THE U.S. MILITARY GOVERNMENT AND DEMOCRATIC REFORM AND
DENAZIFICATION IN BAVARIA, 1945-47

A thesis presented to the Faculty of the U.S. Army
Command and General Staff College in partial
fulfillment of the requirements for the
degree

MASTER OF MILITARY ART AND SCIENCE
Military History

by

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Fort Leavenworth, Kansas
2001

MASTER OF MILITARY ART AND SCIENCE

THESIS APPROVAL PAGE

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Thesis Title: The U.S. Military Government and Democratic Reform and Denazification in Bavaria, 1945-47

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The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)

ABSTRACT

THE U.S. MILITARY GOVERNMENT AND DEMOCRATIC REFORM AND DENAZIFICATION IN BAVARIA, 1945-47, by MAJ Walter M. Hudson, 204 pages

This thesis studies the efforts of the U.S. Military Government in Bavaria to bring about democratic reform and denazification. It focuses on the period from V-E Day on 8 May 1945 to 5 June 1947, when Secretary of State George Marshall first publicly announced the European Recovery Program (Marshall Plan).

This study reveals that the organizational restructuring and ultimate diminishment of military government played an important role in achieving German political autonomy. The study further reveals that democratic reform efforts along federalist lines were relatively successful in Bavaria, and that, contrary to some critics' assertions, the American military government played a prominent role in this achievement. The study then focuses on denazification efforts. It determines that total denazification failed because, in part, the American military government pursued contradictory policies of attempting to restore political autonomy to Bavarians and at the same time pursuing aggressive denazification. Nonetheless, denazification did not wholly fail and aided somewhat in bringing about democratization through stigmatizing Nazism as a political ideology. This study concludes by pointing out that, despite some failures, especially in denazification, the American military government and Bavarians forged a viable, if imperfect, democracy during the crucial period from 1945 to 1947.

ACKNOWLEDGMENTS

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LIST OF ABBREVIATIONS

ACC   Allied Control Council

BVP   Bavarian Peoples' Party (*Bayerische Volkspartei*)

COSSAC   Combined Chiefs of Staff

CDU   Christian Democratic Union (*Christlich-Demokratische Union*)

CSU   Christian Social Union (*Christlich-Soziale Union*)

EAC   European Advisory Council

FDP   Free Democratic Party (*Freie Demokratische Partie*)

FM   Field Manual

G-5   Civil Affairs section of a tactical unit

GCC   Group Control Council

IMT   International Military Tribunal

JCS   Joint Chiefs of Staff

KPD   Communist Party (*Kommunistische Partei Deutschland*)

OMGB   Office of Military Government for Bavaria

OMGUS   Office of Military Government for Germany (United States)

POLAD   Political Advisor

SED   Socialist Unity Party (*Sozialistiche Einheitspartei Deutschland*)

SHAEF   Supreme Headquarters Allied Expeditionary Force

SPD   Socialist Democratic Party (*Sozialdemokratische Partei Deutschland*)

USFET   United States Forces, European Theater

CHAPTER 1

INTRODUCTION

In the spring of 1945, the United States Army established military government in

Bavaria, a German state (*Land*) caught in a maelstrom of defeat and near-anarchy. Its

public works, courts and school systems had broken down completely. Cities and towns

lay in waste. Allied air attacks had destroyed 80 percent of Munich, Bavaria's once proud

capital, and its population had fallen from 830,000 to 475,000.[1] The Americans who

captured the city described it as a place of desolation and despair: "People came out of

their roofless, windowless apartments or cold cellars and, as if by reflex, began to move

along the streets. From force of habit, some lined in front of food stores that did not

open. Others dragged logs or bundles of faggots along the gutters. They were all dazed,

scarcely moving to avoid the American tanks and artillery that rumbled past."[2] There

was not only physical desolation. After the Faustian bargain the Bavarian people had

made with Hitler, Nazi ideology had seemingly permeated their life and culture.

Ultimately, Hitler led them into the most destructive war in history, resulting in absolute

defeat in May 1945, the darkest moment in German history.

Bavaria had made that devil's bargain along with the rest of Germany, though the

region was a unique part of the German nation that prided itself on its independence. It

was a land of enchantment, beauty, and paradox, known for the mad King Ludwig II and

the stigmatic visionary Therese Neumann, for fairy tale castles and onion-domed

churches, for both the Lenten Passion Play in Oberammergau and Wagner's pagan music

dramas in Bayreuth. It was part of Germany, yet defiantly different, a heavily Catholic

state in a predominantly Lutheran nation, and had fought Bismarck himself in the so-called *Kulturkampf* he had waged against its cultural and religious institutions.[3]

In many ways, Bavaria had been the region of Germany most resilient to National Socialism. Yet it was also the wellspring of the Nazi movement.[4] Hitler wrote *Mein Kampf* in Landsberg Prison after leading the unsuccessful 1923 Munich *Putsch*.[5] He held huge Nazi Party rallies in the northern Bavarian city of Nuremberg. His retreat house was in the mountain resort of Berchtesgaden, near the Austrian border. Despite Bavaria's separatism and Catholicism, Nazi ideology had nonetheless made inroads into Bavarian life, from school books and youth groups to professional organizations. In the midst of all this, the U.S. Army, as the military government from 1945 to 1947, was to rebuild Bavaria physically, and perhaps even more dauntingly, to reform it politically.

<div align="center">The Origins of the Postwar Occupation</div>

Occupation planning begin well before Germany's surrender. The Allies proceeded haphazardly in developing a strategy for the postwar occupation of Germany, with the first real attempts beginning at the operational, rather than strategic, level of planning. Roosevelt had called for the unconditional surrender of Germany at Casablanca in January 1943, and in May, the Anglo-American coalition at Supreme Headquarters Allied Expeditionary Force (SHAEF) began planning for Germany's possible occupation. The first operational plan, codenamed RANKIN, had four contingency plans. Only one of the four was for an actual occupation of Germany, and even it was relatively threadbare.[6] As an attempt to clarify and coordinate efforts and develop a more comprehensive plan, SHAEF staffers began planning the successor to RANKIN, codenamed TALISMAN, in the spring of 1944.[7] In November 1944,

TALISMAN became ECLIPSE, and, incorporating some of the strategic guidance from policymakers, became the final Anglo-American occupation plan.[8]

Meanwhile in 1944, strategic occupation guidance began to appear. In April, the Anglo-American Combined Chiefs of Staff (COSSAC) approved a document entitled "Directive for Military Government in Germany Prior to Defeat or Surrender" (better known as Combined Chiefs of Staff Directive 551 or simply CCS 551). It called for an interventionist military government, to include removing Nazis from office, wiping out Nazi laws, arresting and bringing to justice war criminals, and controlling the Germany economy.[9] The European Advisory Council (EAC), formed at the Moscow Conference in 1943 to coordinate Allied policy for postwar Germany, also developed a plan for tripartite sector control of Germany. The U.S., U.K., and U.S.S.R. subsequently approved in late 1944 and early 1945.[10]

Within the American government, in the summer and fall of 1944, Secretary of Treasury Henry Morgenthau led an effort to have severe peace terms imposed upon Germany. Under the so-called "Morgenthau Plan" Germany would be decentralized, deindustrialized, and turned into an agrarian state.[11] The Morgenthau Plan somewhat influenced the primary American policy document on the occupation. Drafted by the Civil Affairs Division of the War Department with the lengthy title, "Directive to the Commander in Chief of U.S. Forces of Occupation Regarding the Military Defeat of Germany in the Period Immediately Following the Cessation of Organized Resistance (Post Defeat)," it became better known as simply JCS (for the Joint Chiefs of Staff, who approved the document) 1067.[12] According to JCS 1067, Germany would be treated as a conquered, rather than a liberated, nation.[13]

As the war neared its end, the Allies clarified joint occupation policy. The Yalta Conference in February 1945 stated in broad terms how the Allies would deal with postwar Germany. Yalta definitively established the three zones of occupation for the United States, the United Kingdom, and the Soviet Union. The three nations pledged themselves to a policy of denazification, reparations, and control of German industry.[14] The postwar Potsdam Conference in July and August 1945 elaborated on the principles established at Yalta. It adopted many of President Truman's proposals, themselves largely derived from JCS 1067. Germany would fall under an Allied Control Council (ACC) that would determine joint occupation policy. Furthermore, Germany would be disarmed and denazified, and the German political structure would be decentralized.[15]

As occupation planning finalized, Allied forces entered the German heartland in the spring of 1945. Occupational duties in the southwestern region of Germany, including Bavaria, became the responsibility of the U.S. Army.[16] However, neither the President nor the Army initially wanted the job. Roosevelt thought the military was unfit for the job of creating and sustaining postwar government.[17] The Army's senior commanders did not seek the mission either. After achieving total battlefield victory, they did not desire presiding over a country ruined by war, and close to starvation and possible revolution.[18]

As the only force that had the logistic and administrative capability to perform the mission, the Army nonetheless took the responsibilities of military government following Germany's surrender (V-E Day) on 8 May 1945. The military government in Bavaria, both in its primary office in Munich and in the various detachments spread throughout the cities, towns, and countryside, thus began to implement the political and

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reform of Bavaria along decentralized, non-authoritarian lines. The military government

established the initial local governments, approved the formation of political parties, and

later monitored elections. Most importantly, it set parameters that allowed Bavarians

largely to govern themselves, stepping in when it deemed necessary to correct or prohibit

certain actions. Within less than two years, Bavaria had functioning, German-elected

governments at village, town, city and *Land* level, and had an approved Constitution.

The military government had set the stage for Bavaria to become a democratically

operating state of a new Federal Republic of Germany that would form two years later.

One of the military government's main tasks during the years immediately

following the surrender was also denazification. General Lucius D. Clay, the Deputy

Military Governor of Germany during the 1945-47 period, stated that denazification was

a "precondition to German recovery and rehabilitation. . . . [I]t was necessary before

Germans could develop a sound democracy . . . [and] the military government would do

the job if Germans would not want to."[19] Yet denazification in Germany, and particularly

in Bavaria, was an immense, difficult, and controversial task. The principal policy

document, JCS 1067, was extremely broad and vague in its language, and

implementation of the policy rendered difficult by changing laws and definitions. Partly

as a result, Bavarians often viewed denazification as contradictory, confusing, and unfair.

Denazification in Bavaria was thus considerably less successful than democratic reform.

However, the denazification process did serve a vital purpose: it publicly eradicated and

permanently stigmatized Nazism as a political philosophy and way of life.

The occupation lasted four years and occurred in two major phases: the first

phase, from V-E Day to mid-1947 almost completely run by the U.S. Army; and from

mid-1947 until the creation of the Federal Republic of Germany on 21 September 1949, largely under German control. The latter two years are perhaps better known. During that time, the Cold War began to quickly escalate; Germany divided into different nations; and the Berlin Airlift demonstrated Western resolve. Yet the first two years of U.S. military occupation, roughly from V-E Day on 8 May 1945 to 5 June 1947, the date Secretary of State George Marshall announced the European Recovery Program, were in many ways even more critical. Given the task to reform Bavaria for future generations, the Americans strove for democratic reform at great speed while they attempted to eliminate Nazi influence from Bavarian society.

While the American military government succeeded in bringing about political reform in Bavaria, it failed to meet its own goals of denazification. This perhaps appears puzzling in retrospect. How could democratic reform succeed relatively well if Bavaria was not thoroughly denazified? While there are perhaps several answers, it appears that the goals of democratic reform and denazification, at least as envisioned by American policymakers, were not complementary, but often at odds with each other. American policy required that political autonomy was to be given to the Germans as soon as possible. However, this meant giving up the denazification program to the Germans themselves. Bavarians especially failed to pursue aggressive denazification, and denazification soon faded out after they took control.

It also appears that many American policymakers and experts in German culture and history profoundly misunderstood the Nazi movement, perhaps understandably viewing Nazism as simply the latest guise of a deeply rooted societal disease that would take a lifetime of cultural reeducation to overcome. It appears, however, that Nazism was

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the result of a complicated array of social, economic, and political factors that arose in interwar Germany. Total military defeat, unconditional surrender, shame over revealed Nazi atrocities, a new world order of America and the Soviet Union as rival superpowers, an effective and benign western occupation, and finally, the political stigmatization process of denazification--all these things convinced Germans, to include Bavarians, that Nazism was no longer a viable political alternative.

Furthermore, Bavaria had a long political tradition of political autonomy and even separatism. This tradition was reborn during the first years of the American occupation. It comported well with the American military government's policy goal of creating a decentralized Germany. American military government and Bavarians together thus successfully brought about democratic reform in Bavaria along decentralized, federalist lines, a success that helped shape the modern German state.

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[1]U.S. Military Police School, *Case Studies on Field Operations of Military Government Units* (Fort Gordon, GA: Military Police School, 1950), 77. CARL 322.5U579. An American postwar observer described Germany as "a country without cities. The countryside is practically untouched and in many spots as picturesque as ever. But in a physical and to a large degree psychological sense, the cities no longer exist." Julian Bach, *America's Germany: An Account of the Occupation* (New York: Random House, 1946), 17.

[2]Ibid.

[3]Until 1806, Bavaria consisted only of Upper and Lower Bavaria and the Upper Palatinate, areas that were completely Catholic. In 1806, Bavaria formed an alliance with Napoleon and as a result acquired Franconia to the north and Swabia (Schwaben) to the east. Middle and Upper Franconia were predominantly Protestant and Lower Franconia and Swabia predominantly Catholic. After the Bismarck Constitution of 1871, Bavaria became part of the German nation, but retained special rights and preserved its monarchy. Bismarck's *Kulturkampf* occurred in the 1870s when he attempted to attack Catholic institutions, particularly the clergy and Catholic education, throughout Germany. His attempts backfired and Catholicism emerged more powerful than before. Geoffrey Pridham, *Hitler's Rise to Power: The Nazi Movement in Bavaria, 1923-1933* (New York:

Harper & Row, 1973), 1-11; D. R. Doronodo, *Bavaria and German Federalism* (New York: St. Martin's Press, 1992), 1-4. It should be noted that Bavaria did not feel the weight of the *Kulturkampf* as strongly as did other German regions, notably Prussia. Allan Mitchell, *Revolution in Bavaria, 1918-1919: The Eisner Regime and the Soviet Republic* (Princeton: Princeton University Press, 1965), 12.

[4]Following Germany's surrender in November 1918, a short-lived radical Socialist/Marxist regime succeeded the toppled Bavarian monarchy (House of Wittelsbach). It was initially led by Kurt Eisner (assassinated in February 1919 by an archconservative) and then followed in April 1919 by a Soviet style regime. Bavarian and other German paramilitary units suppressed it in May 1919. The impact of the Soviet style government had an immense impact on Bavarian political consciousness:

> It would be hard to exaggerate the impact on political consciousness in Bavaria of the events between November 1918 and May 1919, and quite especially of the *Räterepublik* [the Soviet style government briefly established in April 1919]. At its very mildest, it was experienced in Munich itself as a time of curtailed freedom, severe food shortages, press censorship, general strike, sequestration of foodstuffs, coal, and items of clothing, and general disorder and chaos. But of more lasting significance, it went down in popular memory as a 'rule of horror' (*Schrenkensherrschaft*) imposed by foreign elements in the service of Soviet communism.

Ian Kershaw, *Hitler, 1889-1938: Hubris* (New York: W. W. Norton & Co., 1998), 114. The Eisner regime and the short-lived Bavarian Soviet also fanned the fires of anti-Semitism and xenophobia, Eisner and prominent figures in the Soviet regime being "non-Bavarian" Jews. Robert S. Garrett, *Lion, Eagle, and Swastika: Bavarian Monarchism in Weimar Germany, 1918-1933* (New York: Garland Publishing, 1991), 41. See also Mitchell, passim. The subsequent 1919 constitution of the Weimar Republic took most of the remaining vestiges of Bavarian autonomy away, tying Bavaria to the more leftwing central government in Berlin. Throughout the 1920's, a strong right-wing backlash took hold in Bavaria, with many Bavarians believing Bavaria should be a "cell of order" against the liberal and Marxist north. Pridham, 7; Kershaw, 169, 171; Garnett, 51-64. Despite the rightwing reaction, throughout the 1920s, most Bavarians rejected Nazism. Instead, the rightwing, populist Catholic Bavarian People's Party (BVP), formed in 1918, emerged as the dominant political force throughout the decade. Voting patterns indicated that support for Nazism was weak or lukewarm in Bavaria throughout the decade, more so in the Catholic south. The Nazis finally broke the BVP stranglehold in old Bavaria when it consolidated its national power in 1933. Pridham, 321; Garnett, 220.

[5]While the BVP emerged as the dominant political force in Bavaria in the 1920s, the Nazi party nevertheless made significant inroads in Bavaria during that decade. Though BVP Bavarian Minister-President Eugen von Knilling stated in May 1923 that, "The enemy stands left, but the danger [stands] on the right," Bavaria had become a

postwar haven for rightwing extremists throughout Germany. Kershaw, 197. Nazism, with its fiercely anti-communist, anti-liberal, and anti-Semitic rhetoric, appealed to many Bavarians, despite the fact that some Nazi propaganda, such as that by Julius Streicher, was as anti-Catholic as it was anti-Semitic. Pridham, 24. Those Bavarians whose autonomous Bavarian, Catholic identities were not as pronounced generally were less likely to join the BVP and more likely to vote for the Nazi party. Pridham, 321. After Hitler took power in 1933, however, many in the BVP--and some in the Bavarian Catholic hierarchy--found common cause with some Nazism, in particular approving its destruction of the despised Weimar Republic, which many Bavarians considered weak, ineffectual, and Marxist-leaning. Kershaw, 488.

[6]U.S. Army Civil Affairs School, *Planning for the Occupation of Germany* (Fort Gordon, GA: U.S. Army Civil Affairs School, 1947), 12. CARL N-16359.39.

[7]Ibid., 50.

[8]Ibid., 84.

[9]Ibid., 62.

[10]The EAC completed the Tripartite Agreement on Control Machinery in Germany on 14 November 1944, which was approved by the United Kingdom on 5 December 1944, the United States on 23 January 1945 and the Soviet Union on 6 February 1945. (France later signed on, making it a quadpartite agreement.) The agreement called on three military commanders-in-chief to have supreme authority in their respective occupation zones, acting on instructions from their governments. Each commander-in-chief would act in his own zone of occupation. The chiefs would jointly act as members of supreme organ of control, the ACC, on matters effecting Germany as a whole. U.S. Army Provost Marshal General's School, *U.S. Military Government in Germany: Financial Policies and Operations*. (Office of the Chief Historian, U.S. Army European Command, 1950), 10. CARL N-16359.37-1.

[11]The fullest exposition of the Morgenthau Plan is found in a Treasury Department briefing book dated 9 September 1944, dramatically entitled "Program to Prevent Germany from Starting a World War III." The Morgenthau Plan's plan for restructuring German government stressed a permanent dissolution of the modern German state, restructuring it as a loose confederation along pre-1871 lines:

> The military administration in Germany in the initial period should be carried out with a view toward the eventual partitioning of Germany. To facilitate partitioning and to assure its permanence, the military authorities should be guided by the following principles: (a) Dismiss all policy-making officials of the Reich government and deal primarily with local governments. (b) Encourage the reestablishment of state governments in each of the states (*Länder*) corresponding

to 18 states into which Germany is presently divided and in addition make the Prussian provinces separate states. (c) Upon the partition of Germany, the various state governments should be encouraged to organize a new federal government for each of the newly partitioned areas. Such new governments should be in the form of a confederation of states, with emphasis on states' rights and a large degree of local autonomy.

"Briefing Book Prepared in the Treasury Department, September 9, 1944" in United States Department of State, *Foreign Relations of the United States: The Conference at Quebec, 1944* (Washington, D.C.: United States Government Printing Office, 1972), 129-30.

[12]After several drafts, the final version of JCS 1067 that became occupation policy was approved on 12 May 1945. This version, incorporating the changes and amendments made to JCS 1067 is entitled "Directive to the Commander in Chief of the United States Forces of Occupation Regarding the Military Government of Germany, May 10, 1945." "Directive to the Commander in Chief of the United States Forces of Occupation Regarding the Military Government of Germany, May 10, 1945" in United States Department of State, *Documents on Germany, 1944-1985* (Washington, DC: Department of State, 1985), 15-32.

[13]The final version of JCS 1067 listed among its "basic objectives":

B. Germany will not be occupied for the purpose of liberation but as a defeated enemy nation. . . . In the conduct of your occupation and administration you should be just but firm and aloof. You will strongly discourage fraternization with the German officials and population. C. The principal Allied objective is to prevent Germany from ever again becoming a threat to the peace of the world. Essential steps in the accomplishment of this objective are the elimination of Nazism and militarism in all their forms, the immediate apprehension of war criminals for punishment, the industrial disarmament and demilitarization of Germany, with continuing control over Germany's capacity to make war, and the preparation for an eventual reconstruction of German political life on a democratic basis."

Ibid., 17-18.

[14]The Yalta Communiqué, released to the press on 11 February 1945, amended the agreed to Surrender Terms for Germany to state: "The United Kingdom, the United States of America and the Union of Soviet Socialist Republics shall possess Supreme Authority with respect to Germany. In the exercise of such authority, they will take such steps, including the complete disarmament, demilitarization and dismemberment of Germany as they deem requisite for future peace and security." "Communiqué Issued at the End of the Conference" in *Foreign Relations of the United States: The Conferences at*

Malta and Yalta, 1945 (Washington, DC: United States Government Printing Office, 1955), 978.

[15]Herbert Feis*, Between War and Peace: The Potsdam Conference* (Westport, CT: Greenwood Press, 1960) 241.

[16]The American zone included the German states (*Länder*) of Hesse, Wuerttemberg-Baden, Bavaria, the north German cities of Bremen and Bremerhaven, and one sector of Berlin. The British occupied Hamburg, Lower Saxony, North Rhine-Westphalia, and Schwlesig-Holstein; the French occupied Baden, Rhineland-Palatinate, and Wuerttemberg-Hohenzollern; and the Soviet Union occupied Brandenberg, Mecklenberg, Saxony, Saxony-Anhalt, and Thuringia.

[17]Lucius Clay, *Germany and the Fight for Freedom* (Cambridge, MA: Harvard University Press, 1950), 53.

[18]According to John Gimbel, the State Department wanted to create U.S. postwar policy in Germany, but needed the U.S. Army to administer it. John Gimbel, "Governing the American Zone of Germany," in *Americans as Proconsuls: United States Military Government in Germany and Japan* ed. Robert Wolfe (Carbondale, IL: Southern Illinois University Press, 1984), 92.

[19]Lucius Clay, quoted in John Gimbel, *The American Occupation of Germany* (Stanford, CA: Stanford University Press, 1968), 107.

CHAPTER 2

ORGANIZATION OF MILITARY GOVERNMENT
IN BAVARIA, 1945-47

Military Government in Bavaria: Pre-V-E Day to June 1945

In a 1949 lecture, Brigadier General Walter J. Muller, the Director of the Office of Military Government for Bavaria (OMGB) from October 1945 to November 1947, pointed out that military government maintains itself by "force of arms over occupied territory of the enemy and its inhabitants."[1] He further pointed out that under military government, the operation of enemy civil government temporarily ceases, and "the Commanding General of the theater of operations is the military governor and his authority is limited only by the laws and customs of war and by such instructions as he may receive from higher authority."[2] During the American occupation of Bavaria, the military government had such absolute authority. Yet the American occupation had, as its ultimate purpose, the relinquishment of that authority to a functioning democratic government. Military government's organization in Bavaria would reflect that seeming paradox during the 1945-47 occupation period.

In fact, the original concept for the American occupation of Germany was to have the job of military government completed by V-E Day. A wholly civilian administration would then take over.[3] General Clay himself said that military government was "no job for soldiers."[4] The problem, however, was that no civilian agency was ready or able to take over the occupation mission. By default, the U.S. Army became the governmental agent charged with overseeing the occupation, and indeed, would continue as the executive arm of the occupation until 1949.[5]

Undoubtedly, one reason for the exclusive role of the military in the postwar occupation was that the U.S. Army, quite early in the war, had actually written doctrine for military government, and began to establish staff sections to administer it. This occurred well before the planning for Germany's occupation began at either the strategic or operational level. The Army published Field Manual (FM) 27-5, *Military Government,* as early as 1940. Together with Field Manual 27-10, *The Rules of Land Warfare*, these two manuals were the seminal documents for subsequent U.S. occupations in the postwar world.[6] FM 27-5, among other things, called for the establishment of a civil affairs staff at the tactical level.[7] In March 1943, the War Department created a separate Civil Affairs Division, which had previously been a branch of the Provost Marshal.[8] In similar fashion, during the Sicilian campaign in 1943, General Eisenhower ordered the creation of a military government provisional section for the Seventh United States Army that later became a separate staff section known as G-5.[9] It was also during the Sicilian campaign that civil affairs officers were attached to divisions, corps, and army headquarters.[10]

The concept of a separate G-5 staff section later carried over to the Third U.S. Army, the U.S. force that would actually occupy Bavaria at the war's end. Organized on 8 May 1944, the Third Army G-5 staff consisted of seventy five officers and enlisted men, with sections dealing with personnel administration, intelligence, plans and operations, relief and supply, and governmental affairs.[11] Likewise, within each Third Army corps were attached several civil affairs teams, consisting of approximately twenty five officers and enlisted men grouped in companies. Some of these teams remained in

various towns throughout France, Luxembourg, and ultimately Germany, as the Third Army attacked across Western Europe.[12] These G-5 separate staff sections would later form the military government detachments in organizations in the actual occupation of Bavaria.

Before the war ended, two American armies occupied Bavaria: the Seventh U.S. Army in the western part of the *Land*, and the Third Army in the eastern part (as well as in Austria and Czechoslovakia).[13] This would soon change. After 31 May 1945, the Third Army under General George S. Patton Jr. became responsible for occupying, organizing, and governing the United States Eastern Military District, including Bavaria.[14] On 9 June 1945, all areas in Bavaria under the Seventh Army subsequently transferred to the Third Army.[15] Also, during the late spring and early summer, the Ninth U.S. Army, located in Hanover, Braunschweig, and Westphalia, and the Fifteenth U.S. Army, located in the Rhineland, ended their occupation responsibilities, and the Third Army gained over 400 units from those and other major commands.[16]

<u>U.S. Military Government in Bavaria: Summer 1945-January 1946:</u>
<u>Third Army as Military Government and the Emergence of the</u>
<u>Office of Military Government for Bavaria (OMGB)</u>

Several realignments and reorganizations took place in the summer of 1945. The Seventh Army moved to what would become the Western Military District, the area known as greater Hesse and Wuerttemberg-Baden, while the Third Army remained in Bavaria, later designated the Eastern Military District. Furthermore, on 14 July 1945, Supreme Headquarters Allied Expeditionary Force (SHAEF) dissolved. Shortly

afterwards all American military forces in Europe fell under the newly created United

States Forces, European Theater (USFET).[17]

Military government would operate under USFET throughout the occupation.

The USFET Supreme Commander, also "dual-hatted" as military governor, was General

Dwight D. Eisenhower, with headquarters in Frankfurt. The USFET Deputy Commander

and Deputy Military Governor--and the primary architect of the U.S. occupation--was

Lieutenant General Clay, who had his headquarters in Berlin, known as the U.S. Group

Control Council (GCC). The USFET Commander had "supreme legislative, executive,

and judicial authority within the areas occupied by forces under his command."[18] This

authority devolved to Clay, as the American principally responsible for occupation

policy, thus earning him the informal title of American "proconsul" for U.S. occupied

Germany.[19]

Multiple chains of command initially operated under USFET. The tactical chain

passed directly from Eisenhower to the respective Third (Eastern District) and Seventh

(Western District) Army commanders. There were two military government chains. One

chain ran from Eisenhower to the military district commanders (also the Army

commanders) and from them to the respective military government detachments under

their command.[20] A technical chain of command also existed, which allowed for direct

communication from Clay's office in Berlin to the G-5 Division of theater headquarters,

the G-5 Division of the military district headquarters, and ultimately the military

government detachments within the districts.[21] This creation of a separate technical chain

would create some confusion, but ultimately it was determined that the command channel

was always controlling.[22]

As the summer of 1945 ended, significant changes in military government organization took place. In August 1945, USFET established the boundaries for the Eastern Military District, which included all of Bavaria.[23] General Patton became Commanding General of the Eastern District in addition to his duties as Third Army Commander. Furthermore, despite orders directing Third Army responsibility for occupation duties, General Clay determined that the recreation of civil government in Germany was a "principle mission [that] did not belong in one of five staff divisions at theater headquarters."[24] Clay also felt that military government had to be ready to build and to transfer such a government "at any time to one of the civil departments of government. . . . [I]t was [therefore] imperative that Military Government be organized separately from the Army Command under a deputy responsible directly to the theater commander."[25] What Clay sought were two parallel organizations that would "complement one another, neither being subordinate and both reporting to the theater commander."[26]

By the fall of 1945, after the vast majority of U.S. troops had returned to the United States, Clay thus redesignated his own organization, the GCC, as the Office of Military Government for Germany (United States) (OMGUS). The military government detachments in the U.S. zones subsequently fell under direct OMGUS control. In retrospect, Clay wrote: "By September [1945], we had created three states in our zone and had established their state administrations. . . . Each state was headed by a Director of Military Government who also exercised supervision over the local governments within the state. . . . They were our field representatives, in daily touch with German authorities

and responsible for the prompt organization of German local and state administrations."[27]

These directors were under the U.S. Army district commanders, although, according to

Clay, there was a "free exchange of information from their offices and mine."[28]

Almost at the same time, military government detachments in Bavaria began to

consolidate under one headquarters. In August, the G-5 section of the Third Army

became the OMGB, with headquarters in Munich. OMGB subsequently consolidated in

September with the primary military government unit in Bavaria, Regional Military

Detachment E-201.[29] Also during that month, the other significant military government

unit in Bavaria, the Third Military Government Regiment, became assigned to the

Headquarters, Eastern Military District on 5 September 1945, thus bringing the military

government detachments under one command.[30] Ultimately, over 148 field detachments

throughout Bavaria dealt with a variety of military occupational responsibilities at the

local level.[31]

Soon after consolidation occurred, Clay began to take successive steps to turn

governmental functions back to the Germans. Thus, in October 1945, Clay established

the Council of Minister-Presidents of the American Zone, the *Länderrat*, and began to

assign to its office in Stuttgart many military government functions.[32] Moreover, he

removed military government units and organizations entirely from the tactical chains-of-

command during this time. Also in October 1945 he issued a memorandum directing

that field forces and theater headquarters would have no "direct military government

functions" and that the military government organizations were to depend upon German

civilian agencies and personnel for supplies and services," including telephone

communications, vehicle repair, and maintenance of billets and offices.[33] The following

month, on 10 November 1945, USFET Headquarters reaffirmed that OMGUS could

communicate directly to the Offices of Military Government in the respective *Länder*

without referring to Army commanders.[34]

In Bavaria, the distinction between tactical and military government units became

clearer in October following General Patton's relief as Commanding General of Third

Army. From that point forward, tactical and military government command and control

fell under two different men. Lieutenant General Lucian Truscott succeeded Patton as

Third Army Commanding General, and on 9 October 1945, Brigadier General Muller

was reassigned from his position as Third Army G-4 and appointed Director, OMGB, a

position he would hold until November 1947.[35]

Obviously, the break between tactical and military government units had to be

deftly managed to avoid friction between the two. The appointment of Muller, a member

of Patton's staff since 1941, no doubt reflected Clay's desire to ensure smooth relations

between the Third Army and OMGB. Moreover, after the establishment of independent

military government command on 1 January 1946, OMGB members regularly met with

Third Army staff members. Subsequent directives laid out conditions for cooperation

between Third Army and OMGUS over various matters.[36]

Nonetheless, the emphasis was on independence from tactical command.

Eisenhower promulgated General Order 337 in December 1945, making OMGB

completely autonomous from Third Army. Furthermore, the OMGB Director would

report directly to Lieutenant General Clay at USFET.[37] The order also gave the OMGB

Director command of all military government offices and detachments within Bavaria.[38] With its autonomy complete, by early 1946 the structure of OMGB had stabilized, and consisted of a director, a headquarters commandant and headquarters unit, and thirteen separate divisions or branches, many of which had subbranches within them.[39] Beneath this headquarters structure were the various military government detachments spread across Bavaria's cities, towns, and villages.

Despite the autonomy given by General Order 337 and Clay's desire to cede military government functions to the Germans themselves, General Order 337 failed to resolve the tensions of the two autonomous chains of command. A 1947 U.S. Army study criticized the command relationships created by the order stating that: "The common denominator that would coordinate the factors inherent in efficient civil control and military organization had not been found by this order."[40]

A major problem was that army commanders still retained existing responsibilities that seemed to be logically connected with functions of military government, such as disarming enemy forces and internees, demobilizing the German forces and managing displaced person camps.[41] The *Länder* directors themselves, with far fewer soldiers under their command, were to utilize "all resources available to them, including German civilian police"[42] to maintain order. Only when the directors maintained this could not be done were they to request assistance from the military district commanders. However, available U.S. military units continued to diminish in size and strength throughout the end of 1945 and first half of 1946. The solution was the formation of a constabulary unit to handle the special duties of occupation.

Military Government in Bavaria: February 1946–June 1947,
Organization of the Constabulary

The War Department had conceived the need for a constabulary in late 1945 as a special task force to maintain order in all U.S. Army occupied nations.[43] In light of diminishing available tactical forces, its formation took on a new urgency. In February 1946, USFET, established the U.S. Constabulary to deal with functions of a military occupation that the military government detachments could not handle on their own.

The U.S. Constabulary widened the separation between tactical and military government units by taking over nearly all the functions the tactical units had performed.[44] It had been established "to maintain general military and civil security and to assist in the accomplishment of the objectives of the United States Government in the occupied U.S. zone, of Germany . . . by means of an active patrol system."[45] Its duties including taking "prompt and effective action to forestall and suppress riots, rebellion, and acts prejudicial to the security of the U.S. occupation policies and forces."[46] In Bavaria, the constabulary units took over duties formerly reserved for the tactical troops under Third Army. A respective constabulary brigade headquarters was established in Munich and liaison officers were attached to OMGB detachments.[47]

While the Constabulary assembled through the spring and summer of 1946, OMGB reduced in size.   This reduction of the occupation government was not only a result of postwar troop reduction but also of U.S. foreign policy. An October 1945 Department of State Directive to Eisenhower stated that: "The administration of affairs in Germany shall be directed towards the decentralization of the political and administrative structure and the development of local responsibility. To this end you will encourage

autonomy in regional, local, and municipal agencies of German administration."[48]
Diminishment of military government personnel would thus accelerate this process.

Thus, in a letter dated 9 August 1946, Major General Clarence Adcock, the
Assistant Deputy Military Governor, wrote to Muller stating that the various *Land*
detachments could be "materially decreased over the next few months."[49] Stressing the
need for German self-governance, Adcock referred to "General Clay's repeated statement
that the efficiency of German administration is not the concern of military government
except in those instances where public safety, public health, and the operation of utilities
serving the Army of Occupation might be endangered by lack of proper German
management."[50] In major areas such as public welfare, religion, and finance, Adcock
deemed it sufficient that "one high-quality U.S. representative with a secretary or other
office assistants" would be sufficient to monitor German administration of government.[51]

OMGB was thus greatly reduced by the spring of 1947. By that time, the military
government's role in everyday Bavarian life had significantly diminished as well. As a
March 1947 memorandum from OMGB stated: "The relationship of Military
Government to German governmental agencies today is primarily one of advice,
observation, and reporting. The governments of states in the U.S. Zone are permitted as
much freedom as possible to develop democratically within the framework of their
constitutions."[52] The only areas where the military government still exerted direct
operational control were in certain functions such as reparations, restitutions, and export-
import control.[53] A listing of chiefs of branches from March 1947 also showed that
OMGB was a largely civilian force by that time. Apart from a handful of colonels,

lieutenant colonels, and majors, the vast majority of branch and division chiefs were non-uniformed.[54]

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Military Government Organization and its Impact on
Bavarian Political Reform

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Even before the United States entered World War II, there was a growing

realization that military government would likely play a significant role in the postwar

world, hence the development of FM 27-5 and the creation of a separate Civil Affairs

Division. The concept of a separate G-5 staff section at the tactical level also revealed

this growing awareness.[55] Clay grasped the uniqueness of military government's role in

his early decision to separate tactical and military government chains of command. In

retrospect, this structural decision was nearly as important to the development of political

reform in the American zone as were substantive decisions regarding appointments to

office, elections, and political parties. A tactical headquarters, structured around the

operation and maintenance of a unit filled with thousands of soldiers, did not serve well

as the main point of contact with civilian authorities. Its imposing staff structure served

to intimidate and confuse local authorities, and was far different from civil government

organizational models. The tactical unit's one section devoted exclusively to civil affairs,

G-5, was a late wartime addition to the staff model, and not considered the equivalent in

importance during wartime operations to G-2 (intelligence), G-3 (operations), or G-4

(logistics) sections. It was a less than ideal place to serve as the normal place of contact

with responsible civilian authorities, especially given the major and long-range political

reform objectives.[56] The establishment of a separate military government directorate

sought to resolve such difficulties.

The reorganizational policy had its drawbacks. It created two autonomous chains-of-command. However, the appointment of Muller, one of Patton's inner circle of staff officers since 1941, as the OMGB Director was a way to bridge the two commands and minimize Third Army and OMGB friction. Furthermore, the divide opened up between the tactical and military government units found some resolution in the creation of the U.S. Constabulary. On the other hand, as will be discussed later in this study, the denazification policy proved especially labor intensive, and military government detachments and personnel became overwhelmed with the demands of processing and investigating cases. The sheer scope of the denazification effort probably required a considerable administrative and logistic infrastructure that the tactical units could have more easily provided.

Nonetheless, the restructuring and strength reduction of OMGB, its separation from the Third Army, and the creation of the Constabulary facilitated political self-recovery in Bavaria. Separation of military government from tactical units meant, inevitably, less American resources immediately available to accomplish particular tasks. The structural reorganization thus created a situation in which both American military government and the civil authorities had little choice but to look to Germans themselves to solve problems. The American reduction in presence corresponded with the growth of Bavarian political parties and free elections that began in January 1946, and culminated in the passing of a *Land* constitution and election of a parliament (*Landtag*) in December of that same year.

[1]Walter J. Muller, "Subject: Military Government" (speech to students of the U.S. Army Quartermaster School, Camp Lee, Virginia, 3 March 1949). Papers of Walter J.

Muller, Box 13, Volume 2, Tables of Organization. Hoover Archives, Stanford University, Palo Alto, CA.

[2]Ibid.

[3]Earl Ziemke, "Improvising Stability and Change in Postwar Germany" in *Americans as Proconsuls, United States Military Government in Germany and Japan, 1944-1952*, ed. Robert Wolfe (Carbondale, IL: Southern Illinois University Press, 1984), 59.

[4]Ibid.

[5]Ibid., 66.

[6]Earl F. Ziemke, *The U.S. Army in the Occupation of Germany* (Washington D.C.: Army Historical Series, 1975), 4. Ziemke calls FM 27-10 and FM 27-5, "the Old and New Testaments of American Military Government." Ibid.

[7]Throughout the war, FM 27-5 went through significant changes. After its first appearance, some criticized it for being too concerned with civilian matters, such as the welfare of the population occupied, and not enough concerned with purely functional, military concerns, such as unit security. A revision of FM 27-5 published on 22 December 1943 indicates that the military critics won the debate: the latter version had little discussion about military government concerns, and the welfare of the occupied population was no longer listed as a basic objective. Merle Fainsod, "The Development of American Military Government Policy During World War II" in *American Experiences in Military Government in World War II*, ed. Carl Friedrich (New York: Rinehart & Co., 1948), 27-32.

[8]Muller, "Subject: Military Government."

[9]Ibid.

[10]Ibid.

[11]Ibid.

[12]Ibid. Usually, upon securing a town or area, a combat unit performed only essential tasks in restoring law and order and providing relief to inhabitants in the location. The combat unit subsequently moved on, transferring its military government responsibilities to the unit assigned area responsibility in the rear, with appropriate military government detachments. U.S. Army Provost Marshal's School, *The First Year of the Occupation* (Office of the Chief Historian, U.S. Army European Command, 1947), 52. CARL N-17500.1078.

[13]Third Army, *Mission Accomplished: Third United States Army Occupation of Germany, 9 May 1945-15 February 1947* (Third Army Historical Section, 1947), 16. CARL 940.5343U56m. In fact, Munich first fell to divisions of the Seventh U.S. Army, and initially, the Regional Military Government Detachment, established on 15 May 1945, was attached to that Army. OMGB, *Summary of Activities, Office of the Military Government for Bavaria* (Headquarters, OMGB, 1946), 3. Papers of Walter J. Muller, Box 15. Hoover Archives, Stanford University, Palo Alto. CA..

[14]*Mission Accomplished*, 16.

[15]Ibid.

[16]Ibid.

[17]Ibid.

[18]U.S. Army Provost Marshal's General School, *Civil Affairs: Occupation Forces in Europe Series, 1945-46* (Office of the Chief Historian, U.S. Army European Command, 1947), 70. CARL N16359.8-A

[19]Ibid. The military government of Germany consisted of American, French, British, and Russian headquarters and organizations. Military government representatives of each nation formed the Allied Control Council (ACC), which promulgated joint policy and plans, which were subsequently executed in each nation's respective zone.

[20]Clay would eventually become USFET Commander and U.S. Military Governor in 1947.

[21]*Civil Affairs: Occupation Forces in Europe Series, 1945-46*, 71.

[22]Ibid.

[23]Ibid., 76.

[24]Clay explained his rationale in his memoir, *Decision in Germany*:

This was our principle mission and it did not belong in one of five staff divisions at theater headquarters. . . . [I]t was imperative that Military Government be organized separately from the Army Command under a deputy responsible directly to the theater commander. This deputy would have a staff or cabinet responsible directly to the theater commander. . . . The deputy military governor would receive policy instructions direct from Washington. . . . He would be responsible for the execution of these policies in our zone, setting up field offices

in the states directly responsible to him and not the field commanders. This organization would be staffed with civilian experts as rapidly as they could be obtained.

Lucius Clay, *Decision in Germany* (New York: Doubleday, 1950), 52.

[25]Ibid., 52.

[26]Ibid.

[27]Ibid., 55.

[28]Ibid.

[29]*Civil Affairs: Occupation Forces in Europe Series, 1945-46*, 77.

[30]Ibid.

[31]In late 1945, OMGB personnel in Munich and those attached to Third Army (headquarters in Bad Tolz) comprised approximately 500 officers and enlisted men. The Third Military Government Regiment, with a Headquarters Service Company and eight administrative companies totaled 2000 officers and enlisted men. The 148 field detachments throughout Bavaria were comprised of 1700 officers and enlisted men. Overall, a total of 4200 worked directly in military government at the time. Muller, "Subject: Military Government."

[32]Ibid.

[33]John Gimbel, "Governing the American Zone in Germany," in *Americans as Proconsuls, United States Military Government in Germany and Japan, 1944-1952*, ed. Robert Wolfe (Carbondale, IL: Southern Illinois University Press, 1984), 94. U.S. field forces were available only "to maintain the security of our forces and the authority of military government when required." *The First Year of the Occupation*, 66.

[34]*Civil Affairs: Occupation in Europe 1945-46 Series:* 82-83.

[35]Murray Van Wagoner, a civilian and former congressman from Michigan who would hold the position until 1949, would succeed Muller in November 1947.

[36]*Civil Affairs: Occupation Forces in Europe*, 93. At that point Third Army was still responsible for certain occupation functions such as the handling of looters and marauders and procedures for and transportation of refugees and repatriates.

[37]The order actually became effective on 1 January 1946, and gave the same autonomy to the Office of Military Government in Wuerttemberg-Baden. Ibid., 84.

[38]The order still held that the District Commander would be responsible for providing military government personnel administrative support. Ibid., 85.

[39]They were: intelligence branch; personnel and administration branch; civil administration branch; plans and operation branch; economics division; internal affairs and communications division; finance division; public relations branch; transportation branch; supply branch; manpower branch; legal branch; and the information control division. *Summary of Activities, Office of the Military Government for Bavaria*, passim.

[40]*Civil Affairs: Occupation Forces in Europe 1945-46*, 88.

[41]Ibid., 86

[42]Ibid.

[43]*Mission Accomplished*, 20.

[44]Tactical units would still some provide occupation-like duties after the U.S. Constabulary's formation. The First and Ninth Infantry Divisions in the Eastern District would continue to provide security for civilian internee camps, detention camps for displaced persons, and United Nations Relief and Rehabilitation Administration. Ibid., 23.

[45]Ibid.

[46]Ibid.

[47]Ibid., 20.

[48]Robert A. Reese, "Directive and Policies Governing the Formation and Operation of the U.S. Constabulary, U.S. Zone, Germany" (Headquarters, OMGB, 12 March 1946). Papers of Walter J. Muller, Box 19. Hoover Archives, Stanford University, Palo Alto, CA.

[49]C. L. Adcock, OMGUS, to Walter J. Muller, OMGB, 9 August 1946. Papers of Walter J. Muller, Box 15. Hoover Archives, Stanford University, Palo Alto, CA.

[50]Ibid.

[51]Ibid. The motivation to reduce the size of military government was not exclusively out of desire for German autonomy. Adcock stated to Muller that he should study where to make cuts "to meet General Clay's policy of throwing more and more responsibility on the Germans and lessening the American taxpayer's burden." Ibid.

[52]General Orders No. 4 (Headquarters, OMGB, 12 March 1947). Papers of Walter J. Muller, Box 15. Hoover Archives, Stanford University, Palo Alto, CA.

[53]Ibid.

[54]Ibid. Apart from Muller, only 20 of 53 division and branch chiefs were U.S. Army officers at this time.

[55]SHAEF had developed its own series of operational level occupation plans, beginning in 1943, that would implement Allied occupation policies developed by the Allied nations political leadership. Much of the final occupation plan, codenamed Operation ECLIPSE, became irrelevant because the Allies had exceeded their expectations in achieving total German defeat. For this reason, for example, relatively little postwar demilitarization of the *Wehrmacht* was necessary. U.S. Army Civil Affairs School, *Planning for the Occupation of Germany* (Fort Gordon, GA, 1947), passim. CARL N-16359.38.

[56]Two observers of postwar military occupation made many of these criticisms of tactical unit control of military government and concurred that tactical and military government separation be made as soon as possible. George C. S. Benson and Mark Dewolfe Howe, "Military Government Organizational Relationships," in *American Experiences in Military Government in World War II*, ed. Carl Friedrich (New York: Rinehart & Co., 1948), 64.

CHAPTER 3

DEMOCRATIC REFORM IN BAVARIA, 1945-47

<u>Setting the Stage</u>

When the Allies defeated and occupied Germany in the spring of 1945, the major

powers agreed that there was to be no repeat of 1918. Germany was never again to

emerge as a belligerent, dictatorial state. Germany was not simply to be defeated; it was

to become a wholly new nation. But what that new nation would be was not at first

certain. Under the influence of Secretary of Treasury Morgenthau, there were proposals

put forth within President Roosevelt's administration to "pastoralize" Germany. It was

also uncertain what kind of government Germany would have. Indeed, at the Allied war

conferences at Quebec and Yalta, democratization of Germany was not a high priority.[1]

As the defeat of Germany became evident, however, democratization moved to

the center of American occupation policy. Set forth in JCS 1067, democratization later

became official policy that the major Allied powers at the Potsdam Conference in the

summer of 1945 ratified and clarified. Taken together, JCS 1067 and the Potsdam

Declarations indicated that political life would resume in Germany, that an autonomous

government would at some point be restored, and that the form of government would be

democratic.[2]

Restoring a democratic government to Germany was a formidable challenge that

many thought would take a generation. For twelve years, the Nazi government strove to

achieve a society based on the principle of *Gleichschaltung*, forced synchronization, in

which all aspects of life--familial, communal, professional, religious, and

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governmental--fell under a centralized, pyramidical governmental system of control and coercion. The Nazi regime sought submission to the *Führerprinzip*--absolute loyalty to Hitler. Youths had been taught to honor Hitler before their parents, religious clergy co-opted by the Reich, and professional organizations turned into adjuncts of the Nazi Party.[3]

The victorious Allies thus reckoned that military defeat was not sufficient. Political and societal changes had to occur to ensure Germany would never again fall under the totalitarian spell. One particularly American solution to the totalitarian problem was to restore German government along decentralized, federalist lines. A federalist-type government, in which the *Länder* and local governments possessed substantial powers themselves, would create structural impediments to totalitarian centralism.[4] Federalism would allow local cultures within each *Land* to revive and act as buffers and mediators against an encroaching, centralized state.[5] A federalist-style government of divided local and state governments also was something within the realm of German experience. Prior to 1871, Germany had been a loosely knit confederation of states, and even during the Weimar Republic years, *Länder* had retained some autonomous powers.[6]

The Allied occupiers would not be bound by legal restraints in their occupation mission and thus swept aside any possible restraints in international law, embodied in the Hague Conventions. Article 43 of the 1907 Hague Conventions required that occupants had to "restore and ensure, as far as possible public order and civil life, while respecting, unless absolutely prevented, the laws in force in the country."[7] But the Allies had no

intention of abiding by the totalitarian Nazi laws, or restoring the laws of the Weimar Republic--the state that crumbled weakly under Hitler's grip. Instead, based on the concept of *debellatio* or subjugation, the Allies held that Germany did not fall under the Conventions because, totally subjugated, with its institutions destroyed, Germany no longer legally existed as a nation-state at all.[8]

Despite such legal justification, however, unrestrained attempts to create a new German society and culture did not occur within the American zone. The Morgenthau Plan reforms were not fully implemented.[9] Despite rhetorical claims to the contrary, American occupiers primarily sought to change German government, not to transform German culture. While there were programs in reeducation along democratic lines and efforts at social reorientation, they were remarkably modest in the American zone.[10] The basic elements of German culture--family, community, and religion--were not objects of significant reform or reorientation. Furthermore, while the United States would set up a military government in its zone, and while the American military would set about establishing democratic government, it did so, for the most part, without dictating which political parties should prevail. The military government did not affiliate with particular political parties or movements within Germany, and did not choose sides.[11] In the American zone, U.S. military government set conditions for democracy and set limits on how far the Germans could go in restoring it, but to a great degree, allowed Germans to achieve democratic government themselves.

The ultimate goal was the unification of all the German *Länder* in the zones into a new German nation.[12] But what the Americans sought to establish in their own zone, and

hoped would become the model for all Germany, was a decentralized, federalist democracy. This plan partially succeeded. The Soviet zone did not unify with the western zones. Instead it formed its own centralized Communist government. The *Länder* in the three western zones did unify, however, in 1949, and the governmental model they adopted, in many significant ways, was federalist.[13]

Bavaria had a vital role to play in this process. It was the largest and most populated *Land* in the U.S. zone. It also had a strong tradition of independence, and had, prior to the Nazi ascendance in 1933, political parties that sought to maximize Bavarian governmental autonomy.[14] Of all the German provinces, it appeared to be a natural place for federalism and decentralization to take root in postwar Germany. Bavaria, however, also had a tradition of separatism, and as perhaps the most conservative region of Germany, still had monarchist, antidemocratic elements. American military government thus had a unique challenge. It sought to encourage federalism and decentralization in Bavaria without interfering directly in Bavarian politics, and yet at the same time it sought to steer Bavaria away from reactionary separatism.

From 1945 to 1947, perhaps the primary architect of democratic reform in the U.S. zone was Lieutenant General Clay, who served as Deputy Military Governor. Clay, however, received little instruction from Washington policy makers on how to accomplish this. Indeed, he was to admit years after his service in Germany that he received no guidance from any executive agency on how to achieve German governmental decentralization.[15] Mainly drawing on JCS 1067 and the Potsdam Declarations, Clay and his military government staff prepared plans for democratic

restoration. In a letter written in 1946 to Lieutenant General O. P. Nichols, the director of

the War Department's Civil Affairs Division, Clay set forth his interpretation of U.S.

policy for German government reconstruction:

> The United States believes in a decentralized German government in accordance
> with the Potsdam Agreement. It proposes therefore the establishment of a
> Germany composed of a small number of states, each of which would have a
> substantial responsibility for self-government. These states would be permitted to
> form a confederation or federal type of government, which, however, would be
> given the requisite powers to achieve true economic unity. The United States
> recognizes the right of the German people to participate in the determination of
> their governmental structure which, however, must come within the general
> provision for decentralization agreed at Potsdam.[16]

In order to achieve this vision of a federalized Germany, Clay further stated it would be

necessary for the several *Länder* to draft and for their citizens to approve democratic

constitutions and to "provide for some delegation of governmental responsibility to

county and community levels."[17]

Such a process in the midst of an impoverished, devastated Germany might

reasonably be thought of as the job of one or more generations. Furthermore, Clay had

on his own military government staff many officials who were leading exponents for

radical societal reconstruction. However, Clay came to the conclusion that many of the

ambitious plans of the social reformers were unworkable. He called the more ambitious

reformers "zealots for reforms that go far beyond anything that's ever been done in [the

United States]."[18] Rather, against the advice of many reformers, Clay, determined to

begin democratic reform--which meant giving German political autonomy--as soon as

possible.[19]

Within weeks of the surrender, basic governmental functions in the U.S. zone *Länder* had been reestablished and the appointed officials empowered to act according to their positions.[20] In several speeches to the Council of Minister-Presidents (*Länderrat*), Clay stated that the *Land* Minister-Presidents, though U.S. appointed, should make their own decisions as much as possible and not turn to the American military government for answers.[21] Within months, political parties were legalized. In January 1946, just eight months after the Third Reich had ceased to exist, U.S. zone Germans voted in local elections. By December of that year, they voted in their respective *Land* legislatures (*Landtag*) and approved their *Land* constitutions.

Clay's reasons were pragmatic and his expectations realistic. He stated that he wanted to return local government to the Germans because he was unsure if the United States would support a lengthy, expensive occupation. He also believed that if he reduced U.S. military troop strength, he could better obtain popular support at home. Furthermore, he admitted that he thought that the Germans could do the job better than the Americans could.[22] He expected that with increased autonomy would come increased German resentment over the occupation. Clay considered this resentment simply "the self respect and pride of the people [that] are the qualities which make a self-governing nation. We must withdraw as fast as we can from the daily life of the German people."[23]

Clay and his subordinate military governor directors refined the policies of democratic reform in the fall of 1945. Minister-Presidents were appointed for each U.S.-occupied *Land* (Wuerttemberg and Baden were consolidated as one *Land*) and in

September each *Land* Minister-President was explicitly authorized to approve and promulgate state legislation that did not conflict with military government policy.[24] In August, Clay ordered that the administration of the U.S. zone "should be directed toward the decentralization of the political structure and the development of local responsibility," with an ultimate goal of an independent democratic Germany.[25] To achieve this, self-government at the regional, city, and *Land* level using "representative and elective principles" would return "as rapidly as is consistent with military security and the purposes of military occupation."[26] In September, Clay directed that the primary American military government relationships would be among the three autonomous *Land* governments and American military government at that level. All instructions passed from Clay to his military government directors, and from them to the Minister-Presidents, who would then implement them.[27] Clay also directed that the Minister-Presidents and their subordinate ministers would have the right to appoint all *Land* officials subject to prior military government approval for political reliability.[28] Likewise, in September, OMGB directed that higher authorities in the Bavarian government would issue administrative instructions related to military government laws and directives directly to lower civilian echelons. They would not have to receive formal authorization for the instructions, but only had to ensure that Bavarian government officials submitted information copies to the supervising OMGB authority.[29]

<div align="center">Bavaria, Federalism, and "Forced Democracy"</div>

The federalist model seemed especially suited for Bavaria.[30] Bavaria remained an essentially agrarian *Land*, with a great deal of its population dispersed in the

countryside, and not concentrated in heavy industries, which were natural targets for socialist and Communist politicians. Its strong Catholicism formed a natural bulwark against Communist-style centralization of any sort.[31] Additionally, Bavaria had long had a particularist and even separatist strain. Even after the establishment of the German empire in 1871, Bavaria kept many of its former prerogatives, such as its financial independence, its ability to control emigration and residency, and its right to have separate representation in peace treaty negotiations. Bavaria further reserved the right to have its members in the upper parliamentary house (*Bundesrat*) appear at any time before the Reichstag in Berlin on its behalf.[32]

The pre-Nazi years also saw the rise of the Bavarian People's Party (BVP), which attempted to further strengthen Bavarian autonomy within the Weimar Republic.[33] But while Bavarian autonomy might have been conducive to federalism, it also posed dangers. The strongly Catholic BVP, in its fear of Berlin-centered Communism, had moved toward the autocrat Hindenburg during the Weimar years, and ultimately even sought common cause with Nazism. Fascist centralization, as compared to Marxist, many Bavarians considered the lesser of two evils.[34] In the end, not only was the BVP suppressed, but many Bavarians succumbed and accepted the darkest conclusions of Nazi ideology.

Many Bavarians emerged from the ruins of the Reich firmly believing that a total separation from Germany was the only solution to the twin evils of Nazi and Communist totalitarianism. In one of the first military government postwar reports, military government detachments noted that Bavarians were not only interested in self-

government, many believed that no political activity of any kind should be tolerated until the millions of displaced persons scattered in camps throughout the land, suspected to be "Prussians," moved out.[35] Bavarian leaders made statements virtually advocating secession. Albert Rosshaupter, the appointed Minister of Labor, for example, reportedly stated that "Bavaria should be separated from the rest of the Reich, separated from Prussian and militaristic interference for all times to come."[36]

Concerns over resurgent authoritarianism and Bavarian separatism created unique dilemmas for military government in Bavaria during the 1945-47 period. On the one hand, it sought to foster conditions for democracy and encourage democratic institutions in a region that looked suspiciously on them. On the other, it had to ensure that it did not go too far in imposing democracy, lest it be seen as authoritarian and anti-democratic. In the cities and small communities throughout Bavaria, military government detachments clearly sought for German officials to run their own communities and pass their own legislation. Nonetheless, OMGB kept final approval authority over legislation, still unsure whether there might be a revival of Nazi laws.[37]

Brigadier General Muller, OMGB director for most of the 1945-47 period, also walked the fine line between compulsion and cooperation. Minister-Presidents Wilhelm Hoegner and Hans Erhard regarded him as fairminded. At the same time, their subordinates stated that they believed Muller would, if necessary, have summarily arrested them.[38] On the other hand, Muller's concerns over an autocratic Bavarian government were such that one of his last acts before leaving as Director in November 1947 was to write to Minister-President Erhard personally, and insist that a free and

independent press was vital to a democratic state: "Such a press may, or may not, present the government's case in a favorable light; it must never be required to."[39]

Scholars have disagreed about military government's effectiveness. Some argue that the Americans imposed democracy on the Germans. They were "forced to be free." According to this view, the Americans resorted to "compulsion to create representative government . . . restricting the Germans' freedom to choose their own government."[40] Interestingly enough, another view holds that American military government worked best by being irrelevant, by letting the Germans restore democracy themselves.[41]

Perhaps the truth lies between these two positions. In Bavaria, the Americans did use compulsion, but usually as a last resort, and more often sought cooperation instead. The Americans also practiced a hands-off approach when dealing with the Bavarian government. Such a policy was deliberate and consistent with the larger plan of a federalized, decentralized German government. At the same time, OMGUS and OMGB initiated the systems and processes to create conditions for federalism--the allowance for voting at local levels, the rules and requirements for political parties, the creation of intrazonal and bizonal governmental agencies, and the occasional vetoing of German governmental actions. Finally, the conditions in Bavaria were right for the kind of government the Americans proposed. Bavarians did not take federalism against their will, but readily accepted it. While many of them may not have been as eager to embrace other democratic notions, most realized that democratic government represented the most viable and realistic option in postwar Germany.

<u>Formation of Political Parties at Local Levels and</u>
<u>Restoration of Local Political Control</u>

Unlike many of the other *Länder* following the surrender, Bavaria kept most of its area and population.[42] The *Land* was administratively subdivided into five separate districts known as *Regierungsbezirke*: (1) Mainfranken (also known as Unterfranken) in the northwest; (2) Ober and Mittelfranken running from northeast to southwest (along with Mainfranken comprising the more Protestant Franconia); (3) Oberpfalz and Niederbayern in the east; (4) Oberbayern in the south, along the Austrian border; and (5) Schwaben in the southwest, along the border of Wuerttemberg-Baden.

Those five *Regierungsbezirke* were further divided into either *Landkreise*, in predominantly rural areas (roughly approximate to an American county), or *Stadtkreise*, cities usually with a population of 20,000 or more not under *Landkreis* control. A *Landkreis* further subdivided into smaller communities called *Gemeinden*, villages or rural areas with a few thousand people. Each of these subdivisions of the Bavarian *Land* had a form of government, headed by either chief executives or community councils. During the Third Reich, however, governmental functions had become almost entirely administrative, and the appointed governmental entities simply implemented directives from Berlin.[43]

To create a decentralized, federalist Bavaria, all these governmental structures were to be resurrected, and given greater power than even during the Weimar period. Except for the *Gemeinden*, which came about as an early nineteenth century democratic reform, there was very little tradition of "grass roots" local government in Bavaria, despite its tradition of independence from Berlin. But American military government did

not want to decentralize Germany only to have the separate *Land* governments centralize

governments at their level. Therefore, OMGUS and OMGB established policies and

procedures for democratic voting for officials at all the levels of government, from lowest

(*Gemeinde*), through *Landkreis* and *Stadtkreis*, to highest (*Land*).

To do this, political parties would have to be reestablished to give the people

choices for their elected officials. This was a challenge that seemed to pose risks for the

Americans. Prior to the conclusion of the war, some planners contended that the reviving

of political parties would take considerable time. Furthermore, they believed that the

Communist parties would gain many followers and that escaped Nazis would try to build

up an underground movement for a restoration of Nazi government.[44]

If fears of a Communist takeover worried the Americans, their concerns had much

less justification in Bavaria. The defeat of National Socialism had not thrown Bavarians

into the Communist camp. Rather, if anything, nine out of ten Bavarians polled by

OMGB in the summer of 1945 expressed their fears that Communism would spread into

the western zones.[45] Furthermore, this fear was not confined to the staunchly

conservative peasantry. The more sophisticated Munich residents were aware that

already in early June 1945, the Soviets had permitted the formation of so-called "non-

fascist" (re: Communist) parties in the eastern zone.[46] According to the reports of the

military government detachment in Munich, fear of Communism was one of the few

things that motivated the city residents to any political action.[47]

Perhaps a more realistic fear for U.S. military government in Bavaria was that of a

far-right or separatist resurgence. Many staunchly conservative Bavarians had thrown

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their lot in with the Nazi party and some perhaps sought to return to power. Other

Bavarians saw *both* the Weimar Republic and Third Reich as failures, and believed that

only a restoration of the Bavarian monarchy would protect the *Land* from Communism.

Furthermore, separatist impulses were strong in Bavaria following the Nazi cataclysm.

Bavarian politicians frequently made references to hated "Prussian dominance." Even

the moderate Minister-President Wilhelm Hoegner stated publicly that Bavaria had "been

forced into the defensive and offensive alliance with Prussia,"[48] and thus had been drawn

into the Nazi regime.

American aims were to encourage the formation of parties, but not to appear to

"play favorites" to as great a degree as possible. Richard Merritt has stated that the

United States had a "mission to limit the spread of socialism in western Germany."[49]

But, in fact, Clay refused to provide extensive assistance to conservative and moderate

parties even in Communist-heavy Berlin, stating he was not "unduly apprehensive" about

the ultimate results.[50] OMGB was also aware that public scrutiny of the Bavarian

occupation was intense and that it had to appear to be as impartial as possible. Muller

thus required that Wilhelm Hoegner, Bavaria's second U.S. appointed Minister-President,

place Communist party (KPD) members in his cabinet (though Hoegner only appointed

one to a significant post, it was one of the most significant, the so-called "Minister

without Portfolio," who was charged with overseeing denazification).[51]

At the same time OMGB tried to ensure that the major parties had fair

representation in the U.S.-appointed government, it also attempted to reestablish

democracy. Practical as well as policy reasons existed to get the German government

back on its feet as soon as possible. American military government officials had been

accused in the press, by Congress, and by the Germans themselves of making bad

appointments. The first appointed Minister-President of Bavaria, Friedrich Schaeffer,

caused a storm of controversy because of his Nazi connections. Clay admitted that: "The

experience in Bavaria [concerning Schaeffer's appointment and ultimate resignation]

seems to me to indicate the desirability of relaxing the ban on political activities as soon

as possible."[52] Another reason for the desire for elections was the imminent reduction in

American troop strength in Germany. With the end of the war in the Pacific in

September, 1945, 40 percent of officers and 50 percent of enlisted men in military

government were eligible for discharge by the end of the year.[53]

The everyday running of local governments became a Bavarian responsibility

before 1945 ended, even if many of the officials were appointed by Americans. After 15

December 1945, military government detachments within the *Regierungsbezirke*,

Landkreise and *Stadtkreise* in Bavaria exercised only general policy control and

supervision over local civil government, while retaining direct supervision over

denazification, summary courts, and refugee care. Control of everyday activities fell

under the appropriate civil officials in those governmental jurisdictions.[54]

Even before this return of local control, OMGB was setting conditions for the

reestablishment of full political life. The first major step in reestablishing Bavarian

democracy occurred in late August and September 1945. In keeping with Clay's

decentralizing policy, OMGB set conditions for political parties in Bavaria to ensure that

one party did not consolidate power too quickly. OMGB allowed for the formation of

political parties at the local (*Landkreis/Stadtkreis)* level only.[55] The local military

government detachment in the *Landkreis* or *Stadtkreis* granted temporary permission to

form a party, and this temporary permission was ultimately be sent up through OMGB

channels to the G-5 section at USFET in Berlin.[56] Furthermore, OMGB did not allow

parties to organize at the *Land* level, and party mergers were "not to be encouraged."[57]

On 3 October 1945, OMGB published a draft document which gave more detailed

requirements for the formation of political parties in Bavaria. Effective that date, OMGB

allowed for the formation of political parties in Bavaria upon written application, signed

by at least twenty five sponsors. The application, submitted to the local military

government detachment, allowed the political party to engage in political activity at the

local level only. After reviewing the applications of the sponsors to determine whether

the party had any Nazi or militarist affiliations, the detachment could grant temporary

approval. Political activity of the party could thus begin, pending final approval or

revocation from G-5 Division at USFET. [58]

Sponsors and members had to be German citizens, Bavarian residents for one

year, and *Kreis* residents for thirty days prior to filing of the application. Once formed

and approved, parties would have the right to hold public meetings and discussion, to

solicit membership, and to publish semimonthly reports. While party agents, speakers,

and other members outside the U.S. zone could speak at party meetings, they had to first

obtain approval from USFET G-5. Restrictions on the parties included the prohibition of

military or political parades and a prohibition on wearing uniforms, emblems, or

armbands. Solicitation or acceptance of funds, loans, or contributions from persons not

party members was forbidden. Finally, the local detachment had the power to prohibit political parties and/or subsequent meetings of formed parties if it determined that a political meeting was "undemocratic or hostile to allied purposes, or prejudicial to Military security and to the maintenance of order."[59]

Bavarians began to meet informally to propose the formation of parties in the late summer and early autumn of 1945. In September, Dr. Joseph Müller solicited support to form the Christian Social Union (CSU).[60] The party was to be established along conservative Catholic principles. It called for a culturally autonomous, but not politically separate, Bavaria. It emphasized the need for "confessional" (religious) public schools and called more generally for a moral rejuvenation of Bavaria, which, according to the CSU, had suffered under the heel of militarist Prussian dominance and pagan Nazi influence.[61] Though conceived as an heir to the BVP, Müller hoped to obtain support from both Catholic and Protestant clergy and wanted a more ecumenical membership.[62]

While the CSU rapidly became the dominant political party, others also began to emerge in the summer and fall of 1945. The Weimar Republic's Social Democratic Party (SPD), which promoted socialism of public utilities and heavy industries and did not have the Christian emphasis of the CSU, also began to attract attention, especially in urban centers such as Munich.[63] The KDP, which called for total denazification, governmental control of most private enterprises, and radical land reform, also resurfaced after years of severe Nazi persecution.[64] Smaller, less influential parties, such as the Free Democratic Party (FDP), also arose.[65] OMGB permitted all except radical rightwing parties (such as the monarchist Bavarian Home and King Party[66]) to organize and conduct campaigns beginning in the fall of 1945.

Even some of the approved Bavarian political parties caused some American military government officials--perhaps more so in Berlin than in Munich--to worry. Walter Dorn, one of Clay's key advisors, feared, after a visit to Bavaria in early 1946, that the CSU intended to restore the monarchy in Bavaria.[67] Such fears generally were overstated. In fact, the CSU was riven with internal dissension during the first years of its existence over how much autonomy Bavaria should have from the rest of Germany. Furthermore, the Vatican lent its support to the more inclusive and less radical wing of the CSU, having concluded that an independent Bavaria independent could lead to an overall weakening of the Church in Germany and, as a result, a weakening of German resolve against Soviet expansionism.[68]

Rather, discussions among the mainstream parties were usually within more standard political lines. Arguments over who could vote, something the American military government would have the final approval, highlighted the parties' differences. While most of the parties felt the vote should be held to those twenty five and over, the parties differed on whether it should be extended to women and former Nazis. A leading member of the SDP, Minister of Labor Albert Rosshaupter, held that voting rights should be withheld from any Nazi party member, and was not convinced of the need for suffrage to be extended to women, at least without political training. KDP Minister of Denazification (technically termed a "Minister without Portfolio") Heinrich Schmitt argued that all voting should be postponed until the spring of 1946, that no Nazi party members should vote, and that women should receive the same voting rights as men. CSU Minister for Food and Agriculture Joseph Baumgartner did not think voting should

be denied to "seduced, nominal Nazis" and that, before women were granted suffrage, they should receive political training.[69]

By mid-January 1946, the SPD, CSU, and KDP had all been provisionally approved, and the three major parties had absorbed many of the various splinter parties that had sprung up that previous autumn. But even as the Bavarian Minister of the Interior submitted an election code providing for voting machinery and prepared candidates lists, most OMGB detachments thought voter apathy and lack of preparation posed problems. Intelligence reports indicated that political concern was "dormant," especially in rural communities.[70] At the beginning of December, 1945, only 25 percent of the *Landkriese* in Bavaria had political parties operating in them. Even though the first *Gemeinde* elections were slated for late January, many detachments concluded they should be postponed until the late spring or early summer.[71]

<u>The *Gemeinde* Elections: January 1946</u>

Clay believed that in order to establish a federalist democracy in the U.S. zone, it was necessary to phase elections, moving from the smallest governed communities to largest. The *Gemeinde* elections thus were a logical starting point. Such local elections served several purposes. They restored democracy to Germany at the lowest level. The voters would likely know many of the candidates personally. The issues that would be discussed would not be matters of state relevant to Munich or Berlin, but would be issues related to everyday living in the villages and farmland communities.

In Bavaria in particular, the *Gemeinde* elections seemed an appropriate beginning. The community councils, called *Gemeinderäte*, were "miniature" legislatures that elected

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Bürgermeisters in communities of 3,000 and more (beneath 3,000, the *Bürgermeisters* were elected by popular vote).[72] The concept of a democratically elected *Gemeinderat* was also familiar to Bavarians. It had been an early nineteenth century reform in the Bavarian kingdom. Furthermore, in the Weimar Republic, Bavaria was one of the few areas in Germany that actually had progress in creating functioning, somewhat autonomous local governments.[73]

There were advantages for the Americans as well. Turning over governance of the *Gemeinde* almost entirely to the Germans would alleviate the workload of OMGB, which was being reduced in strength throughout 1946. In March of that year, two months after the *Gemeinde* elections, General Muller told Hoegner and his cabinet that OMGB would be reduced to around 1800 men, both military and civilian, by June, with only two officers and two enlisted assigned to each *Landkreis*, and five officers and ten enlisted to each *Stadtkreis*. Given the small numbers of OMGB personnel, Muller told the assembled cabinet that their primary mission could only be to ensure that military government directives were carried out. They would have no "functional activities."[74] *Gemeinde* elections also provided a small-scale opportunity to work out the first-time employment of election codes, voting machinery, and OMGB support. Because the elections concerned small communities and no major cities, OMGB could evaluate election results without having to react to intense media coverage. It also allowed OMGB to evaluate voting trends and evaluate the relative strengths of the competing parties.

The KDP, and to a lesser extent, the SDP would find little sympathy or support among the conservative, mostly Catholic peasantry. With some justification, SPD Minister of Labor Rosshaupter stated that the *Gemeinde* elections would not give a true picture of the political situation in Bavaria, stating "they only deal with communities under 20,000 inhabitants, in which conservative elements are prevailing, whereas more radical tendencies will prevail in towns."[75] Perhaps revealing his lack of total understanding--or sympathy--of federalist principles, he further stated the *Gemeinde* elections were "local decisions of administration, not real party elections."[76]

Clay wanted the *Gemeinde* elections to commence in January 1946, barely eight months after V-E Day. Intelligence reports indicated that many if not most Bavarians opposed early elections, believing that efforts were better spent on restoring the shattered infrastructure rather than rushing toward democracy.[77] OMGB detachments also reported back skeptically. In Niederbayern and Oberpfalz, two weeks prior to the elections, the majority of the detachments thought that voting was taking place far too soon, given that the major political parties had only recently gained authorization, and recommended a delay of several months.[78] Furthermore, OMGB detachments expressed concern that temporary refugees and displaced persons scattered in the hundreds of thousands throughout the Bavarian countryside might outnumber actual residents.[79] If allowed to vote locally, as transients, they would defeat the very purpose of local elections.[80]

There were also administrative problems. By early December 1945, with the elections less than six weeks away, only 40 percent of the OMGB detachments reported they had satisfactory voter lists. The original temporary registration of the Bavarian

population had left out nationality, former party membership, and length of residence in the voting district. OMGB detachments thus had to reinterview over two million people.[81] The creation and maintenance of party membership lists was also a source of difficulty and General Muller urged the recognition of the parties at *Land* level in order to provide consolidation and easier access to the lists.[82] In January 1946, OMGUS thus allowed the three major political parties in Bavaria to organize at *Land* level.[83] The timetable, however, did not change. OMGUS scheduled Sunday, 27 January 1946, as election day in all U.S. zone *Gemeinden*.[84]

OMGB's role in the drafting of election laws was supervisory: the Bavarian government promulgated election regulations subject to OMGB's approval.[85] German nationality was a requirement to vote, but "German" was defined by borders existing on 1 September 1939 (thus including Austria and the Suedetenland in Czechoslovakia).[86] The minimum voting age was twenty one and women were extended suffrage. Not more than one year of residence in a *Gemeinde* was required. Former Nazis or Nazi sympathizers were disenfranchised.[87] As a further way to prevent former Nazi party members from voting, "any qualified voter" could file a written, signed petition to strike a possible Nazi or sympathizer or collaborator from voting eligibility lists.[88] The petitioner could submit his case before a *Gemeinde* election committee to argue against allowing the alleged former Nazi from voting. Term limits were set for *Gemeinde* government officials at two years.[89] The laws also had to provide for workable machinery for honest and secret elections. Additionally, election codes could not promote Nazism or discriminate on basis of race or religion.[90]

Likewise, the drafting of local government codes was left to the Bavarian *Land* authorities, with certain requirements. The laws had to contain provisions for popularly elected councils with "substantial powers" in each *Gemeinde* (and later for S*tadtkreis* and *Landkreis*). The laws also had to require a majority vote of councils for the passage of legislation, which had to be done in public meetings, with rules allowing citizens to be heard before the legislative bodies. Furthermore, local communities had to be permitted to have the option either to adopt standard charters from *Land* authorities or to create charters themselves.[91]

Both Bavarian government officials and OMGB detachments worked feverishly to meet the late January election dates. By early January OMGB detachments had reinterviewed 90 percent of the voting population.[92] OMGB reports indicated that the Bavarian officials "appeared enthused" about the upcoming elections, but would "have a tremendous job in 'waking up' the people as to the long-range significance of these elections."[93] At the same time, OMGB detachments estimated that between 60 to 70 percent of the qualified population would vote, with the CSU expected to dominate with 65 percent of the vote, the SPD with 30 percent, and the KDP and other splinter parties obtaining between 5 to 10 percent.[94]

While some in American military government saw little enthusiasm and predicted a low turnout, they appear to have misread the population's interest. As early as September 1945, illegal elections had already occurred in small Bavarian towns.[95] Among the Bavarians fear of Communism was strong, as was the influence of the parish priest (or the Lutheran minister in the Ober and Mittelfranken *Regierungsbezirke*) over

the rural population. Voting would occur on Sunday, after most of the voters had left

church and this undoubtedly would assist in bringing out the vote, as priests and pastors

would likely urge from the pulpit that their congregations vote (in all likelihood, for the

CSU, and almost certainly anti-Communist).[96]

On 27 January 1946, from 0900 to 1800, the *Gemeinde* elections took place in

Bavaria, effecting approximately 4,500,000 people. *Bürgermeisters* were elected in

Gemeinden with populations less than 3,000 and community councils in *Gemeinden* less

than 7,000.[97] Voter turnout greatly exceeded expectations: approximately 2,082,000 out

of 2,398,000 (87 percent) of those eligible voted.[98] Voters elected approximately 76

percent of military government-appointed *Bürgermeisters* already in place, thus

indicating that rural Bavarians took a generally favorable view of the American

occupation.[99] As expected, the CSU gained an overwhelming victory, winning over

900,000 votes. The SPD obtained slightly over one-third of that amount, 337,000, the

KDP 46,000, and various splinter parties 757,000.[100] Almost no election irregularities

were reported.[101]

Minister-President Hoegner and KDP leader Bruno Goldhammer contended that

the elections were essentially unpolitical because of their restriction to small

communities. They stated their parties would do better in forthcoming *Stadtkreis*

elections. Hoegner also stated that the left-leaning parties did not have enough time to

prepare and that the CSU had a much more receptive audience in predominantly Catholic,

conservative, rural Bavaria.[102]   OMGB intelligence also stated that the *Gemeinde*

election results possibly indicated a "skewed picture." The SDP and KDP had not shown

their real strength, and that the KDP in particular had little time to prepare their campaigns in the countryside.[103] Both parties could expect to gain considerable strength in the next round of elections.

Nonetheless, the first step in Clay's election plan had, by most measures, been a success. Voter turnout was heavy, and irregularities few. While the KDP and SDP complained about the lack of campaign time, OMGB had not provided its support or blessing to the CSU or to any other party. Its support, expectedly, came from the rural Bavarians themselves. It was too soon to tell, however, whether these successful elections were a sign of future success for democracy in Bavaria.

The *Landkreis* and *Stadtkreis* Elections: April and May 1946; OMGB Involvement in Bavarian Politics; and the Problem of "Miniature Centralization"

Following the apparent success of the *Gemeinde* elections in January, OMGB turned to the next phase of the voting plan: the *Landkreis* and *Stadtkreis* elections to be held in the spring. The same general voting requirements for the *Gemeinde* elections remained in effect.[104] The *Landkreis* elections would take place first, on 28 April 1946 with the *Stadtkreis* elections to occur on 26 May.[105] Both would involve the election of legislative councils, called the *Kreistag* for the *Landkreis* and the *Stadtverordnetenversammlung* for the *Stadtkreis*.[106] Those two councils would elect executive officials to run everyday city and *Kreis* governments and would legislate on matters such as local taxes and municipal budgets.[107]

Bavarian political life appeared to grow steadily following the January elections. By late February, 96 percent (136 of 142) of Bavarian *Kreise* had at least one political

party campaigning in them. In early March, *Land* parties began establishment at the U.S. zone level, with right to conduct political activities anywhere in the zone.[108] The SPD in particular saw this as a chance to increase its power by linking up with the more industrialized, less conservative *Länder* of Hesse and Wuertemberg-Baden.[109] Furthermore, reports during late March and early April indicated that candidates and parties showed a "better understanding" of democratic procedures than during the *Gemeinde* elections.[110] OMGB detachments also reporting having profited from the experience.[111] By the end of March, all the election codes for the *Landkreis* elections were already distributed to the local OMGB detachments.[112] OMGB thus expected that the *Landkreis* elections would go even smoother.[113]

Once again during the April *Landkreis* elections, the CSU dominated the field, gaining 71.5 percent of votes cast. The SPD obtained 22 percent of the electorate, the KDP 3.6 percent, and other splinter parties 3.5 percent.[114] Reports indicated that 73 percent of those eligible to vote did so, a decline of 12 percent. Reasons cited included economic problems, as well as the fact that *Kreistag* elections were less personally involving than the *Gemeinde* elections, indicating that the candidates, being less personally known, were less relevant to the voters. More importantly, unlike the *Gemeinde*, there was no tradition of the populace voting for the *Kreistag* in Bavaria.[115]

Voting turnout improved considerably for the May *Stadtkreis* elections. OMGB determined that 85.52 percent of those eligible voted, and, as expected, the SPD did considerably better in the urban areas, receiving 37.2 percent of the vote, receiving a majority of the legislative seats in Nuremberg, Furth, and Schweinfurt, all in more

Protestant Franconia. The KDP also slightly increased its percentage of the votes, receiving 6.7 percent of votes and obtaining 5.3 percent of the legislative seats in the Bavarian *Stadtkreise.* Nonetheless, the CSU remained the dominant party, receiving 44.6 percent of the vote and a total of 359 seats (43.3 percent of all seats) and obtaining undisputed majorities in eleven of the twenty four *Stadtkreise* and in five *Stadtkreise* a near majority. Thus, in sixteen of twenty four of the major Bavarian cities, the CSU had legislative control and chose the city *Bürgermeister*.[116]

Boyd Dastrup asserts that the high vote turnout, at least in Nuremberg, was a misleading indicator of voter interest. Rather, given the reports of voter apathy among Bavarians, many of them felt prodded into voting by military government officers.[117] Actually, OMGB's handling of Bavarian politics during the spring election season and the summer of 1946 involved a combination of deliberate self-restraint and hands on supervision. In June, Muller set forth the new direction for OMGB liaison officers operating in Bavarian *Kreise*. The duties of the officers would be almost entirely to "observe and study" the local governments they had been assigned to monitor. The goal of such monitoring was not "to control or interfere in any way with the German civil administration" but to provide OMGB's Civil Administration Branch with "the necessary information to permit it to accomplish its mission."[118] Furthermore, OMGB took measures to ensure that it was not seen as favoring one party over another. In August, a spokesman for the small Economic Reconstruction Party had implied in a speech that it was more trusted by the American military government than any other party. OMGB directed the party leader to refrain from making any statements that American military

government favored one party over another. It further directed that the military

government not be mentioned "in connection with interparty rivalries or party

programs."[119]

As Clay predicted, increased political involvement and autonomy meant more

chafing at occupation rules by Bavarians. During the spring of 1946, OMGB dissolved

the monarchist Bavarian Homeland and King Party in *Stadtkreis* Munich and prohibited it

throughout Bavaria.[120] It also stepped in to squelch a scheme apparently devised by the

Bavarian Minister of the Interior to disenfranchise one million evacuees by redefining

German citizenship by its 31 December 1937 borders. Because OMGB never received a

copy of the policy change, this clearly seemed to be an attempt to "endrun" the

Americans.[121]

Controlling reactionary elements in the CSU also was a challenge. In April 1946

OMGB also barred former Minister-President Friedrich Schaeffer from holding any

position of prominence or influence, to be a candidate for office, or even to vote. OMGB

had already forced Schaeffer to resign the previous fall for, among other things, his

failure to denazify his cabinet. He still, nonetheless, was a powerful figure in the CSU.

After an extensive investigation, OMGB had concluded that he could no longer play a

part in Bavarian politics because of his "pro-Nazi, supernationalistic, and antidemocratic

background"[122]

The CSU was also the party most prepared to welcome "repentant" Nazis into its

ranks, in part to increase its numbers,[123] actually having fewer registered members than

the SPD.[124] The party was shut down completely in *Landkreis* Viechtach in early June

for nominating and electing a former member of the *Schutzstaffel* (SS). Though OMGB

reinstated the party less than two weeks later, the effect of the ban was allegedly so

strong that CSU leaders felt compelled to state that it was limited to that *Landkreis*

alone.[125]

Furthermore, OMGB carefully monitored, if not interfered with, publication of

political and other information. In May 1946, OMGB directed its Information Control

Branch not to conduct prepublication scrutiny of political handbills and posters, but only

postpublication review.[126] Despite this apparent leniency, the following month a June

OMGB memorandum from Muller stressed the need to monitor press and other media.

In the memorandum, Muller instructed field liaison officers to report the publication of

newspapers and books, the presentation of plays and concerts, and the showing of films

that had not received license or censorship clearance from OMGB Information Control.

Furthermore, the field liaison officers were directed "immediately to close down or

suspend operations" of publication or presentation if license or clearance had not been

granted.[127]

Another problem that required continued oversight was the possibility of an

ongoing "miniature centralization" within the Bavarian *Land*. It became evident to

OMGB officials that it was possible that the Bavarian government might replicate nation-

wide centralization, but with government powers emanating from Munich rather than

Berlin. OMGB considered some of this Bavarian centralization inevitable. At the

Regierungsbezirk level, for example, OMGB allowed many agencies, especially dealing

with agricultural products, to fall under direct control of the *Land* government. However,

it justified such policies because of the necessities of the occupation: "If such functional control were exercised by self-governments, each district, county, or local government might attempt to retain the maximum quantity of produced foodstuffs for its own consumption. Non-agricultural areas would be at an enormous disadvantage."[128]

In other areas, however, during the summer of 1946, different levels of Bavarian government actively pursued consolidation of power unacceptable to OMGB. Reports indicated that only 40 percent of the local government operations were truly local, with the communities receiving direct supervisory control from Munich, the *Regierungsbezirk*, or both.[129] Reports also indicated that *Land* ministries had established agencies at the *Kreis* level, independent of the local governments, and that local government in some places was on the verge of "vanishing."[130]

OMGB thus had to intervene frequently to try to prevent this smaller-scale centralization. In May 1946 it recommended that *Land* agencies that operated at local levels independently of the local governments be abolished.[131] In June, it required Minister-President Hoegner to submit a law to curtail such centralizing activity.[132] Nonetheless, such centralizing continued, compelling OMGB to abolish such agencies outright. In January 1947, for example, OMGB abolished a *Regierungsbezirk* police detachment in Ober and Mittelfranken because OMGUS regulations required decentralization of police departments down to the *Stadtkreis* level.[133]

This centralizing trend revealed that while Bavaria seemed the *Land* most suited for this style of government, it did not follow that model without resistance. Bavarians for the most part welcomed the concept of a decentralized Germany, with greater

autonomy for each *Land*. The cultural and religious independence that the federalist model offered seemed appealing. The federalist concept of layers of semiautonomous local governments that, together with other community organizations, such as churches, would stand as deliberate impediments against *any* central government's power, seemed harder for Bavarians to accept. What became increasingly evident was that the government in Bavaria, while democratic, was not emerging as a replication of the American model.

Moreover, given the need for governmental efficiency in the difficult times of occupation, the Americans themselves did not wholly follow the federalist principles. Postwar hardship had seemingly justified OMGB-imposed centralization at the *Regierungbezirk* level. Meanwhile, at the *Länder* and zonal levels, the American military government formed, created, or initiated other centralized agencies. These centralized organizations, the *Länderrat* and the Anglo-American interzonal economic union, so-called Bizonia, added further complexity to the establishment of federalist democracy in Bavaria. These organizations therefore need to be examined before turning to the final step taken to restore Bavarian democracy--parliamentary elections and the approval of a Constitution.

<div align="center">Bavaria, the Länderrat, and Bizonia</div>

On 6 September 1946, U.S. Secretary of State James Byrnes gave an important speech in Stuttgart to the assembled Minister-Presidents of the U.S. zone and others. The speech adopted many of Clay's ideas about German democracy almost verbatim.[134] It included a near-total endorsement of Clay's policy, to include his policies of establishing

an autonomous, elected German government.[135] Bavarians especially welcomed the

central theme of the speech--that Germans should and would govern themselves--along

with its lack of animosity.[136] Some Bavarians also apparently took the speech as a call to

arms against Soviet Communism, a sure indication that "the German people are once

again called upon to free the world of bolshevism."[137] Bavarians also polled about

Byrnes' speech took it as meaning that Germany's government would be built from the

bottom up. They were reportedly "unanimously in favor of the federalist solution."[138]

Perhaps for that reason they were somewhat less enthusiastic of another of Byrnes'

proposals, that of a *Nationalrat* of Minister-Presidents that would meet together on

certain issues. Bavarians viewed this proposal skeptically, unless it were checked by a

democratically elected parliament.[139]

Perhaps one reason for this skepticism was the existence of the American zone

Länderrat, a governmental agency set up by Clay in the summer of 1945, composed of

the Minister-Presidents from each of the American zone *Länder*. The *Länderrat* had

been meeting monthly for over a year, primarily to coordinate economic policies, when

Byrnes made his Stuttgart speech.[140] The organization, however, seemed contrary in

many ways to federalist ideas. According to John Gimbel, the *Länderrat* revealed that

the American military government's interest in economic problems "assumed precedence

over the grass-roots interest expressed by Germans and Americans alike."[141] Bavarians

also expressed their concerns over the *Länderrat's* power, both actual and potential. In

January 1946, reports indicated that many saw it as a de facto zonal government bent on

recentralizing German government and taking away Bavarian autonomy.[142]

The *Länderrat* could be seen as a measure that might, in the short term, run

contrary to federalist principles. Such a step, however, American military government

policymakers deemed necessary for long-term democratic success. As one official stated:

> In the final analysis, the triumph or failure of the attempt to democratize
> Germany will be determined by whether American military government
> can succeed in making western Germany economically prosperous.
> For democracy is a plant that thrives only in prosperous countries. So long as the
> German people are on the verge of starvation and economic collapse, democracy
> can never hope to get a firm foothold in the country. [143]

Indeed, over the course of 1945-46, the *Länderrat* had been the instrument deemed

necessary for the maintenance of those services that crossed *Länder* lines, such as the

railroads, postal service, and telephone and telegraph services. [144] It had also been the

organization that drafted the Law for the Liberation from National Socialism and

Militarism, the first piece of German legislation that dealt with denazification. Because

the new denazification policy had to be consistent throughout the U.S. zone, the

Länderrat had been the best means to gather *Länder* officials to develop a unified,

workable law.

On closer examination, the *Länderrat* could also be seen as an institution that

promoted federalism as much as it hindered it. Clay established it to coordinate the U.S.

zone *Länder* and eliminate duplication of efforts on matters of immediate concern such as

coal shortages. Each Minister-President or his representative had an equal vote among

the *Länder*. All agreements had to be unanimous. [145] As D. R. Doronodo states, "With

the *Länder* forced to act collectively, indeed unanimously, in the council to enact

ordinances, Munich was relieved of the threat of being coerced into accepting

disagreeable measures. The organization of the *Länderrat* also provided a continuation,

whether intended or not, of the collegiality inherent in the *Bundesrat* [upper house of the German legislature] of the imperial period."[146]

Byrnes' September speech addressed another concern, the lifting of the borders between the Allied zones, virtually sealed off from each other since the surrender in May 1945.[147] This seemed the next logical step in German economic development. Clay, beginning in the spring of 1946, had already begun to replicate the *Länderrat* model on a larger scale by attempting to create an Allied interzonal agency that would eventually eclipse the zone authorities and agencies.[148] While neither the French nor Soviets agreed in joining, the British did.[149] Such an agreement created another avenue for eventual German reunification, and the opening of the industrial Ruhr in the British zone particularly made the U.S.-occupied *Länder* more economically sustainable.[150] Washington policy makers also thought the idea sound, since an interzonal agency would, by bringing zones together, help relieve the American financing of German recovery.[151]

Clay saw the formation of the bizonal agency and the subsequent economic unification of the U.S. and British zones (termed Bizonia) as promoting efficiency, but not along typical German and English models: "The tendency of the Germans is to an almost complete regimentation of German economy and they have considerable British sympathy for this purpose."[152] Clay, who had run the U.S. wartime military procurement program, had a thorough knowledge of wartime price controls and did not want to create a heavily staffed centralized agency to dictate all the details of U.S.-British zone economy. Such an agency would be "much too large for broad policy actions and yet many times too small for detailed controls."[153] He instead preferred resource allocations

on a broad basis, either at the *Länder* or general industry level. "Microcontrol" of resource allocation at plant levels was not only contrary to American models, but, to Clay, could not possibly succeed "without months if not years of effort to establish the requisite organization."[154]

Bavarian reaction to bizonal merger was skeptical, if not hostile. The British, as expected, pushed for greater economic centralization,[155] something many Bavarians feared. In September 1946, after Byrnes' speech, OMGB intelligence reports indicated Bavarians feared British "bureaucracy" would "invade" the United States zone.[156] Reports indicated that Bizonia might indeed increase Bavarian separatism, since the bizonal merger would require Bavarians to reduce food rations to provide equivalent rations in the British zone to other Germans many Bavarians considered "foreigners" or "outsiders."[157] On the other hand, reports also indicated Bavarians saw some benefits to the merger, especially in the need for coal from the Ruhr area and the desire to have a consistent denazification policy.[158]

The dilemma between decentralized government and centralized economic planning proved difficult to resolve. What ultimately emerged was somewhat of a compromise between American and Bavarian principles of free enterprise and British centralized, socialist models. By the spring of 1947, the Americans and British had agreed that the bizonal economic agencies needed broad economic powers. The agencies obtained general authority over production, allocation, and distribution, to include rationing policies, and also had the authority to control by executive order a small group of scarce commodities and raw materials, such as coal.[159] But the allocation of such

commodities was largely left up to the individual *Länder* themselves. Thus, for example, while each *Land* received coal allocations for domestic heating, the *Land* had control over how the coal was divided among homes, hospitals, schools, and other domestic places.[160] As Clay realized, the bizonal arrangement represented "at least as high a degree of centralization as we had in the United States during the war" although not the near-total centralization the British wanted.[161] The arrangement, on an even grander scale than the U.S. zone *Länderrat*, also seemed to take away *Land* autonomy, and thus worked against the proposed American, and presumably Bavarian, decentralizing principles.[162]

However, the centralizing powers of Bizonia were not as powerful as they appeared to be. One reason for this was that it went into effect after Germans in the U.S. zones had elected members to their own legislatures (*Landtag*) in December 1946, the kind of "check" that the Bavarians had wanted on Byrnes' proposed *Nationalrat*. At least within the U.S. zone, rather than military government appointed officials, bizonal representatives were elected from within the various *Länder* parliaments. Thus each *Land* sent officials to the agencies with the respective *Land* interest in mind. Furthermore, the party that dominated in Bavaria, the CSU, and its dominant sister party in northern *Länder*, Konrad Adenauer's Christian Democratic Union (CDU), as majority parties, also became dominant in the bizonal departments and executive councils. These federalist, capitalist-oriented parties thus acted as a significant counterweight to Bizonia's centralizing tendencies.[163]

Rather than Bizonia, the *Länderrat*, or the *Land* governments completely

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dominating as separate entities (though the *Länderrat* diminished somewhat in importance in light of the bizonal merger), what instead emerged from mid-1946 to early 1947 was a complex three-way relationship among the three, as well as with the respective Allied military governments. OMGB attempted to clarify the parameters for each. The OMGB Chief of Civil Administration Division Albert Schweizer--in the absence of overarching and connecting legislation--scrutinized Clay's statements in particular to determine those limits.[164] The *Länderrat*, as a U.S. zone creation, ceased to exercise control over the economic policymaking taken over by the bizonal agencies, though the *Länderrat* was still a necessary, if temporary, body in order to "study, recommend, and commend on proposed quadripartite [Allied occupation] legislation."[165] The bizonal agencies were also viewed as contingent governmental bodies that were not to supercede *Länder* prerogatives: "Military Government will not permit the bizonal agencies to assume state responsibilities and will insist that the responsibility for the execution of bizonal policies [e.g., specific resource allocation] remains with the state governments."[166]

American military government thus acted as the mechanism that kept the three governmental entities in harmony. More significantly, however, was the growing role of the *Land* governments themselves. By early 1947, when Schweizer distributed his memorandum, the bizonal agencies fully emerged and had begun formulating and implementing policies. By this time too, the U.S. zone *Länder* had popularly elected legislatures and approved Constitutions. The rights of the states, clearly defined in the state Constitutions, and the voice of the populace, expressed in the *Landtag*

representatives appointed to the bizonal councils, thus protected the prerogatives of the

Länder against excessive centralization.[167]

<center>The Bavarian Constitution and the *Landtag*: June–December 1946</center>

The culminating phase of establishing democracy at the *Land* level in the U.S.

zone was the election of the *Länder* legislatures (*Landtag*), and the popular approval of

Land Constitutions, both slated to occur in December 1946. With those completed, the

next step would be German reunification. The development of Constitutions would

require considerable effort before their ultimate approval, but American policy was, once

again, to provide general guidance and allow the respective *Länder* to work out the

specific details. In a 23 August 1946 message to the War Department, Clay elaborated

on this laissez-faire policy:

> We have told the German authorities of the basic principles which we consider
> necessary to a democratic institution and these principles have been furnished to
> you and to the State Department. As long as these principles are safeguarded in
> the constitution, we do not propose to comment on the details or on the
> governmental procedures established in the constitutions. . . . [I]t is of utmost
> importance that comment and suggested changes given to the constitutional
> assemblies be at a minimum and limited to violations of the fundamental
> principles which have been laid out. These constitutions go to the German people
> as a free creation of their elected representatives and with the least possible taint
> of military government dictation.[168]

There were seven "minimal essentials" required for the constitutions: (1) political power

had to "originate with the people and be subject to their control"; (2) programs and

political leadership had to be subject to popular elections frequently; (3) elections had to

be competitive, with at least two competing parties; (4) political parties had to be

democratic in character and distinct from governmental institutions; (5) basic individual

rights had to be defined in the constitution and preserved by law; (6) government could

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only be exercised through the rule of law; and (7) the constitutions had to provide for "some delegation of governmental responsibility to county and community levels."[169] Furthermore, Clay wanted the constitutional articles dealing with individual rights to be reasonably similar for all the U.S. *Länder*.[170]

While setting these requirements, American military government had to proceed carefully, despite the speed of the democratizing process. If it applied too much pressure or attempted to intervene, the end result might be a populace suspicious of the legitimacy of a document tarred "with the brush of an Allied *Diktat*."[171] At the same time, there were real concerns that the Germans might not be ready to make such a huge step towards self-government so soon. In June 1946, Minister-President Hoegner stated at a meeting with Muller and other OMGB officials that Bavarians did not fully understand constitutional government and would need five years to understand the basis of democratic thinking.[172] Nonetheless, the process went forward as planned. In February 1946, OMGUS directed each *Land* Minister-President to appoint a preparatory commission, to gather necessary bibliographical and documentary materials for the proposed Constitutional Assembly, to gather proposals from the different parties, and to draft an Assembly election law for American military government approval.[173]

The Bavarian Constitutional Assembly elections took place on 30 June 1946 at all governmental levels that had already had elections (*Gemeinde, Landkreis*, and *Stadtkreis*). Nearly 72 percent of eligible voters participated. As expected, the CSU candidates received a majority of votes (1.5 million or 58 percent). The SDP candidates received 785,000 (28 percent), the KDP 144,000 (5.8 percent) and the remainder

distributed among splinter parties.[174] The voter turnout, however, was the lowest of any

election so far. Furthermore, OMGB reports indicated that Hoegner's warning about

Bavarians not understanding constitutional government had merit. Most Bavarians

appeared not to understand what they were voting for in the assembly elections. Many

believed that they were actually voting for the *Landtag*.[175]

On 15 July, the Constitutional Assembly opened at the University of Munich with

a requirement to complete a draft constitution no later than 15 September 1946.[176] A

twenty one man drafting committee (composed of twelve CSU, six SDP, one KDP, and

two splinter party members) formed. Michael Horlacher of the CSU was named

Assembly President. OMGB, and ultimately OMGUS, had final approval over the

document. If approved by OMGUS, it would be submitted to popular vote at the same

time Bavarians voted for their *Landtag* representatives.[177]

The voters' confusion over the Constitutional Assembly highlighted OMGB's

dilemma between intervening too much or not enough. Obviously concerned about the

misunderstandings by the Bavarians over the June Constitutional Assembly elections,

OMGB pushed for widespread publicity of the Assembly meetings. Such publicity

hopefully would be "an effective means of teaching the people what is involved in

practical democracy."[178] Various Bavarian newspapers began publishing frequent articles

on the ongoing Assembly debates throughout July and August to arouse public interest.[179]

On the other hand, at a Berlin conference on the drafting of the constitutions, OMGUS

informed *Land* military government officials that their advice and recommendations were

to be of a "broad and general character based on our policy of democratization and

decentralization."[180] Military government advisors would "confine [their]

recommendations primarily to the draft already prepared by the Preparatory

Constitutional Commission and concern [themselves] thereafter only with the new items

and the changes from the preliminary draft that the Constitutional Assembly may

make."[181]

To some OMGUS, if not OMGB officials, what seemed to be emerging from the

Bavarian Constitutional Assembly was a reactionary document representing Bavarian

particularism and a far-right alliance with the Catholic Church.[182] Undoubtedly the

document being prepared was more conservative than that of the other U.S. zone *Länder*.

To many it contained extremist elements of a church-state alliance based on Catholic

"corporatist" principles: state-run "confessional" schools; a non-popularly elected senate

from private enterprise, churches, and other institutions; a *Staatspräsident* with more

autonomy and power than given to a Minister-President; and assertions of near-

independent Bavarian "citizenship."[183] Perhaps the most significant idea developed was

the 10 percent mandate rule. According to this rule, any party that did not obtain at least

10 percent of the vote in any one *Regierungsbezirk* would be shut out of the *Landtag*

entirely. While proponents contended it was a measure to prevent legislative chaos,

others saw it as a "trap for all the smaller parties" set by the CSU and SPD to "secure a

parliamentary monopoly."[184]

In reality, the document being developed was in keeping with Bavarian political

tradition as well as the result of compromise between the right and left parties.[185] When

the final Constitution was published, many of its provisions were taken verbatim from the

Weimar Constitution and the Bavarian Constitutions of 1919 and 1923.[186] Furthermore, the give-and-take between political parties had led to compromises that muted the alleged extremism. For example, public schools would follow the so-called confessional model, but would be either Catholic or Protestant, depending on the predominant religion in the area, or in mixed areas, nondenominational.[187]

Regarding the Senate, the Assembly agreed on a compromise between the SPD, which opposed giving a senatorial body any power, and the CSU, which sought for it a strong role. The Assembly agreed there would be a sixty person Senate elected for six year terms from within public or private corporations. The Senate would include members chosen from trade-unions (at the SPD's insistence), as well as representatives from agriculture and forestry, trade and industry, handicrafts, cooperatives, so-called free professions, and religious institutions.[188] As another compromise, the Senate would have limited rights of participation in matters such as budgets and constitutional amendments.[189]

The *Staatspräsident* was to be a strong executive who could break legislative deadlocks through demands for referenda, issue emergency decrees in times of crises, and who would be elected directly by the voters rather than the *Landtag*. The idea aroused suspicions among OMGUS officials and Washington policymakers. Ironically, in many ways, the *Staatspräsident* was more similar to the American model of a chief executive who also act as head of state. The concept actually caused a split in the CSU, with CSU party leader Josef Müller voting against it, and in an apparent role reversal, the SPD assembly leader voting for the measure.[190] It failed by one vote in the Assembly and the

German press reported on the "dissent and fraction" as a result occurring in both the CSU and SPD.[191]

The proposed Bavarian Constitution was accepted by the Constitutional Assembly by a vote of 134 to eighteen on 20 September 1946.[192] The *Staatspräsident* idea had been eliminated, but the Minister-President would still act more independently than Minister-Presidents in other *Länder*.[193] The two major parties supported and urged voter approval of the document. The KPD publicly proclaimed it a reactionary document, focusing in particular on the 10 percent clause, the Senate chamber, and the provisions for confessional or quasi-confessional schools.[194] Some Washington policymakers also objected to it more than any other *Land* constitution.[195]

OMGB did not view the document as extreme as its detractors pronounced it to be and refused the petitions of the KPD and other small parties to eliminate the 10 percent mandate clause.[196] Clay did not view it as extreme as Washington policymakers did either. Responding to concerns from the Chief of the War Department's Civil Affairs Division, he took issue with unilaterally changing provisions in the proposed Bavarian Constitution:

> The proposed changes can be obtained only by military government decree. If such a decree were issued, I believe as a minimum the full support of both major parties in all three states would be lost and the constitutions would go before the people with only single party support. However, we might fail to get the approval of the constitutional assemblies and therefore have to defer the submission of the constitutions to the German people for ratification. It is our belief that the latter occurrence would be disastrous to our accomplishments in government to date.[197]

Furthermore, Clay disagreed with many of the comments War Department experts offered. He indicated that he could not see how OMGUS could press for a parliamentary

style Minister-President, "since in the United States the President does continue in office whether or not he has full party support in Congress."[198] He also disagreed with concerns over constitutional provisions regarding suspension of certain civil liberties in periods of emergency. Clay responded that such restrictions did not convey any more authority than many American governmental officials had under martial law and further believed the provision establishing a Constitutional Court would guarantee that individual rights "would not be abused."[199] He also added, "Finally we must point out that the constitutional assemblies of the three *Länder* composed of representatives freely elected by the people have devoted three months of sincere and conscientious effort to the drafting of these constitutions. They are major advances over the Weimar constitutions."[200]

Washington acquiesced, and OMGB and OMGUS approved the proposed Bavarian Constitution with minimal changes. The vote for the Constitution and the *Landtag* was set for 1 December 1946. As it had in the prior elections, OMGB deliberately refrained from making comments approving or disapproving any candidates, despite reports that indicated that Bavarians were "not yet in many instances capable of using [the democratic right of election]."[201] During the fall of 1946, reports indicated the CSU was relatively dormant, perhaps confident in its strength. The KPD, on the other hand, did the most campaigning of any Bavarian party.[202]

When election day arrived, once again voter turnout was heavy, with 76 percent of those eligible participating. The Constitution won approval by 70 percent of votes cast. The CSU once again emerged triumphant and became dominant in the *Landtag*,

gaining 104 of 180 seats (52 percent). The SPD gained fifty four seats with 28 percent of the vote, and two smaller parties, the Economic Reconstruction Party and the FPD obtained thirteen (7.39 percent) and nine (5.64 percent) seats, respectively. The KDP, on the other hand, was shut out of the *Landtag* entirely, having failed to obtain at least 10% in any single *Regierungsbezirk*.[203] OMGB reports attributed the shutout to the conservative Bavarian peasantry and the strong anti-Communist stance of the Catholic and Protestant churches: "Only one conclusion can remain. The conservative, highly religious Bavarian peasantry reject any political influence which is at variance with the dogma of its faith. In times of trouble and uncertainty such as these, they continue to seek solace and advice from their local minister or priest."[204]

The CSU triumphs, the passage of the more conservative Constitution, and the KDP shutout aroused concern among Germans outside Bavaria. Many northern Germans were skeptical of the CSU dominance and concerned about the incoming CSU Minister-President Hans Erhard.[205] Within Bavaria, there was also concern about the KDP shutout. A Munich newspaper stated that the shutout "may be regretted" because Communist opposition was traditional in the Bavarian *Landtag* and "because the Communists can claim the fact of having been the most decisive fighters against National Socialism and doubtless they sacrificed the greatest number of victims in penitentiaries and concentration camps."[206]

However, once again, no claims were made that OMGB had turned the results with any sort of overt or covert influence. Furthermore, there were no significant reports of unrest, rioting, or voter fraud. If the CSU victory and the KDP shutout significantly

reduced Communism as an influence in postwar Bavaria, it had occurred within the broad parameters OMGUS and OMGB had set, but almost entirely through the influence and actions of Bavarians themselves. Thus, by the end of 1946, barely over eighteen months after the surrender and amidst extreme material deprivation and hardship, Bavarians had elected governmental officials at all levels and had approved a democratic, federalist oriented constitution, significant steps towards a democratic, decentralized German nation.

Democratic Reform in Bavaria: An Assessment

Boyd Dastrup, who studied the occupation of Nuremberg, has argued that the military government's policy in Bavaria was paradoxical in that it used "authoritarian means to establish a democracy."[207] It appears, however, that while OMGB did resort to compulsion at times to guide Bavarians away from a radical separatism or antidemocratic extremism, it tried to intervene as seldom as possible. Rather, the kind of government the American military government wanted for Germany, a federalist democracy, comported well with postwar Bavarian desires. Bavarian political leaders, especially those in the newly formed CSU, saw advantages in such a governmental structure. While those leaders at times disagreed with the American model in all its respects, such as in its insistence on a nonpopularly elected, advisory Senate, the Bavarian constitution, while more controversial than that of the other *Länder*, was deemed acceptable.[208]

There were, however, more profound difficulties in the American attempt at democratic reform along federalist lines. As John Gimbel points out, the push by OMGUS and OMGB for local and *Länder* elections as well as self-government under

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Land constitutions in turn created resistance to the formation of centralized governmental institutions such as the *Länderrat* and the bizonal economic agencies.[209] Yet Bavaria had little choice but to accept such arrangements for its own good. Low in industrial goods and raw materials such as coal, it needed other German zones to open their borders in order to revive itself. In turn, those *Länder* needed Bavaria for its agricultural products. In short, the *Länderrat* and bizonal agencies revealed the limits of federalist autonomy and arguably gave the Bavarian government experience in the give-and-take required for a semiautonomous state to work together, while pursuing its own self-interests.[210]

Another criticism is that so-called "grass roots" democracy never took firm hold and that the Americans made misguided efforts to "jump start" German democracy. Clay received criticism from his own staff for establishing structures of democracy within a space of months rather than years. Some critics deemed such measures would be worthless without a large-scale reorientation towards democracy:

> Perhaps the greatest weakness in the American efforts in this field lay in their formality. Too much emphasis was placed on the holding of elections, the framing of constitutions and laws, the setting up of the machinery, and other more or less mechanical techniques. Too little attention was given to cultivating Germans disposed to support a democratic system in Germany, filling public offices with able Germans who could be expected to fight for the democratic cause during critical periods of attack in the future, and educating the Germans as to the meaning of representative democracy.[211]

Such reorientation never occurred within the American zone. Except for denazification, no widespread attempt at "democracy education" occurred. Joseph Mire, in an OMGUS advisory paper about the German civil service, wrote in 1949 of the need for a "reconstruction of the German society towards a genuinely democratic state"[212] But

by 1949, he was crying out far too late. That year, virtually all aspects of American occupation disappeared.

It appears, however, that the social reformers overstated their case considerably in postwar Germany. If Nazism really *was* the expression of the deepest cultural values of the German people, then the reformers' claims would have been borne out by some subsequent rise of far right, anti-democratic extremism. Rather, it appears that in Bavaria especially, Nazism represented not the deepest expression of values, but rather a significant departure from Bavarian tradition and experience. The disasters that the Nazis--many of the most ardent of whom were Bavarians--inflicted upon the world and Germany itself convinced most Bavarians that the federalist democratic model the Americans put forth, with some modifications, was a more viable postwar option and in keeping with Bavarian political tradition.[213]

In fact, opinion polls and surveys conducted of postwar Germans indicated that they were ready and willing to embrace much of the American occupation policy goals. Unlike the defeat in World War I, only a small number saw the American occupation as a blot on national honor--perhaps because they were disgraced and ashamed by the world's discovery of the crimes against humanity that so many of them had committed.[214] If the recent Nazi past held nothing but shame, the American model brought forth in Bavaria a sense of renewal, a way to sever the ties, or at least distance itself, from the Third Reich.[215]

While the Nazi past brought dishonor, a turning back of the clock to Weimar Germany provided no solution either, since   that Republic had led to Hitler.[216] In

Bavaria, the CSU, unlike the KDP or SDP, was a new party, without any taint of the Weimar or Nazi years. And unlike its ancestor the BVP, it had a more ecumenical, broader base appeal. The CSU contended that centralized government in "Prussian" Berlin, whether in the ineffectual "socialist" Weimar model or in the tyrannical, militarist Nazi form, had led the nation to ruin. Decentralized, agrarian, Catholic Bavaria, under CSU leadership, would provide a better way to the future.

To a large degree, this occurred. The CSU, and its northern German sister party, the CDU, led by Konrad Adenauer, became the dominant force in postwar German political life. Both the CSU and CDU proposed a federalized German state as the model for a future nation. Germany essentially adopted this model in 1949. Bavaria also subsequently played a major role in drafting the Federal Republic's Constitution, the so-called Basic Law.[217] The model adopted was not as decentralized as many Bavarians wanted, who preferred a looser confederation of states such as existed between 1815 and 1866. Nonetheless, the Federal Republic put significant checks on the central government's power, which only received powers to it granted by the Constitution itself.[218]

The evidence indicates that Bavarians accepted most of the democratic reforms. It would be incorrect to hold that this ready acceptance meant that OMGB was unnecessary or even a hindrance in Bavaria, and that the Americans only succeeded when they, in essence, stumbled off the stage.[219] D. R. Doronodo, who writes positively of the influence of Bavarian federalism on West Germany, gives several reasons for federalism's postwar success, as opposed to its interwar failure. Among them, he cites:

no central German government, no hegemonic Prussia, and no ideological division. He

makes no mention, however, of the American military government's contribution in

setting up the conditions that would allow federalism to flourish in Bavaria, the *Land*

most receptive to such a political idea.[220] Edward Peterson, a critic of the occupation,

states more openly that the OMGB officials were essentially "irrelevant" in Bavarian

political matters.[221] But this begs the question of who, then, *was* relevant. Peterson

identifies the real figures as the Bavarian Minister-Presidents: "None so seriously

influenced events as to be comparable to minister-presidents in importance."[222] Yet he

also asserts that, neither Wilhelm Hoegner, the SPD Minister-President for much of the

1945-47 period, nor OMGB were key players either because "Political power in Bavaria

rested with the Catholic party, the CSU."[223]

This consigning of OMGB to irrelevance regarding postwar democratization is

incorrect. After all, OMGB selected (and, in one case, summarily dismissed) the

Bavarian Minister-Presidents. It allowed the CSU to flourish in Bavaria, but it appointed

Minister-President Hoegner, who was a member of the SPD. Furthermore, the CSU,

while clearly the dominant party in postwar Bavaria, did not have free license. Its

percentage of the popular vote actually diminished from the time of the first *Gemeinde*

elections to the December *Landtag* elections, when it barely achieved an absolute

majority with 52.2 percent of the vote. The CSU also struggled with internal dissension--

a prime reason for the failure of the *Staatspräsident* initiative.   The CSU itself had to

make political compromises. By 1947, it was triumphant in Bavaria, but not absolute in

its power.

It is more accurate to say that American military government provided the framework for democracy, a framework that Bavarians ultimately accepted. It stressed the need for decentralization and federalism, which Bavarians especially embraced. Finally, it required a written constitution enshrining individual rights and semiautonomous local government, which Bavarians voted for by a large margin. Most Bavarians accepted these reforms and have continued to accept them virtually without question for half a century.

OMGB brought these reforms to the Bavarians, who accepted them and used them to their advantage. Yet was the result, as Rebecca Boehling, another critic of the postwar occupation asserts, that true grass-roots democracy was defeated by reempowering political powerbrokers who had either quietly hidden away during the Hitler years or even cozied up to the Nazis?[224] It is true that the CSU wanted to dominate Bavarian political life, and it is likely true that the Americans likely did not want the KDP, in particular, to succeed. But the CSU's political domination did not come about through any sort of active OMGB collaboration. In fact, initial impediments were deliberately set up to prevent the parties from consolidating at the *Land* level. The KDP did complain that the election laws, requiring a gaining of 10 percent of the vote in one *Regierungsbezirk* before having any seats in the *Landtag*, were "reactionary," and claimed that the CSU used "propaganda" to achieve political victory.[225] But the KDP made no claim that the CSU or any group used any sort of voter fraud or intimidation, or that payoffs or ballot corruption took place. The 10 percent requirement was voted upon and approved by the Constitutional Assembly, and subsequently approved by the

Bavarians themselves. At least arguably, such a provision prevented the excessive

factionalism that could lead to governmental paralysis.

Democratic reform in Bavaria was linked to another key policy of the

occupation: denazification. Most OMGUS officials thought that without effective

denazification, democratic efforts would prove hollow. JCS 1067 stated that the

American occupation would "take every effort to prevent the reconstruction of any such

[Nazi] organization in underground, disguised or secret form." Denazification would

involve the enormous task of purging the government of Nazi officials, eradicating Nazi

laws, and removing from public (and in some cases, private) office those who had

actively participated in the Nazi regime. As more and more power and autonomy

returned to Germans, the U.S. occupiers simultaneously struggled with implementing a

denazification policy. Nowhere would this prove to be more difficult than in Bavaria,

and it is to this policy this study now turns.

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[1]Harold Zink, *American Military Government in Germany* (New York: MacMillian, 1947), 167. A review of the published papers from Yalta and Quebec reveal that the term "democratization" is never specifically referred to in any of the documents dealing with the future occupation of Germany. United States Department of State, *Foreign Relations of the United States: The Conference at Quebec, 1944* (Washington, DC: United States Government Printing Office, 1972), and United States Department of State, *Foreign Relations of the United States: The Conferences at Malta and Yalta, 1945* (Washington, DC: United States Government Printing Office, 1955).

[2]Zink, 167 and John Gimbel, *The American Occupation of Germany* (Stanford: Stanford University Press, 1968), 15. According to Herbert Feis, the political programs that President Truman proposed at Potsdam were little different from those in JCS 1067 that Eisenhower and Clay used to guide them during the occupation. Herbert Feis, *Between War and Peace: The Potsdam Conference* (Westport, CT: Greenwood Press, 1960), 241. The ten features of Truman's proposal were: (1) Germans had to unconditionally submit to orders of the ACC and the zone commanders; (2) Germany would be completely disarmed and military forces forbidden forever; (3) National Socialism would be extinguished as a government, party, and ideal, meaning that all Nazis

would be removed from private and public office; (4) all Nazi laws and decrees that were discriminatory on grounds of race, creed, political opinion were nullified; (5) individuals accused of war crimes would go before a jointly formed tribunal; (6) the formation of a central German government was indefinitely postponed, but the ACC might use governmental administrative machinery for national economic policies; (7) the German political structure would be decentralized and local responsibility developed; (8) all political parties except those of a Nazi character would be allowed to function freely; (9) education in Germany would be controlled and directed in ways to further democratic ideas and forms of government and society, and eventual peaceful cooperation with other nations; and (10) and steps would be taken to assure freedom of speech, press, religion, and trade-union organizations subordinate to the Allied Control Council for security reasons. Feis, 242.

[3]Richard Merritt, *Democracy Imposed: U.S. Occupation Policy and the German Public, 1945-1949*, (New Haven, CT: Yale University Press, 1995), 393. Ian Kershaw, *The Nazi Dictatorship: Problems in Perspectives of Interpretation*, 4th ed. (London: Arnold, 2000), 161-217. Kershaw contends that the Nazi social revolution never occurred. Kershaw, 178-79.

[4]As stated in a special report prepared by the Interdivisional Committee on German Governmental Structure, Office of Military Government for Germany (US) (OMGUS), to the U.S. Military Governor, dated 1 May 1946:

> "Centralization" and "decentralization" are reverse aspects of the single process of distributing the powers and functions of government. In democratic political theory, the source of all power and therefore of all functions is the people. Democratically established centralized and decentralized structures differ not in the basic source of their powers, therefore, but in the levels to which that power is assigned. On the other hand, U.S. policy holds that, however democratically conceived, the powers exercised by a centralized government are deprived of their democratic vitality directly as they are removed from their popular source and thus enable minority groups to seize and exploit the instrumentalities of government for warlike purposes. Conversely, powers exercised close to those from whom they have been obtained are less apt to confuse means for end, more apt to preserve a sense of responsibility to the people.

OMGUS, *Central German Agencies*: *Special Report to the Military Governor, U.S. Zone* (Headquarters, OMGUS, 1 May 1946). CARL R-13499, 2.

[5]According to the Interdivisional Group on German Governmental Structures, the German government would be considered decentralized when the following conditions were met: (1) All power would be recognized as originating from the people; (2) such power would be granted by people primarily to the *Länder* governments and only in specifically enumerated and approved instances to a federal government; (3) a substantial

number of functions would be delegated by the *Länder* to the *Kreise* and *Gemeinden*; and (4) all residual powers would remain in the *Länder* or would be reserved to the people. Ibid.

[6]As described by D. R. Doronodo, "The individual states were rather well represented in the *Bundesrat*, the designated organ of imperial collective sovereignty. Indeed, its members were more ambassadors of the states than legislators." D. R. Doronodo, *Bavaria and German Federalism* (London: St. Martin's Press, 1992), 1.

[7]Article 43 of the 1907 Hague Conventions, cited in Eyal Benevensti, *The International Law of Occupation* (Princeton, N.J.: Princeton University Press, 1993), 91.

[8] Eyal Benevisti points out that a fundamental distinction between the German and Japanese surrenders was that Japanese sovereignty still existed, whereas the German government had totally disintegrated. Benevisti, 92. As defined by Morris Greenspan, subjugation (*debellatio*) "embraces not merely the occupation of the territory of the state, but its actual annexation, so that the legal title passes to the conquerer." Morris Greenspan, *The Modern Law of Land Warfare* (Berkeley: University of California Press, 1959), 601. *Debellatio* indicates a final and irretrievable defeat, with no standing army in the field attempting to restore the country to its former "owner." Furthermore, *debellatio* derives "purely from the act of conquest itself" and does not require any consent from the defeated belligerent. Ibid., 601-02. Greenspan points out, however, that: "Calling an occupation a subjugation [*debellatio*] will not avail the occupant as a means of evading the obligations of an occupant imposed by international law." Ibid., 215. Benvenisti contends that the concept of *debellatio* is outdated, in light of modern concepts of human rights, and a corresponding diminished concept of governmental entities as the legal bodies recognized under international law: "This doctrine has no place in contemporary international law, which has come to recognize the principle that sovereignty lies in a people, not in a political elite." Benevisti, 95. However, others still hold that international law does give military authorities the power to amend or repeal a wide variety of laws "prejudicial to the welfare and safety of their forces." Uri Shoham, "The Principle of Legality and the Israeli Government in the Territories," *Military Law Review*, 153 (summer 1996): 263.

[9]The Morgenthau Plan was vigorously resisted by Henry Stimson in the War Department, and President Roosevelt vacillated on promulgating it as policy. Clay himself never actually read the proposed plan. Jean Edward Smith, *Lucius D. Clay, An American Life* (New York: Henry Holt, 1990), 220.

[10]Merritt, 387. While there were attempts at reforming certain aspects of German culture, such as the educational system in Bavaria, they were relatively modest. These modest attempts ultimately failed due to Bavarian resistance and also because of lack of American desire to push for complete reform. James F. Tent, *Mission on the Rhine* (Chicago: University of Chicago Press, 1982), 110-63.

[11]Earl F. Ziemke, *The U.S. Army in the Occupation of Germany* (Washington DC: Army Historical Series, 1975), 360.

[12]There were, in fact, significant differences in governmental administration in each zone. In the British zone, for example, the tendency was not to assimilate into the normal local government agencies many special services. Such services were instead performed by national field offices. Furthermore, the British gave almost no economic powers to the *Länder* in their zone, and also kept transportation, health services, and education functions of the military government. In the French zone, levels below the *Länder* level of government had virtually no governmental administrative bodies. In the Soviet zone, the military government kept complete control over all aspects of government. *Central German Agencies*, 5.

[13]A U.S. military government document described federalism as follows: "In order for a federal organization to work, it is essential that the state boundaries provide firm economic and sociological areas which can sustain the states as strong units in a federal system." OMGUS, Civil Adminstration Division, *The Civil Administration of U.S. Zone, Germany*, (Headquarters, OMGUS, undated). The main tenets of German federalism are found in Articles 30 and 31 of the Basic Law. Article 30 states that "The exercise of *Land* governmental powers and the discharge of governmental functions shall be incumbent on the *Länder* insofar as this Basic Law does not otherwise prescribe or permit." Article 31 begins by stating that "Federal law shall override law." German Basic Law, arts. 30 & 31.

[14]The Weimar BVP was the most powerful party in Bavaria at the time, and advocated greater rights for individual *Länder*. Geoffrey Pridham, *Hitler's Rise to Power: The Nazi Movement in Bavaria, 1923-1933* (New York: Harper & Row, 1973), 67-69.

[15]Smith, *Lucius D. Clay: An American Life*, 244. John Gimbel contends that major discrepancies existed between policy and practice for most of the 1945-47 occupation period. Only after the revocation of JCS 1067 and its replacement with JCS 1779 were policy and practice consistent. Gimbel, 1-2.

[16]Lucius D. Clay to O.P. Echols, "U.S. Policy in Germany," 19 July 1946 in *The Papers of General Lucius D. Clay, Germany 1945-1949*, vol. 1., ed. Jean Edward Smith (Bloomington, IN: Indiana University Press, 1974), 240.

[17]Ibid., 241.

[18]In an interview conducted by Jean Edward Smith, Clay stated: "One of the real problems in running an occupation is your own people. They want to be Czars. They resent very bitterly when they suggest to the Germans that certain things be done and the Germans don't do them. This is one of the hardest things you have to face in an

occupation situation: your own staff are zealots, and they're often zealots for reforms that go far beyond anything that's ever been done in your own country." Smith, *Lucius D. Clay: An American Life*, 244.

[19]Lucius D. Clay to John McCloy, "Conditions in Germany," 16 September 1945 in *The Papers of General Lucius D. Clay, Germany 1945-1949*, Vol. 1, 77.

[20]Dr. James R. Newman, Military Governor and later Land Commissioner for Hesse, described the general procedure by which military government officials restored local governments:

> Mayors (*Buergermeisters*) and county presidents (*Landraete*) were selected from previously furnished lists. Generally, the Military Government officer called in the town or county priest or minister, the local school-teacher, and a few local citizens and asked them to suggest a *Buergermeister* or *Landrat*. After several conferences, as much investigation as possible, and clearance of political questionnaire, a provisional administrative chief was selected, and he in turn appointed other provisional leaders, such as police and fire chiefs, food office head, local clerk, motor vehicle supervisor, and other needed officials. Through these appointed officials, the local Military Government Officers began to bring order out of complete chaos, restore circulation, remove hazards to life, such as partially destroyed buildings, start cleaning up rubble, and feed the starving population.

Dr. James R. Newman, "The Story of Reconstruction and Reorientation at the Grass Roots Level of Civil Affairs and Military Government, 1949" quoted in J. F. J. Gillen, *U.S. Military Government in Germany: American Influence on the Development of Political Institutions* (Historical Division, U.S. Army European Command, 1950), 4. CARL N-17500.1089.

[21]John Elliott, "Democratization in Germany." (Headquarters, OMGUS, 4 February 1948), 1. National Archives Record Group No. 260.71. National Archives, College Park, MD. Elliott points out that "[I]n his speeches to the *Länderrat* at Stuttgart, General Clay has encouraged the German minister-presidents to take decisions for themselves instead of referring everything to Military Government in Berlin for settlement." Ibid.

[22]Smith, *Lucius D. Clay: An American Life*, 243.

[23]Lucius D. Clay, quoted in Elliott, 1-2. The quote is from a speech Clay made to the Minister-Presidents at Stuttgart on 6 November 1947.

[24]Military Government Proclamation No. 2, dated 19 September 1945, stated that each *Land* was to have eventual complete legislative, judicial, and executive powers, but

that, while democratic institutions were developing, the *Land* Minister-Presidents could approve and promulgate legislation, and that lower executive officials in local governments had similar authority.

[25]H. H. Newman, "Administration of Military Government in U.S. Zone in Germany" (Headquarters, USFET, 27 August 1945). Papers of Walter J. Muller, Box 15, Item 90. Hoover Archives, Stanford University, Palo Alto, CA.

[26]Ibid.

[27]H. H. Newman, "Administration of Military Government in U.S. Zone in Germany" (Headquarters, USFET, 20 September 1945). Papers of Walter J. Muller, Box 15, Item 90. Hoover Archives, Stanford University, Palo Alto, CA.

[28]Ibid.

[29]OMGB. *Weekly Detachment Report*, no. 19 (Headquarters, OMGB, 20 September 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[30]Dorondo, 30; Pridham, 67-69.

[31]OMGB came to these conclusions in its own study of Catholicism in Bavaria. OMGB, "The Catholic Church in Bavaria" in OMGB, Intelligence Division, Analysis Branch, *Trend: A Monthly Report of Intelligence Analysis and Public Opinion*, nos. 13-14. (Headquarters, OMGB, 3-10 September 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[32]Ibid., 1-2.

[33]Doronodo, 4.

[34]Ibid., 4. Pridham shows the gradual nine year increase of the Nazi vote from 1924 to 1933 in Bavaria. Interestingly, though Bavaria averaged a far higher percentage of the vote at the beginning of Nazism (16% to 6.5% for Germany overall) in 1924, in the March, 1933 elections, Bavaria's percentage voting for Nazism was actually slightly less than the overall German electorate (43.1% to 43.9% for Germany overall). Pridham, 322.

[35]OMGB, *Weekly Detachment Report*, no. 4 (Headquarters, OMGB, 11 June 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[36]OMGB, *Weekly Detachment Report*, no. 7 (Headquarters, OMGB, 29 June 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[37]In Nuremberg, for example, Colonel Charles Andrews, the military government detachment commander, authorized the Nuremberg governmental authorities to promulgate legislation with the following restrictions: all such legislation had to be examined by military government officials and were subject to U.S. approval; American military government had the authority to nullify any laws; and no German legislation could contain anything that would suggest it was issued at the behest of, or approved by, the military government. Boyd L. Dastrup, "U.S. Military Occupation of Nuremberg, Germany, 1945-1949" (Ph.D. diss., Kansas State University, 1980), 143-44.

[38]Edward N. Peterson, *The American Occupation of Germany: Retreat to Victory.* (Detroit: Wayne State University Press, 1977), 226.

[39]Walter J. Muller, to Hans Erhard, 26 November 1947. Papers of Walter J. Muller, Box 13, Vol 2. Hoover Archives, Stanford University, Palo Alto, CA.

[40]Dastrup, "U.S. Military Occupation of Nuremberg, Germany, 1945-1949," 133-34. At the beginning of his published work on the American occupation of Nuremberg, Dastrup makes this point more emphatically:

> Trying to reform the Germans, the Americans adopted authoritarian measures. They forcefully denazified government and private enterprise, controlled the media, directed youth education, decartelized I.G. Farben interests in Nuremberg, and forced the people to accept representative government. Because the Americans feared the Germans might arise and start another war, American military governors prevented Nurembergers from making decisions alone about their future. In short, the Americans violated their own democratic principles trying to restructure Nuremberg.

Boyd L. Dastrup, *Crusade in Nuremberg: Military Occupation, 1945-1949* (Westport, CT: Greenwood Press, 1985), ix.

[41]"The American victory in the occupation seems in essence a retreat from policies based on interference which would not work to other policies based on noninterference. Those more workable policies meant the rapid return of authority to the Germans. The occupation worked when and where it allowed the Germans to govern themselves." Peterson, 10.

[42]Bavaria did lose its Rhineland Palatinate (*Pfalz*) region, located west of the Rhine, south of Koblenz and north of Baden and Wuerttemberg. It became incorporated into the French zone. The old Bavarian Rhineland Palatinate region differed significantly

from other parts of the French zone, not the least of which were its Catholic, conservative tendencies, as opposed to those of the "Protestant and Socialist majority" in other parts of the zone. F. Roy Willis, *The French in Germany, 1945-1949* (Stanford, CA: Stanford University Press, 1962), 100.

[43]OMGB, Civil Administration Division, *Civil Administration Question and Answer Book* (Headquarters, OMGB, October, 1947), 3. Papers of Walter J. Muller, Box 13, Vol 2. Hoover Archives, Stanford University, Palo Alto, CA.

[44]As stated in the *Handbook for Military Government in Germany*, issued prior to surrender, the revival of political parties was predicted to be gradual, and that "there [would] be a pronounced swing to the left, the Socialist and Communist Parties gaining many adherents." The handbook also predicted that escaped Nazis would attempt to build an "underground" with the purpose of interfering with the existing government and "preparing for a future recrudescence of Nazi activity." U.S. Army Civil Affairs School, *Handbook for Military Government in Germany* (Fort Gordon, GA: 1944), 73-4. CARL N-16359.8-A.

[45]OMGB, *Weekly Detachment Report*, no. 16 (Headquarters, OMGB, 30 August 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[46]On 10 June 1945, the Soviet military government issued Order No. 2, which authorized resumption of political activities in the Soviet zone. The Soviet military government subsequently licensed four parties: the SPD; KPD; CDU; and the smaller Liberal Democratic Party. Eventually, the SPD and KPD "merged" on 21 April 1946, forming the Socialist Unity Party (SED). As seen by many Germans in the western zones, this merger was a "political shotgun marriage" that effectively eliminated the SPD as an influence and made the SED little more than a Soviet-manipulated political body. Joachim Joesten, "Soviet Rule in Eastern Germany" vol. 2, no. 9 in *New German Reports* (Hartsville, CT: Joachim Joesten, March 1949), 12.

[47]According to the Munich military government detachment's report, by early fall 1945, Communists were circulating an illegal newspaper and holding meetings. U.S. Army Military Police School, *Case Studies on Field Operations of Military Government Units* (Fort Gordon, GA: 1950), 82. CARL 322.5U579.

[48]OMGB, *Weekly Detachment Report*, no. 27 (Headquarters, OMGB, 15 November 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[49]Merritt, 264. This assertion is belied somewhat by the fact that the Minister-President that replaced Friedrich Schaeffer, Wilhelm Hoegner, was a member of the Socialist Democratic Party (SPD), as well as by the "hands off" policy adopted by the military government during the elections. It is nonetheless likely that the SPD's views on a more centralized government were not in keeping with the American decentralization policy.

[50]In the same communication to the War Department on the subject of aid to the CDU and SPD, Clay stated:

> There is a group of officials of military government here who believe strongly that military government should grant much greater support to the CDU and SPD parties in Berlin against the Socialist Unity Party. . . . I do not agree with this group that we should provide all out assistance to CDU and SPD parties. If we did this, military government would have clearly violated its announced principles of complete political neutrality and such action would be misunderstood in Germany and would prove a step backward in teaching democracy. Moreover, it would weaken the strength of our protests against corresponding Soviet action and we are not in a position to compete on equal terms in Berlin.

Lucius D. Clay for War Department, "CC 2135 (Secret) U.S. Aid for CDU and SPD," 20 August 1946, in *The Papers of Lucius D. Clay*, *Germany 1945-1949,* vol. 1, 256-57.

[51]Peterson, 227.

[52]Ziemke, 361. Schaeffer's appointment and dismissal are discussed in chapter 4.

[53]Ziemke, 364-5.

[54]Walter J. Muller, "Duties and Responsibilities of *Regierungsbezirk* After 15 December 1945" & "Duties and Responsibilities of *Landkreis* and *Stadtkreis* After 15 December 1945" (Headquarters, OMGB, 17 December 1945). Papers of Walter J. Muller, Box 15, Item 92. Hoover Archives, Stanford University, Palo Alto, CA.

[55]OMGB, *Weekly Detachment Report*, no. 17 (Headquarters, OMGB, 6 September 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[56]Ibid.

[57]OMGB, *Weekly Detachment Report*, no. 15 (Headquarters, OMGB, 23 August 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[58]The draft document appeared in the OMGB *Weekly Detachment* Report, which was released on 4 October 1945. It also contained a sample application for the organization of a political party which required the following information: (1) name and location of the political organization; (2) a brief statement of purpose and party programs and directives; (3) names and addresses of sponsors; (4) number and character of political public meetings contemplated each month; (5) approximate number of members anticipated in the organization after six months of date of filing; (6) amount of membership fees; (7) the names and addresses of persons responsible for custody of party funds; and (8) all mediums of advertising and publications that the organization contemplates using. OMGB, *Weekly Detachment Report*, no. 21 (Headquarters, OMGB, 4 October 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[59]Ibid.

[60]OMGB, *Weekly Detachment Report*, no. 18 (Headquarters, OMGB, 13 September 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[61]Hitler had subsequently criticized the BVP in *Mein Kampf* for its attempts "to preserve special rights for the Bavarian State out of small-hearted, particularistic motives." Adolf Hitler, *Mein Kampf*, trans. Ralph Manheim (Boston: Houghton Mifflin, 1971), 574. He devoted a chapter of *Mein Kampf* to attacking federalism and concluded the chapter it with these words:

> National Socialism as a matter of principle must lay claim to the right to force its principles on the whole German nation without consideration fo previous federated state boundaries, and to educate it in its ideas and conceptions. Just as the churches do not feel bound and limited by political boundaries, no more does the National Socialist idea feel limited by the individual state territories of our fatherland.
> The National Socialist doctrine is not the servant of individual federated states, but shall some day become the master of the German nation. It must determine and reorder the life of a people, and must, therefore, imperiously claim the right to pass over boundaries drawn by a development we have rejected. The more complete the victory of its ideas will be, the greater may be the particular liberties it offers internally.

Hitler, 577-78.

[62]OMGB, *Weekly Detachment Report*, no. 18 (Headquarters, OMGB, 13 September 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD. The BVP had been founded in the autumn of 1918 by Georg Heim, out of concern in Bavaria over centralist tendencies in the early postwar republic largely associated with the Social Democrats. It was largely Catholic, extremely traditional, and

showed strong sympathy towards separatism or a "reunion" with Austria. Pridham, 64-65. So-called "old Bavaria," the Bavarian Palatinate, and Schwaben remained solidly behind the BVP throughout the 1920s. Pridham, 322. The BVP was ultimately suppressed by the Third Reich in the early 1930s. According to D. R. Doronodo, the twin calamities of Nazi rule and total war convinced prominent former BVP leaders that a new Bavarian party would have to bridge religious and socioeconomic differences to provide a unified political voice. Doronodo, 31.

[63]Ultimately, for the Bavarian legislature (*Landtag*) elections on 1 December 1946, the SPD would outpoll the CSU in Munich, 103,912 votes to 97,897. U.S. Army Military Police School, *Case Studies on Field Operations of Military Government Units*, 83.

[64]Ibid.

[65]OMGB, *Weekly Detachment Report*, no. 18 (Headquarters, OMGB, 13 September 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[66]OMGB, *Weekly Detachment Report*, no. 53 (Headquarters, OMGB, 16 May 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[67]Peterson, 229.

[68]Doronodo, 34, 37.

[69]OMGB, *Weekly Detachment Report*, no. 26 (Headquarters, OMGB, 8 November 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[70]OMGB, *Weekly Detachment Report*, no. 27 (Headquarters, OMGB, 15 November 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[71]OMGB, *Weekly Detachment Report*, no. 29 (Headquarters, OMGB, 29 November 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[72]*Gemeinde* could range in size from tiny villages of a few hundred inhabitants to small cities with up to 30,000 people. Another advantage to beginning with *Gemeinde* elections was that, although all democratic features were eliminated during the Nazi era, its administrative structure remained relatively intact and functioning. The *Gemeinderäte* served a dual role, acting as a miniature legislature on community matters, as set forth in the *Gemindeordnung* (community regulations). Typically they voted on matters such as

local ordinances, and as an elective body that voted for the *Bürgermeister* in communities larger than 3,000. *Civil Administration Question and Answer Book*, 9-10.

[73]During the Weimar Republic, "Practically no progress toward [self-government and proportional representation] was made in Prussia, but Bavaria and Wuerttemberg made some advance. In Bavaria, for example, city councils were popularly elected and in turn chose the *Bürgermeister*." U.S. Army Civil Affairs School, *Handbook for Military Government in Germany* (Fort Gordon, GA, 1944), 64, sec. 215. CARL N-16359.8-A

[74]According to Muller, "The mission of these detachments will be to maintain liaison with the tactical units, to help in the denazification, to supervise the local government to see that the directives of Military Government are properly carried out, also to act as summary courts. They will have no functional activities." Walter J. Muller, "Notes on Conference with Ministers of Bavaria and Branch Chiefs, 21 March 1946" (Headquarters, OMGB, 21 March 1946). Papers of Walter J. Muller, Box 13, Vol. 1, Item 21. Hoover Archives, Stanford University, Palo Alto, CA.

[75]OMGB, *Weekly Detachment Report*, no. 36 (Headquarters, OMGB, 17 January 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[76]Ibid.

[77]According to the intelligence reports, Bavarians believed that all efforts should be devoted to rehabilitating the shattered economy and infrastructure. There were further concerns that the existing press would be unable to disseminated political information: as of mid-October 1945, there were only four licensed newspapers in Bavaria. OMGB, *Weekly Detachment Report*, no. 23 (Headquarters, OMGB, 18 October 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD. Bavarian Minister-President Hoegner also opposed the January elections, stating that "It will not be recommendable to have the polling made in January, because in a hard winter, many rural electors will not got [sic] to the polls owing the Bavarian habit of solitary farms. With the municipal population, the distress of the winter might have a politically unfavorable result, whilst the mind of the people might improve in spring." Wilhelm Hoegner to Peter Vacca, 8 December 1945, quoted in Gillen, 15. According to Gillen, Lucian Truscott, then Third Army Commander, agreed with Hoegner and forwarded Hoegner's letter to Clay. Gillen, 15-6.

[78]OMGB, *Weekly Detachment Report*, no. 35 (Headquarters, OMGB, 10 January 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD. Dr. James Pollack, Clay's German government and politics expert, also disagreed with having January elections, stating that winter would make voting difficult and poll turnout would be low. Clay, *Decision in Germany*, 88.

[79]OMGB, *Weekly Detachment Report*, no. 31 (Headquarters, OMGB, 13 December 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[80]OMGB, *Weekly Detachment Report*, no. 20 (Headquarters, OMGB, 27 September 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[81]OMGB, *Weekly Detachment Report*, no. 31 (Headquarters, OMGB, 13 December 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD. Voter registration lists had largely been taken from police registration lists in local communities. Gillen, 19

[82]According to Edward Peterson, Muller stated to Hoegner that "The submission of candidate lists for the villages is causing everywhere great difficulties, because the local and county [*Landkreis*] parties have not been built yet. Therefore, someone should make sure that the *Land* level parties take form as quickly as possible, and that they submit the necessary lists." Peterson, 230.

[83] The CSU and SPD gained authorization on 9 January and the KDP on 17 January 1946. At the time, the SPD claimed approximately 70,000 members in Bavaria and the CSU, 100,000. OMGB, *Weekly Detachment Report*, no. 35 (Headquarters, OMGB, 10 January 1946) & no. 36 (Headquarters, OMGB, 17 January 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[84]OMGB, *Weekly Detachment Report*, no. 32 (Headquarters, OMGB, 20 December 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[85]"The law governing local elections in 1946 in the U.S. zone consists of (a) the relevant provisions of Military Government directives; (b) the local government codes and election regulations which have been duly promulgated by the *Land* governments after approval by the U.S. Military Government; (c) applicable *Land* legislation on elections which was in force on 30 January 1933 and which has not been repealed on amended by (a) or (b)." C. L. Adcock, "Subject: Local Government Codes and Elections" (Headquarters, OMGUS, 23 November 1945). Papers of Walter J. Muller, Box 15, Item 90. Hoover Archives, Stanford University, Palo Alto, CA.

[86]The decision regarding what constituted German nationality was only a tentative decision that was subject to change: "For election purposes only and without prejudice to any future decisions or determinations concerning German citizenship or nationality, persons who are now German nationals shall be deemed to meet this requirement [German nationality]." Ibid.

[87]Those specifically excluded were: (1) persons in "mandatory arrest" categories under current denazfication directives and laws; (2) persons who joined the Nazi party before 1 May 1937, and all active members who joined thereafter, to include officers and non-commissioned officers of the party at any time; (3) all persons who were members of the SS at any time; (4) all officers, non-commissioned officers, and high-ranking officials in certain other Nazi organizations, such as the *Hitler Jugend*; and (5) known Nazi sympathizers and collaborators. Peter Vacca, "Report on the Elections Conference" (Headquarters, OMGB, 30 November 1945). Papers of Walter J. Muller, Box 13. Hoover Archives, Stanford University, Palo Alto, CA.

[88]The *Gemeinde* election committee was chaired by the local *Bürgermeister* (appointed to the position by military government). The committee was authorized to use information gained through military government denazification efforts to conclude whether the named person should be disqualified from voting because of being a Nazi or Nazi sympathizer or collaborator. Adcock, "Subject: Local Government Codes and Elections."

[89]Ibid.

[90]H. H. Newman, "Administration of Military Government in U.S. Zone in Germany," (Headquarters, USFET, 20 September 1945). Papers of Walter J. Muller, Box 15, Item 90.

[91]Ibid.

[92]OMGB, *Weekly Detachment Report*, no. 35 (Headquarters, OMGB, 10 January 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[93]Ibid.

[94]Ibid.

[95]Three illegal elections were held in Bavarian towns in September, 1945. OMGB subsequently revoked the results. OMGB, *Weekly Detachment Report*, no. 20 (Headquarters, OMGB, 27 September 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[96]As pointed out in an OMGB intelligence report, an anticlerical backlash never occurred in Catholic Bavaria: "It is significant that pious "Old Bavaria" is one of the few Christian countries never convulsed by widespread revolt against the authority of Rome. The waves of violent anticlericalism which swept over most Occidental countries at one time or another and engulfed arch-Catholic Spain and Mexico in our generation never penetrated south of the Danube and east of the Lech River." Information Control Division, "The Catholic Church in Bavaria," in OMGB, Intelligence Division, Analysis

Branch, *Trend: A Weekly Report of Political Affairs*, Report no 13 (Headquarters, OMGB, 3 September 1946), 12. National Archives Record Group No. 260.71. National Archives, College Park, MD. It should be noted that the *Gemeinde* elections took place on Sunday, and OMGB intelligence reports indicated that many voters first attended church services before voting. OMGB, *Weekly Detachment Report*, no. 38 (Headquarters, OMGB, 31 January 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[97]Vacca, "Report on Elections Conference."

[98]OMGB, *Weekly Detachment Report*, no. 38 (Headquarters, OMGB, 31 January 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[99]Peterson, 230.

[100] OMGB, *Weekly Detachment Report*, no. 38 (Headquarters, OMGB, 31 January 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[101]OMGB, *Weekly Detachment Report*, no. 39 (Headquarters, OMGB, 7 February 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[102]OMGB, *Weekly Detachment Report*, no. 38 (Headquarters, OMGB, 31 January 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[103]OMGB, *Weekly Detachment Report*, no. 39 (Headquarters, OMGB, 8 February 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD. OMGB.

[104]OMGB, *Weekly Detachment Report*, no. 40 (Headquarters, OMGB, 14 February 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[105]Ibid.

[106]OMGB, Civil Administration Division, *Civil Administration Question and Answer Book*, 9.

[107]The election of the *Kreistag*, and its election of the chief executive official, the *Landrat*, were innovations of the U.S. occupation. Previously, in both Nazi and Weimar Germany, *Landräte* had been appointed by the *Land* government. Ibid.

[108]OMGB, *Weekly Detachment Report*, no. 43 (Headquarters, OMGB, 7 March 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[109]Ibid.

[110]The same report, however, noted that political apathy among average Bavarians was still noticeable, and that the average citizen was both reluctant and fearful because of possible reprisals, if one associated with the wrong party, after the American occupation forces left. OMGB, *Weekly Detachment Report*, no. 47 (Headquarters, OMGB, 4 April 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[111]Ibid.

[112]OMGB, *Weekly Detachment Report*, no. 45 (Headquarters, OMGB, 21 March 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[113]OMGB, *Weekly Detachment Report*, no. 47 (Headquarters, OMGB, 4 April 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[114]OMGB, *Weekly Detachment Report*, no. 51 (Headquarters, OMGB, 2 May 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[115]OMGB, *Weekly Detachment Report*, no. 52 (Headquarters, OMGB, 15 November 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[116]OMGB, *Weekly Detachment Report*, no. 51 (Headquarters, OMGB, 2 May 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[117]Dastrup, *Crusade in Nuremberg*, 105. According to Dastrup, "Although 89% went to the polls on 26 May 1946, American pressure undoubtedly produced the high figure and made it difficult to determine genuine political awareness and activity. If party memberships were a guide, the Nurembergers did not care for party politics but would vote for no other reason than to appease their American governors and to find a leader." Ibid.

[118]The duties of the *Kreis* liaison officers were to: (1) "observe and study" the organization of the offices of the *Landkreis* and *Stadtkreis* executive officials and

subordinate departments, to include observing "channels of communications and responsibility"; (2) observe the "adequacy and clearness" of instructions received from local civil administration officials from higher governmental echelons; (3) study important directives issued from the local governments to determine if they are clear, adequate, and in conformity with U.S. military government policy; (4) observe the speed with which instructions, reports, and other documentation are transmitted from higher to lower governmental entities and vice versa; (5) observe the extent to which political considerations enter into official everyday business; and (6) observe attitudes of German civil administration officials towards the U.S. military government. The only area that the liaison officers had powers beyond observation were in elections: "In matters of elections, liaison and security officers shall take such direct action and exercise such functions as prescribed by current directives concerning elective affairs." Walter J. Muller, "Functions of *Kreis* Military Government Liaison Officers in Connection with Civil Administration" (Headquarters, OMGB, 8 June 1946). Papers of Walter J. Muller, Box 15, Item 92. Hoover Archives, Stanford University, Palo Alto, CA.

[119]As a further precaution, other Bavarian political parties were given the same notice. OMGB, *Weekly Detachment Report*, no. 72 (Headquarters, OMGB, 26 September 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[120]OMGB, *Weekly Detachment Report*, no. 53 (Headquarters, OMGB, 16 May 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD. OMGB initially approved the party in Munich. Knowledge of the monarchist party came to the Department of State and the Civil Affairs Division of the War Department. Both sought the suppression of the party, against the advice of Clay, stating that the party supported separatism and the archaic concept of the "divine right of kings." Eventually, the Civil Affairs Division stated that the party must be dissolved before the 26 May 1946 *Stadtkreis* elections. Clay responded personally to General O. P. Nichols, head of the Division, after the ordered dissolution: "[T]his office believes that this dissolution was unnecessary as this party had gained no standing and would have died a natural death. . . . We have not assumed that a King's party is necessarily non-democratic as certainly our British ally would not agree. We had no fears of situation getting out of hand and would have taken action if we had." Clay, quoted in Gillen, 75.

[121]OMGB, *Weekly Detachment Report*, no. 53 (Headquarters, OMGB, 16 May 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[122]OMGB, *Weekly Detachment Report*, no. 50 (Headquarters, OMGB, 25 April 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[123]According to Earl Ziemke, the CSU, and its Northern German counterpart, the CDU, also stated that only "real" Nazis needed to be denazified, the rest being *Mussnazis*, Nazis by compulsion. Ziemke, 363.

[124]As of June, 1946, the CSU reportedly had 55,000 members and the SPD 70,000. OMGB, *Weekly Detachment Report*, no. 57 (Headquarters, OMGB, 13 June 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[125]All the CSU party members in Viechtach were forbidden to engage in political activity, beginning on 8 June 1946. The party was reinstated on 18 June 1946. OMGB. *Weekly Detachment Report*, no. 58 (Headquarters, OMGB, 20 June 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[126]OMGB, *Weekly Detachment Report*, no. 53 (Headquarters, OMGB, 16 May 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[127]Walter J. Muller, "Functions of Field Liaison Officers in Connection with Information Control Affairs" (Headquarters, OMGB, 15 June 1946). Papers of Walter J. Muller, Box 15, Item 92. Hoover Archives, Stanford University, Palo Alto, CA.

[128]OMGB, Civil Administration Division, *Civil Administration Question and Answer Book*, 7.

[129]According to reports, in certain extreme cases, the local *Landrat* or *Bürgermeister* had little supervisory authority beyond minor matters, and his prestige was much diminished compared to his pre-1933 counterparts: "Until such time as he becomes the competent governmental authority in the *Landkreis* or *Stadtkreis*, the democratic process of electing him is farcical." OMGB, *Weekly Detachment Report*, no. 58 (Headquarters, OMGB, 20 June 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[130]OMGB, *Weekly Detachment Report*, no. 53 (Headquarters, OMGB, 16 May 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[131]Ibid.

[132]OMGB, *Weekly Detachment Report*, no. 59 (Headquarters, OMGB, 27 June 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[133]OMGB. *Weekly Detachment Report*, no. 91 (Headquarters, OMGB, 6 February 1947). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[134]Clay, when asked by his biographer whether he had, in fact, written Byrnes' address, stated: "It was very close to the messages that I had sent to Washington. But to say that I wrote the speech would not be correct. To say that Mr. Byrnes listened to and accepted many of my ideas and suggestions would be much closer to the truth." Smith, *Lucius D. Clay: An American Life*, 387.

[135]"It is the view of the American Government that the German people throughout Germany, under proper safeguards, should now be given the primary responsibility for the running of their own affairs." James F. Byrnes, "Address by Secretary of State Byrnes on United States Policy Regarding Germany, Stuttgart, September 6, 1946" in United States Department of State, *Documents on Germany, 1944-1985* (Washington D.C.: Department of State, 1985), 96.

[136]According to a poll of 266 Bavarians taken by the OMGB Information Control Division (ICD) after Byrnes' speech, 86% of those surveyed responded "very favorably" (40%) or favorably (46%) to the address. Only 6% reacted "unfavorably, and 8% had "no opinion." OMGB, Intelligence Division, Analysis Branch, "Reactions to Byrnes' Speech" in *Trend: A Weekly Report of Political Affairs*, no. 15 (Headquarters, OMGB, 17 September 1946), 3, 6. National Archives Record Group No. 260.71. National Archives, College Park, MD.

[137]According to an ICD investigator, "Common people still imbued with Nazi propaganda and lacking a political sense . . . conclude that Byrnes' words were directed in the first place against Russia, that a war between the United States and the Soviet Union is imminent and that the German people are again called upon to free the world of Bolshevism." Ibid., 4.

[138]Ibid., 5.

[139]Ibid.

[140]The first meeting of the *Länderrat* took place on 17 October 1945 in Stuttgart. At this first meeting, Clay stated that he did not want to create a "South German state," but rather believed that administrative coordination among the *Länder* was needed to meet the ultimate goal of establishing Germany as a functioning, autonomous economic unit. Gillen, 91. In its charter, the *Länderrat* called for a General Secretariat, who with experts, would deal with matters of common concern of all the U.S. zone *Länder*. Ibid., 92.

[141]According to John Gimbel, the official history of the *Länderrat* overstates its contribution to the "establishment of the federal principle in postwar German politics."

Gimbel, 44. Gimbel instead asserts that, "The case is effectively presented, but it rests mainly on theory and structural considerations, and on selected evidence that minimizes the extent to which the Americans intervened to make the *Länderrat*, and therefore the *Länder*, conform to the larger objectives of the United States in Germany." Ibid., 44-45. Gimbel's argument that the *Länderrat* cannot be considered a deliberate "capstone" to a "political program of German self-government starting from the grass roots in the Gemeinde and rising to the Kreise, to the *Länder*, and then to the entire zone" is correct in the sense that, as he points out, the *Länderrat* came into being months before even the *Gemeinde* elections. Gimbel, 50-51.

[142]According to Gimbel, "Bavarians thought that it assumed too much authority, that it operated as a zonal government, that it required *Land* officials to devote excessive time to meetings and committees, that it was expensive, and that [Erich] Rossman [the appointed General Secretariat of the *Länderrat*] was building up a permanent staff." Ibid., 40.

[143]Litchfield, 11.

[144]Gillen, 105.

[145]According to Clay, "The *Länderrat* became a major influence in shaping German political thought. Since it could only function with unanimity, its members learned to compromise the views of the states which they represented in the common good and such compromise is the essence of democracy." Clay, quoted in Gillen, 96.

[146]Doronodo, 55. Doronodo's comments were presaged by the Interdivisional Committee on German Governmental Structure, which stated in its 1946 special report that the *Länderrat* "furnished the first opportunity in fifteen years for German officials to practice democracy and democratic methods--the assumption of personal responsibility, the interchange of ideas, the reconciliation of conflicting interests and views, and the value of compromise and concession--and accordingly it has been an invaluable training tool toward our ultimate goal." OMGUS, *Central German Agencies*, 4.

[147]"The United States is firmly of the belief that Germany should be administered as an economic unit and that zonal barriers should be completely obliterated so far as the economic life and activity in Germany are concerned." James F. Byrnes, "Address by Secretary of State Byrnes on United States Policy Regarding Germany, Stuttgart, September 6, 1946," 93.   In Byrnes' view, an economic unification did not conflict with Potsdam's decentralization policies: "The Potsdam Agreement wisely provided that administration of the affairs of Germany should be directed toward decentralization of the political structure and the development of local responsibility. This was not intended to prevent progress toward a central government with the powers necessary to deal with matters which would be dealt with on a nation-wide basis. But it was intended to prevent the establishment of a strong central government dominating the German people instead of being responsible to their democratic will." Ibid., 95.

[148]The apparent fear was that the artificially created zonal agencies would harden over time and become, in effect, small autonomous governments that would impede ultimate unification and prevent the free flow of raw and manufactured goods. This would have had a disastrous effect on German economic as well as political life. The permanent zonal boundaries would create "a separation of raw materials and semi-finished goods from their processing plants and a separation of component manufacturers from their markets." OMGUS, *Central German Agencies*, 7.

[149]The French agreed to a "trizonal" fusion in the summer of 1948, via piecemeal legislation. F. Roy Willis, *The French in Germany*, *1945-1949* (Stanford: Stanford University Press, 1962), 61-66.

[150]Jean Edward Smith, Clay's biographer, stated that Clay saw Bizonia as a "way to bypass French and Russian intransigence: a first attempt to put the splintered pieces of Germany back together." Smith, *Lucius D. Clay: An American Life*, 405.

[151]Gimbel, 112.

[152]Lucius D. Clay, "Bizonal Economic Matters," in *The Papers of Lucius D. Clay*, *Germany 1945-1949,* Vol. 1, 333.

[153]Ibid.

[154]Ibid. A related problem in the bizonal fusion was that, whereas in the U.S. zone, the agencies that would come to form the bizonal organizations came German-run *Länder* governments, those in the British zone, as of mid to late 1946, still would have to come from the British military government, since elections in the British zone lagged significantly behind those in the U.S. zone. Gillen, 145.

[155]Lucius D. Clay, "Bizonal Merger: Economic Council," in *The Papers of Lucius D. Clay*, *Germany 1945-1949,* Vol. 1, 352.

[156]OMGB, *Weekly Detachment Report*, no. 71 (Headquarters, OMGB, 19 September 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD. OMGB.

[157]OMGB, *Weekly Detachment Report*, no. 69 (Headquarters, OMGB, 5 September 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[158]Ibid.

[159]Clay, "Bizonal Merger: Economic Council," 352. The formal agreement was signed by U.S. and U.K. representatives in Washington, D.C. on 2 December 1946, with

the agreement taking effect on 1 January 1947. "Memorandum of Agreement Between the United States and United Kingdom on Economic Fusion of their Respective Zones of Occupation of Germany, Signed in Washington, 2 December 1946," in United States Department of State, *Documents on Germany, 1944-1985* (Washington, DC: Department of State, 1985), 110.

[160]Clay, "Bizonal Merger: Economic Council," 352.

[161]Ibid. The structure that emerged was a twofold organization. (1) A U.S.-U.K. bipartite organization, consisting of a bipartite board made up of the two U.S. and U.K. deputy military governors, with advisors, and a bipartite control office, consisting of a chairman and bipartite groups. The bipartite organization, along with the Allied bank commission and the Joint Export Import Agency, oversaw bizonal economic policy. (2) The German bizonal agencies, which carried out U.S.-U.K. zone economic policy. The main bizonal agency was the economic council, consisting of 54 members, elected from the *Landtäge*, which promulgated economic ordinances, an executive committee, which drafted regulations implementing those ordinances, and bizonal departments, which implemented them. Gillen, 143-46.

[162]Bizonia, as conceived and ultimately enacted, proved contrary to federalism in two ways. First, because the introduction of German economic agencies in the absence of a "single German government operating according to democratic principles which will provide a constant example and a source of continuing democratic inspirations." Secondly, because the establishment of central German economic agencies that were not "truly representative of either the German people or the *Länder* governments" did not "satisfy the U.S. policy of devolving as much responsibility to German civil administration agencies as possible." OMGUS, *Central German Agencies*, 14. It could also be argued that, whereas the U.S. zone had attempted political decentralization, it had not done the same economically, and that Bizonia was the logical culmination of governmental economic centralization. In contrast to the relative freedom given in political reform, U.S. economic zone policies during the occupation was often activist and interventionist. In Bavaria, for example, while OMGB permitted trade unions, it reserved the right to prohibit strikes and lockouts if they would "jeopardize security or military government policies." By the end of 1946, only one strike took place anywhere in Bavaria. OMGB also set wage and price controls, established a forty-eight hour work week, and mandated the establishment of unemployment compensation for up to thirteen weeks beginning in January, 1947. U.S. Army Military Police School, *Case Studies on Field Operations of Military Government Units*, 81.

[163]A.J. Ryder, *Twentieth Century Germany from Bismarck to Brandt,* (New York: Columbia University Press, 1973), 479-80. Ryder calls the bizonal agencies a "shadow government" of the CDU. Ibid. Initially, the bizonal agencies could only recommend agreed views to the respective *Länder*, which made the administration rather weak. In May, 1947, the two zones agreed that the bizonal economic council could issue ordinances dealing with "public finance, currency, credit banking, and property control."

U.S. Army Provost Marshal General's School, *U.S. Military Government in Germany: Financial Policies and Operations* (Office of the Chief Historian, U.S. Army European Command, 1950), 89-90. CARL N-16359.37-1. Because the economic council consisted of members elected from the respective *Landtäge*, however, the *Länder* interests were still preserved.

[164]Albert C. Schweizer, "Relationship between *Länderrat*, Bizonal Agencies, and Land Civil Governments" (Headquarters, OMGB, 3 February 1947). Papers of Walter J. Muller, Box 15, Item 91. Hoover Archives, Stanford University, Palo Alto, CA. Schweizer laid out the threefold relationship at the beginning of his memorandum: "Military government has recently entered into an era where the Minister Presidents of the three *Länder* of U.S. zone are representative officials, chosen by a popularly elected *Landtag* and responsible thereto. As a corollary, the *Länderrat* is composed of Minister-Presidents who are no longer appointees of Military Government. At the same time this situation has developed, another new situation has come into being through the institution of the bizonal agencies." Ibid.

[165]Ibid.

[166]Ibid.

[167]Ibid.

[168]Lucius D. Clay, "Constitutions for *Laender* in U.S. Zone," in *The Papers of Lucius D. Clay, Germany 1945-1949,* Vol. 1, 260.

[169]Lucius D. Clay, "U.S. Policy in Germany," in *The Papers of Lucius D. Clay, Germany 1945-1949,* Vol. 1, 241.

[170]OMGB. *Weekly Detachment Report*, no. 66 (Headquarters, OMGB, 15 August 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[171]Doronodo, 39.

[172]OMGB. *Weekly Detachment Report*, no. 59 (Headquarters, OMGB, 27 June 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[173]Byran L. Milburn, "Elections in the U.S. Zone" (Headquarters, OMGUS, 4 February 1946). Papers of Walter J. Muller, Box 15, Item 90. Hoover Archives, Stanford University, Palo Alto, CA,.

[174]OMGB, *Weekly Detachment Report*, no. 60 (Headquarters, OMGB, 4 June 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[175]OMGB, *Weekly Detachment Report*, no. 61 (Headquarters, OMGB, 11 June 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[176]Ibid.

[177]OMGB, *Weekly Detachment Report*, no. 56 (Headquarters, OMGB, 6 June 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[178]OMGB, *Weekly Detachment Report*, no. 61 (Headquarters, OMGB, 11 July 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[179]OMGB, *Weekly Detachment Report*, no. 68 (Headquarters, OMGB, 29 August 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[180]OMGB, *Weekly Detachment Report*, no. 63 (Headquarters, OMGB, 25 July 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[181]Ibid.

[182]Peterson, 231. Karl Lowenstein of the OMGUS Legal Division describing the proposed Bavarian constitution stated that:

> It is the embodiment of the dream of Bavarian independence nursed for two generations by Bavarian extremists of whom Dr. Hoegner permitted himself to be a tool. If adopted in this form it will be a great political success of the French because it turns the clock back to the Rhenish Confederation of Napoleon. It serves to prevent the reintegration of Bavaria into a decentralized Germany and presents a permanent road block to German unity which only inexperienced persons are apt to identify with German centralism. This declaration of Bavarian independence is a thinly veiled declaration of the secession from Germany.

Karl Lowenstein to Roger Wells, 11 December 1945, "Draft of a New Bavarian Constitution" quoted in Gillen, 25.

[183]The Catholic corporatist model was seen by American military government experts as deeply rooted in Bavarian culture:

The attempt of American military Government to eliminate the corporative tradition in the American Zone of Germany faces heavy odds. It is deeply rooted. To Germans the corporative system seems essentially "right." It is regarded as superior to the American system of government bureaus and voluntary occupational associations. Defenders of the corporative tradition in Germany feel that the democratization of the German governmental structure requires only the establishment of democratic procedures within the corporations and the general government. They tend to dissociate the corporative principles from National Socialism except as the Nazi regime developed the principles to an extreme and "coordinated" the corporations into a totalitarian governmental structure by abolishing internal democratic procedures and subjecting the corporations to the chain of command or "leadership" principle.

John D. Holt, "Corporative Occupational Organization and Democracy in Germany," *Public Administration Review* 9 (winter 1948): 38, quoted in Gillen, 38. Bavaria was the only *Land* that proposed such a Senate. Gillen, 36.

[184]"Coalition Problems in the South," *Der Morgen*, 4 December 1946, trans. OMGB Intelligence Branch. Papers of Walter J. Muller, Box 14, Item 86. Hoover Archives, Stanford University, Palo Alto, CA. In Hesse and Wuerttemberg-Baden, parties that failed to receive 5% of votes cast in the June Constitutional Assembly elections obtained no Constitutional Assembly seats. Gillen, 28.

[185]It should also be noted that two factions had developed within the CSU, representing different views: a "progressive, liberal-conservative, interdenominational group" led by Josef Müller, and a "traditionalist, fiercely moral, Roman Catholic wing," led by Friedrich Schaeffer, Anton Pfeiffer, and Alois Hundhammer. Peter James, *The Politics of Bavaria-An Exception to the Rule* (Aldershot, UK: Avebury, 1995), 95.

[186]OMGUS, *Constitutions of Bavaria, Hesse and Wuertemberg-Baden* (Headquarters, OMGUS, 15 February 1947), Introduction at 2. Papers of Walter J. Muller, Box 13, Item 73. Hoover Archives, Stanford University, Palo Alto, CA. It is important to note that of all the *Länder* constitutions, the Bavarian Constitution least resembled the Weimar models. Interestingly, this actually brought forth favorable comments from Carl Friedrich, an academic who worked with OMGUS in political reconstruction. Friedrich feared that the "Weimar" model too much resembled the French system, with a unicameral legislature, acceptance of a multiple party system, and proportional representation. This could lead, in his view, to the same "paralysis and chaos of Weimar, and thus usher in right-wing populist extremism to restore order." The Bavarian model, on the other hand, adopted the "much more stable Swiss type" with a bicameral legislature and restrictions on party representation. Friedrich, quoted in Gillen, 45.

[187]Doronodo, 43.

[188]The 60 members were composed of 11 representatives from foresty and agriculture, five from industry and trade, five from handicrafts, eleven from trade unions, four from the press, five from cooperatives, five from religious societies, five from welfare institutions, three from higher education and academies, and six from the *Gemeinde*. Gillen, 38.

[189]Doronodo, 43. According to Doronodo, the main basis of the compromise was the inclusion, at the insistence of the SPD and KPD, of trades-union representatives in the Senate.

[190]Ibid., 44.

[191]"The Political Course in Bavaria," *Meues Deutschland*, 1 December 1946, trans. OMGB Intelligence Branch. Papers of Walter J. Muller, Box 14, Item 86. Hoover Archives, Stanford University, Palo Alto, CA..

[192]OMGB, *Weekly Detachment Report*, no. 72 (Headquarters, OMGB, 26 September 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[193]As the introductory comments to the constitutions point out, "The executive power is exercised under the direction of the Minister-President and his Cabinet who are chosen by, and responsible to, the *Landtag*. (The Constitutions of Hesse and Wuerttemberg-Baden clearly provide for the parliamentary form of government; the Bavarian Constitution is somewhat ambiguous on this point and reflects convention [sic] sentiment favoring a more independent type of executive.)" OMGUS, *Constitutions of Bavaria, Hesse and Wuertemberg-Baden*, (Introduction) 2.

[194] OMGB, *Weekly Detachment Report*, no. 27 (Headquarters, OMGB, 31 October 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[195]Gimbel, 92. Gimbel also points out that Clay defended the U.S. zone *Länder* constitutions against War and State Department objections to the point that, if Washington policymakers were adamant with their objections, the President would have to decide the matter. Ibid.

[196] OMGB. *Weekly Detachment Report*, no. 76 (Headquarters, OMGB, 24 October 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[197]Lucius D. Clay, "Constitutions for *Laender* in U.S. Zone," in *The Papers of Lucius D. Clay, Germany 1945-1949,* Vol. I, 270.

[198]Ibid.

[199]Ibid.

[200]Ibid.

[201]OMGB, *Weekly Detachment Report*, no. 82 (Headquarters, OMGB, 5 December 1946).National Archives Record Group No. 260.71. National Archives, College Park, MD.

[202]Ibid.

[203]Ibid.

[204]Ibid.

[205]OMGB, *Weekly Detachment Report*, no. 87 (Headquarters, OMGB, 9 January 1947). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[206]"Who Will Govern in Bavaria?" *Munchner Mittag*, 4 December 1946, trans. OMGB Intelligence Branch. Papers of Walter J. Muller, Box 14, Item 86. Hoover Archives, Stanford University, Palo Alto, CA,

[207]Dastrup, "U.S. Military Occupation of Nuremberg, Germany, 1945-1949," 166. This theme has also been explored in other works on the occupation: see John D. Montgomery, *Forced to Be Free: The Artificial Revolution in Germany and Japan* (Chicago: University of Chicago Press, 1957); John Gimbel, "The Artificial Revolution in Germany" *Political Science Quarterly*, 76 (March 1961): 88-104.

[208]Bavarian influence on the formation of the Federal Republic and the drafting of Germany's Basic Law was especially felt in the adoption of certain federalist principles. Anton Pfeiffer from the CSU was the leader of the CDU/CSU fraction at the Parliamentary Council and Pfeiffer and the other Bavarian representatives insisted on promoting maximum federalism. James, 114. The biggest checks on government centralization in the German government are the Federal Constitutional Court and the Council of Constituent States (*Bundesrat*), which represents the various influence of *Länder* governments and has veto powers over certain laws that could affect financial or administrative interests of the *Länder*. The Basic Law itself contains certain articles (Articles 30, 31, and 50, especially) which provide for a federalist structure. R. Taylor Cole, "Federalism: *Bund* and *Länder*" in *Politics and Government in Germany, 1944-1984: Basic Documents*, ed. Carl-Christoph Schweitzer, Detlev Karsen, Robert Spencer Jr., R. Taylor Cole, Donald P. Kommers, and Anthony J. Nicholls (Providence, RI: Bergahn Books, 1995), 325-29. Federalism's continued vitality, however, is currently a subject of debate, in light of the current trend toward European economic and political

unification. Donald P. Kommers, "The Basic Law: A 50 Year Assessment," *Southern Methodist Law Review*, 53 (Spring 2000): 487-510; Helmut Steinberger, "50 *Jahre Grundgesetz,*" *Southern Methodist Law Review*, 53, (Spring 2000), 494-500.

[209]"Clay's push for local and *Länder* elections and for self-government under constitutions encouraged particularism and states' rights interest groups that resisted his intention to promote economic unity and centralized economic decisions first at the *Länderrat* and then at the bizonal level." Gimbel, 69. It should be noted that resistance to "centralized economic decisions" is a hallmark of federalism.

[210]This was made more true by the fact that decisions could only be obtained through unanimous vote from all the *Länder* Minister-Presidents or their representatives, and that the presidency of the *Länderrat* rotated among the *Länder* Minister-Presidents every three months, "thereby working to prevent too great an accumulation of power in any one capital." Doronodo, 57.

[211]Zink, 185. A related criticism made is that the decision to begin a German political revival no sooner than the fall of 1945 was an unnecessary "postponement": "Public order, a smoothly running bureaucracy, and an expedient material reconstruction took priority for most MG [military government] detachments over any goals of democratization, whether in the form of government accountability to the citizenry or genuine civic participation in government. . . . Once all the cogs of the bureaucratic wheel had been well greased and were functioning smoothly, [the] propitious moment for initiating the process of reconstructing local democracy in Germany was gone." Rebecca Boehling, *A Question of Priorities: Democratic Reform and Economic Recovery in Postwar Germany* (Providence, RI: Bergahn, 1996), 156-57.

[212]Joseph Mire, "Labor Organization in Germany Public Administration and Services," Visiting Expert Series, Number 8. (Headquarters, OMGUS, May 1949), 2. Papers of Walter J. Muller, Box 13, Item 80. Hoover Archives, Stanford University, Palo Alto, CA,

[213]The renowned Third Reich scholar Ian Kershaw argues that Nazism never achieved its purpose of bringing about a true social revolution in Germany. Nazism failed to break down religious allegiances and no evidence suggests that "family structures came anywhere near to breaking down under Nazism." Furthermore, while enhancement of existing anti-Semitic and other prejudices undoubtedly occurred, "the growing protest against the 'euthanasia action' and the regime's perception of the need for utmost secrecy in the 'Final Solution' are indirect testimony that exposure to Nazi race values had come nowhere near completely eradicating conventional moral standards." Ian Kershaw, *The Nazi Dictatorship: Problems in Perspectives of Interpretation*, 4th ed. (London: Arnold, 2000), 178-79. In this same work, Kershaw examines, and takes issue with the 'Goldhagen' thesis that the Holocaust *was* a natural product of a deeply rooted, racist anti-Semitism in German society. Ibid., 253-62. Daniel Jonah Goldhagen, *Hitler's Willing Executioners* (New York: Knopf, 1996). For

an analysis of how the German people embraced Nazism not as a "hyperventilated expression of German values" but as a populist movement that sought to rekindle German nationalism prevalent at the outbreak of World War I, see Peter Fritzche, *Germans Into Nazis* (Cambridge, MA: Harvard University Press, 1998).

[214]Merritt, 245. In addition to Merritt's analysis of postwar German opinion, American military government Information Control censors reviewed thousands of letters during a four month period: "Based on 21,306 opinions as expressed in 16,048 letters read by Berlin censors between December 1945 and March 1946, the study portrayed the sentiments of the Germans towards each of the occupying powers. Approximately 75 percent of the comments on the American forces expressed satisfaction, whereas a full 80 percent of the remarks on the Russian forces were unfavorable." OMGUS Information Control Division, *Intelligence Summary (ICIS)*, no. 47, 22 June 1946, 1-4, cited in Margaret L. Geis & George J. Gray Jr., *The Relations of Occupation Personnel with the Civil Population, 1946-1948* (Historical Division, U.S. Army European Command, 1951), 11. CARL N-17500.1088.

[215]Merritt, 243. As the German historian Gordon Craig states, "It was not a time conducive to nostalgia, but rather one in which the Occupying Powers encouraged the Germans to reflect upon the consequences of their past political behavior, while they themselves pursued a policy of denazification, disarmament, dismantling and democratization that was designed to prevent a reversion to old ways." Gordon Craig, *The Germans* (New York: G. P. Putnam, 1982), 35.

[216]Merritt, 394. An analysis of taxation going to the central government, as opposed to the respective *Länder* indicate a steady financial centralization that was underway during the Weimar Republic. In 1913/14, 40% of taxes went to the Reich, 60% to the *Länder*. In 1928/29, during the Weimar era, the central government received 68% of all taxes, as opposed to 32% for the *Länder*. Under the Third Reich, this had increased to 78% to the central government and 22% to the *Länder*. U.S. Army Provost Marshal General's School, *U.S. Military Government in Germany: Financial Policies and Operations* (Office of the Chief Historian, European Command, 1950), 2. CARL N-16359.37-1.

[217]Friedrich Glum of the Bavarian Chancellery wrote much of the first draft of the German Constitution calling it the "Constitution of the United States of Germany." Doronodo, 79.

[218]Ibid. Throughout the Parliamentary Council that led to the creation of the Basic Law and the first Federal Republic government, the SPD stood for strong central government, with powers similar to the old Weimar Republic. The CDU/CSU faction stood for a limited government with "all rights not expressly granted to it reserved to the individual states." Gillen, 216.

[219]This essentially is the thesis of Edward Peterson, encapsulated in the title of his book: *The American Occupation of Germany: Retreat to Victory*.

[220]Doronodo,125. Doronodo only states that "These circumstances, arising as they did in the wake of war and defeat, conditioned the leading politicians of the western occupation zones to be more amenable to a search for a political organization of the state which would avoid the centralization of the pre-1933 era." Ibid.

[221]Peterson, 215.

[222]Ibid. It should also be noted that not being "comparable in importance" does not therefore make one "irrelevant."

[223]"What [Minister-President] Hoegner and [General] Muller thought became more and more irrelevant, however. Political power in Bavaria rested in the Catholic party, the CSU." Ibid, 228.

[224]For this viewpoint, see Rebecca A. Boehling, *A Question of Priorities: Democratic Reform and Economic Recovery in Postwar Germany*, passim.

[225]"Without KPD," *Der Abend*, 3 December 1946. trans. OMGB Intelligence Branch. Papers of Walter J. Muller, Box 14, Item 86. Hoover Archives, Stanford University, Palo Alto, CA.

CHAPTER 4

DENAZIFICATION IN BAVARIA, 1945-47

The American denazification program began as a sweeping attempt to wipe out a totalitarian ideology. General Clay called it "the most extensive legal procedure the world had ever witnessed."[1] As an indication of its scale, a denazification report revealed that, as of 16 July 1945, 70,000 Nazis were under arrest in the U.S. zone, with arrests being made at the rate of 700 a day.[2] Indicative of American optimism and idealism, the American denazification effort represented, in many ways, America's view of itself in the postwar world. Under American guidance, Germany would free itself from poisonous Nazi leadership and ways of thought. In doing so, and in concert with other occupation efforts, democracy would emerge in the U.S. zone.

Denazification was also probably the most controversial aspect of the U.S. occupation. Various critics condemned the program for being either too lax or too harsh, too piecemeal or too absolute. Some critics condemned denazification as a fundamentally undemocratic program that presumed persons guilty until proven innocent.[3] Others viewed it as a ruse used by the Americans to placate the home front, while in reality, the occupiers cleared the way for many Nazi members to regain prominent positions in the public and private spheres.[4] Still others criticized the effort as being not only arbitrary, but also mechanistic and reactive, and not part of a comprehensive attempt to achieve large-scale social change in Germany.[5]

Yet it would be incorrect to assume that those in the U.S. military government were unaware that, given political realities, denazification would be extremely difficult.

Military government officials recognized this quite early, as stated in this August, 1945

report on denazification:

> To the Military Government Officer, confronted with administrative and
> communal problems of considerable magnitude, denazification is a perplexing
> question. His mission is to find capable public officials, to get the food-supply
> machinery in operation, the utilities working, a police force in action, some of the
> financial and industrial enterprise moving. At the same time, he must seek out
> and remove the Nazi.[6]

The continuous zigzagging of American policy only intensified these difficulties.

Sometimes reacting to media scrutiny, American public opinion, the need to build a anti-

Soviet bulwark, or the desire to create a democratic and autonomous German state,

denazification suffered from a lack of consistency during the first two years after World

War II. Indeed, its very inconsistency contradicted any notion that either the U.S.

government or the U.S. Army occupiers on the ground formed a "reactionary conspiracy"

that sought simultaneously to reempower Nazis and keep Communists from power. It

was true in the U.S. zone, and Bavaria in particular, that persons with seeming Nazi

sympathies emerged as powerful figures. It was also true that former Nazis remained in

important positions. At the same time, however, military government officials took

measures either to purge or isolate former Nazis from positions of authority.[7] There is

little doubt, however, that the continually changing policy caused military government at

local levels to react in ways that often confused and angered the Germans.

Denazification, particularly in Bavaria, both failed and succeeded. The

Americans failed to remove all former Nazis from positions of postwar power. The

denazification procedures produced a storm of criticism from Germans who felt the

American methods were, in their own way, totalitarian and unjust. The program, when

taken over by the Germans themselves, ended rather perfunctorily. Yet it did succeed in another way: it served not as the first, but rather as the last step in eradicating Nazism as a viable political philosophy and way of life. If the German people recognized that wartime destruction wreaked on Germany was in large part due to Nazism, the postwar stigmatization of Nazism, promulgated in all the acts and procedures of American denazification, confirmed for them beyond any doubt that the future lay, not in totalitarian and racist ideologies, but down a different and democratic path.

<div align="center">Bavaria, Nazism, and the American Military Government</div>

In Bavaria, American idealism collided with a postwar German state that was, in profound ways, a subculture within Germany itself. All the idiosyncrasies of the Bavarian state--its Nazi sympathies, its stubborn particularism and regional pride, and its fervent Catholicism--were important during as the military government's efforts to purge Nazi influence. All significantly complicated denazification during the 1945-47 period.

Nazi ideology had strong claims to Bavaria, and despite absolute defeat, it did not disappear during the occupation. Millions of children had been schooled in Nazism and many remained in its grip after the war. In *Landkreise* Waldmunchen and Cham, OMGB intelligence indicated in August 1945 that 25 percent of all children between 12 and 15 were still under the "fanatical influence of Nazi ideals, girls more so than boys."[8] As late as May 1946, the military government had to close the Teacher Training School at Bayreuth, home of the Wagner festival, because 40 percent of the books in its library contained Nazi or anti-Semitic racial theories.[9]

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The strength of Nazism in Bavaria contrasted with Bavarian particularism.

Bavaria's highly conservative outlook allowed many of its leaders to see positive aspects

in Nazism, overlooking its centralizing and neo-pagan ideology. Yet following the war,

Bavarian particularism reasserted itself and provided a means for Bavarians to cast off

Nazism as a "foreign" and even "Prussian" element. Thus when Minister-President

Friedrich Schaeffer announced that all Nazi signs and insignia would be removed from

public life and replaced with names from Bavarian history, he made this telling

statement:

> National Socialism and the spirit of National Socialism are dead. With the
> vanishing of National-Socialism names and the reappearance of names of
> Bavarian history come new hope, as the nation is reminded of the 1500 years that
> the old Bavarian folk have lived in this area, and that numerous wars have not
> prevented Bavaria from being a country of art and science, a country of free,
> natural life.[10]

Statements such as these, as well as references to the Third Reich as "Prussia-Germany"

fit in neatly with Bavarian separatist ideas, and provided a means of distancing Bavaria

from its Nazi past.[11] While such references may have been, to some degree,

disingenuous--Hitler himself was Austrian, and most of the party's strength, and its

leaders, came not from the aristocrats of Prussia, but from the Rhineland, Saxony and

Bavaria itself[12]--they also seemed to comport well with American attempts to wipe out

Nazism. One reason postwar Nazism never seriously emerged in Bavaria was because it

could be isolated as an "unBavarian" phenomenon.

However, what rendered the problem complex at the individual level was that

some of the same leaders who sought a Bavarian state freed from "Prussian" or "Nazi"

influence had themselves compromised with the Third Reich. Before the war, Nazism

ultimately overcame Bavarian separatism. Nazi ideas of restoring German honor and of

appealing to the *Völk* as a superior race, connected with certain Bavarian concerns and

prejudices, and many Bavarian leaders had, at least initially, struck a deal with the Nazi

party.[13] Schaeffer himself, though not a member of the Nazi party, had strong prewar

connections to it. His sympathies and his seeming reactionary stances belied his anti-

Nazi statements. Ultimately his past and his actions during the occupation led to one of

the biggest controversies in the Bavarian denazification program, one that would lead to

his removal as Minister-President and as Chairman of the CSU.

Closely related to Bavarian particularism was the region's strong Catholicism.

The Catholic Church in Bavaria was a potent force to deal with, and it confronted the

American occupiers when it felt its rights were infringed upon. It could also pose

difficulties for military government when implementing denazification. Paradoxically, as

pointed out in a 1946 intelligence analysis of the Catholic Church, it was the "only

sizeable group in Germany which consistently and openly opposed nazification of the

soul and conscience of the individual."[14]   At the same time the Church in Bavaria had, at

certain times, tolerated Nazism.[15] These seeming contradictions were embodied in its

chief prelate, Michael Cardinal Faulhaber, the Archbishop of Munich, and probably the

most powerful Bavarian, cleric or otherwise, during the American occupation.

Faulhaber, who had attacked Nazism publicly on several occasions, and had been

unafraid to upbraid Hitler personally, nonetheless had been instrumental in the 1933

Concordat between Germany and the Vatican.[16] Yet he clearly loathed Hitler's ideology:

his criticism of anti-Semitic agitation in Munich helped earn him the nickname of the

"Jewish Cardinal" by extreme rightists.[17] On another occasion, he had defended the Jewish antecedents of Christianity in a series of sermons, though denying that the sermons were attacks on Nazi anti-Semitism.[18] Faulhaber would play a prominent role in determining Bavarian leadership. A monarchist at heart, suspicious of American ideas about democracy and wary of encroaching secularist influences, his choices for Bavarian leadership, while aligned with his conservative vision, would also at times run afoul of the denazification program.

The above Bavarian traits are easy to overemphasize. Bavaria was not completely conservative--strong socialist and Communist influences existed in the major cities. In fact, the head of the KPD in Bavaria also served as the Minister with oversight of denazification.[19] Northern Bavaria (Franconia) had a strong Protestant influence: Nuremberg, the city of the infamous rallies, was predominantly Lutheran. Moreover, amidst the swirl of politics and faith, it would be wrong to suggest that American military government naively bumbled its way through a policy in the midst of a culture that it did not or would not understand. While some of the initial appointments to military government were ill-chosen, intelligence reports of the period show an awareness of the multifaceted complexities of both policy and culture.

Furthermore, denazification in Bavaria was part of a larger effort of political reform. The military government simultaneously performed massive efforts such as food relief and refugee management, as it concurrently helped to rebuild Bavaria structures of government. Most literature typically refers to denazification as the effort to purge Nazi party members from public office. It was more part of a larger vision--and more challenging than that one task suggests.

Denazification in Bavaria ended with mixed results. The first two years of denazification in Bavaria saw controversy and conflict. Many former Nazis returned to power in Bavaria after the Germans themselves took complete control over the program. [20] On the other hand, the fact remains that for forty years neither Bavaria as a *Land* nor the Federal Republic of Germany as a nation ever experienced any resurgence of Nazism as a significant, viable political alternative. The Federal Republic of Germany emerged as a democratic nation with a free press and Basic Law respecting individual liberties, and as the leading economic power in Europe. Bavaria, during this time, became the leading exponent of German federalism, with its stress on decentralization and state autonomy[21]--very different from the Nazi philosophy of total submergence in the German Reich. Denazification played a role, albeit a limited one, in that achievement.

The denazification effort in Bavaria also revealed how experience and on-the-ground realities often overcame policy from above. Many in American military government believed in good faith that total denazification would leave no one to run government services or significant industries.[22] The cost of a leaderless German society meant, for the U.S. Army, a period of indefinite occupation. This went directly contrary to the American policy goal of restoring Germany to a functioning democracy as soon as possible and reducing the size of U.S. occupation forces. Thus, American idealism gave way to pragmatism and sometimes improvisation; an abstract policy designed rather vaguely in Washington became modified by the reality of events. American soldiers did what they could with a confusing and sometimes contradictory policy, and tried to fashion something that worked.

Denazification: Background and Policy

Denazification had been a subject of discussion among the major Allied powers and during the conferences at Yalta and Potsdam. Only the United States, however, attempted to implement a sweeping policy. Both the Department of State and the U.S. Army's Civil Affairs Division had unsystematically worked on formulation of such a policy, and the first plan for denazification was in the *Handbook for Military Government in Germany Prior to Defeat or Surrender*, published in 1944 by the U.S. Army's Civil Affairs School.[23] That handbook, though considered "too soft" by Roosevelt Administration officials, helped provide informal guidance on denazification before and after V-E Day.[24]

In the fall of 1944, however, following Secretary of the Treasury Morgenthau's proposal for a total reformation of German society, U.S. policy became more definite. Based in part upon the so-called "Morgenthau Plan," the War Department Civil Affairs Division drafted the primary occupation document, JCS 1067.[25] The document stated: "All members of the Nazi Party who have been more than nominal participants, all active supporters of Nazism or militarism and all other persons hostile to Allied purposes will be removed and excluded from public office and from positions of importance in quasi-public and private enterprises."[26] Being a sweeping policy text, JCS 1067 gave no further clarification on what it meant to be "more than nominal participants" or "active supporters of Nazism or militarism." The occupation forces were left to deal with the specific details and definitions.

Denazification was but one portion of a larger program that was a result of JCS 1067. Known colloquially as the "de-program," it included denazification as part of a process that involved German demilitarization, decentralization, decartelization, and ultimately, democratization.[27] A summary of the mission of the OMGB cited denazification, along with demilitarization and punishment of war criminals, as an essential step in the accomplishment of two primary objectives. The principle objective was "to ensure that Germany never again will threaten her neighbors or the peace of the world."[28] A related, if secondary, goal was to give the German people "the opportunity to reconstruct German economic life to a standard not higher than that of her neighbors, and to develop their political life on a democratic and peaceful basis."[29]

In addition, while denazification is best known as a policy of barring Nazi party members from holding office and punishing Nazi leaders, it reached into many other spheres of German public and private life. Denazification in fact had eight aspects: (1) liquidation of the Nazi party and any affiliated organizations; (2) arrest and detention of Nazi leaders and influential supporters; (3) removal and exclusion from public office and from prominent private enterprise active Nazis; (4) eradication of Nazi laws; (5) prohibition of Nazi flags and paraphernalia, to include renaming streets and removing Nazi monuments, statues, and symbols; (6) prohibition and prevention of any Nazi propaganda; (7) seizure of Nazi property, archives, and blocking of funds and loot of the Nazi party; and (8) prohibition of Nazi privileges and benefits and of payments of Nazi pensions.[30]

Piecemeal military government legislation imposed all these various policies. Thus, for example, ACC Number One repealed some twenty-six laws of a "political or discriminatory nature upon which the Nazi regime rested."[31] U.S. Military Government Law Number 154 forbade the public playing and singing of Nazi anthems and the public display of Nazi flags.[32] A 23 July 1945 USFET directive mandated the changing of the names of streets, parks, and buildings named after prominent Nazi party members.[33]

Several of these denazification policy categories, such as the changing of street signs and the forbidding of displays of flags or parades, while sweeping in scope, were not particularly complex in their implementation or enforcement. They were monitored and enacted with comparative less difficulty than the investigation and sanction of alleged Nazis. Thus, as early as the first report in August 1945, there was no evidence of any significant attempts to distribute Nazi propaganda, and it was widely acknowledged that, for all practical intents and purposes, the Nazi party no longer existed.[34]

On the other hand, determining who had been Nazi party members, what their complicity had been, and if necessary, meting out punishment, was much more difficult.[35] This aspect of denazification, according to General Clay, had two overlapping concerns. First, all Nazi party members and their affiliates had to be excluded from elections. Second, a more comprehensive and lengthier screening process had to determine who were "major" Nazi figures. Once this latter objective had been achieved, then "minor" Nazi party members, presumably the vast majority, could return to full citizenship.[36]

It was difficult defining who had been a Nazi.[37] There was profound uncertainty as to whether the vast majority of the German people had willingly embraced Nazism or

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whether the regime had existed purely by force.[38] There were the difficult problems of

trying to purge the public and upper level private sector of Nazis and at the same time

maintain a functioning local government and stable economy. Furthermore, the rules and

laws regarding denazification changed significantly during the 1945-47 period. Finally,

the special character of Bavaria and its complex relationship with Nazi ideology would

create difficulties, especially when denazification became an almost exclusively German

function in early 1946.

<div align="center">Denazification Procedure in Bavaria</div>

Both the Departments of State and War considered JCS 1067 as the blueprint

document for denazification. During the 1945-47 period, the two Departments

transmitted the policy through different channels: the State Department to the Office of

the Political Advisor to the Military Governor (POLAD), and the War Department to the

Mlitary Governor (Eisenhower) and Deputy Military Governor (Clay). The POLAD, in

fact, worked for Clay, and in this capacity prepared the basic plans for implementing

denazification. Clay transmitted those policies through OMGUS to the military

government directorates in the U.S. zone.[39]

Most significantly, denazification dealt with both the arrest of Nazi officials and

the removal or nonemployment of Nazi party members. The former task was somewhat

easier. Using a Supreme Headquarters, Allied Expeditionary Force (SHAEF) issued

guide, the *Arrest Categories Handbook*, various military government special branch

detachments, counterintelligence units, and military police arrested ranking Nazis, youth

leaders, leaders of paramilitary formations, and all members of the Gestapo and similar

organizations.[40] By the fall of 1945, U.S. occupation forces had arrested and detained

tens of thousands of such persons.

More complex and controversial was the procedure barring former Nazi party

members from positions of public (and later private) employment.   Determining

membership or affiliation required an extensive background check. To gather the

requisite information, military government officials issued a lengthy and complex

questionnaire called a *Fragebogen* to virtually all able-bodied adults throughout the U.S.

zone. Germans had to answer truthfully questions on their private lives, employment,

membership, and military service, with an understanding that lying or misrepresentation

carried criminal penalties.[41] They submitted the *Fragebogen* to the appropriate military

government offices (called special branches), where a variety of personnel reviewed

them. Special branch officers along with American military counterintelligence staff,

cross-checked names against Nazi party rolls, interviewed past employers, and otherwise

investigated as much as resources and limited personnel permitted.[42] The military

government officials then determined the status of the individual.[43] During the initial

phase of denazification, individuals fell into one of five categories: non-employment (or

removal from office) mandatory; employment discretionary with an adverse

recommendation; employment discretionary with no adverse recommendation; no

evidence of Nazi activity; or evidence of anti-Nazi activity.[44] "Mandatory

nonemployment" was required for party officials and leaders of affiliated organizations,

holders of Nazi party decorations, and functionaries in civil service who had joined the

party before 1 May 1937.[45] For all others, including so-called "nominal" Nazis,

employment was at the discretion of the local military government detachment level based on the merits of the particular case.[46]

As might be expected, this was an immense as well as cumbersome process. By August 1945, Clay indicated that in the U.S. occupied zone, 80,000 persons in "mandatory arrest categories" were being detained, 7,000 ardent Nazis had been removed from office, and another 80,000 cleared.[47] Furthermore, a small number of military government personnel undertook this task. No more than 300 at any one time in U.S. military government investigated nearly 800,000 Bavarians from the spring of 1945 to mid-1946, apparently uncovering 150,000 "ardent Nazis, all of whom have been denied access to positions or employment of importance."[48] Eventually more than 13,400,000 Germans would register in the American zone, and nearly 3,700,000 charged for some affiliation with Nazism. Roughly seventy percent would receive amnesty without trial. The remainder, some 945,000, were tried. Approximately 130,000 were classified as "offenders," another 147,000 determined to be ineligible for public office, and 635,000 given sentences including confinement to labor camps, confiscation of property, and fines.[49]

The Special Branches and Local Detachments: Denazification at the Local Level

Denazification was an effort conducted in each *Kreis* by the so-called "special branch" officers assigned or attached to military government detachments.[50] Until mid-1946, when the administrative responsibility shifted to the Germans themselves, these special branch officers, termed denazification officers, conducted this huge task.[51] For example, Military Government Detachment F-213 in Munich and the attached special

branch implemented denazification of the city.[52] The mandate was clear. The first

concern was, despite disease, imminent starvation, and civil unrest, "not the efficient

operation of local government," but denazification.[53] With this mission, Detachment F-

213 distributed a *Fragebogen* to each city employee when he reported for work, as well

as to any Germans who held positions of influence in industry. When returned, the

assigned special branch denazification officer screened the document.[54]

The evaluative system was cumbersome. Upon receiving a F*ragebogen*, the

special branch officer would assigned it an index number to reference it and gave it a first

evaluation. He then it was sent to various counterintelligence and military police units

and offices, where officials checked it against Nazi rolls, police records, and lists

prepared by U.S. intelligence officers. The form then returned to the special branch

officer, who gave a recommendation about employment for the individual. The

recommendation then passed to the appropriate city government office or other public or

private agency. [55] As might be expected, this process often took weeks: hundreds of

Fragebogen came out of special branch offices every day, and by the end of 1946, the

Munich detachment alone processed some 200,000 of the questionnaires.[56]

If one can consider Munich a representative sample, during the first months of the

occupation, the American occupation forces carried the policy out forcefully at the local

level. Germans were "dismayed by the thoroughness of denazification" and were even

more dismayed when a new military government law extended denazification to private

businesses.[57] In just a few months following surrender, denazification forced thousands

from the public rolls. All mandatory removals had been made, "within ninety days after

the denazification mill started grinding, [and] nearly all the second category had been processed."[58]

<div align="center">Denazification at the *Land* Government Level</div>

The Americans also carried out denazification at the *Land* government level. This job of purging the various organs of Bavarian government and civil service fell to the more specified branches in the military government. Thus, OMGB's Economics Division had within it a section that dealt with denazification of *Land* agencies involved with the economic policy making. The OMGB Communications Branch had, as one of its mission the supervision of "the denazification of communications and postal personnel in Bavaria."[59] The Public Safety Division of the Internal Affairs and Communications Division denazified the German police and firefighter agencies. Other branches and divisions had denazification tasks beyond determining who had been Nazi party members. The Information Control Division, for example, established twenty three collecting points throughout Bavaria for Germans to deposit all "objectional literature and material" related to Nazism, fascism, or other "forbidden" ideas, and the Bavarian Minister-President was tasked with ensuring that all public institutions and places of business complied.[60]

The success of *Land* government denazification varied from branch to branch. Within certain individual branches of Bavarian government, denazification appeared to be a relatively straightforward procedure. Thus by 1946, denazification of the Bavarian *Reichspost* (the mail service) was considered practically completed.[61] For other branches, the numbers, though large, were not overwhelming, and those branches

completed their jobs in reasonable time. By the end of 1946, for example, 4,378 public

health personnel had been vetted and deemed "unacceptable" because of Nazi

backgrounds and another 1,584 deemed "unacceptable but retained for operational

necessity."[62] Counterbalancing such successes, however, were difficulties in

implementing denazification at many other levels of Bavarian government, to include the

Land ministry positions, to be discussed in greater detail later in this chapter. Indeed,

denazification at the highest levels would cause some of the greatest scandals during the

1945-47 period.

<div align="center">Denazification: Formalist Bureaucracy?</div>

Scholars have frequently criticized the administrative, formalistic methods of

denazification, especially the use of *Fragebogen*. The questionnaire-based methodology,

according to this view, did not adequately explore the nuances of Nazi influence. What

about, for example, those who had not been party members but had benefited from the

Nazi regime?[63] And how could a mere factual recitation adequately explore one's

behavior?[64] Furthermore, the sheer processing and investigating demands proved

overwhelming and were part of the rationale for the amnesties that Clay and USFET

Commander General Joseph McNarney granted in the latter part of 1946.[65]

While there is merit to some of these criticisms, they overlook that the

Fragebogen was not the endpoint for an investigation. Rather, it provided an initial

baseline of knowledge for investigators to determine a person's membership or

complicity with the Nazi regime. For example, section "H" of the form required a person

to "show the sources of . . . annual income from January 1, 1931 to date."[66] Thus a civil-

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service employee would be suspected of Nazi involvement if his post-1933 salary increased by a considerable amount.[67] Even John Kormann, a fierce critic of the denazification procedure, states that *Fragebogen* "were examined as carefully as possible by local special branch units, checked with counterintelligence and document centers, and further investigated as far as resources would permit."[68] Alternative investigative techniques, such as personal interviews or written affidavits, would have undoubtedly consumed much greater amounts of time, provided inconsistent responses, thus likely ensured more haphazard enforcement. On the other hand, simply scanning the available party rolls would have been an even more formalistic exercise. *Fragebogen* represented a compromise, however imperfect, between these two investigative methods.

Furthermore, those who make the larger criticism that the Americans' "administrative" denazification policy was excessively bureaucratic, non-legal, and therefore doomed to highly imperfect and impermanent results, perhaps fail to realize that denazification was not essentially retributive, but reconstructive. Denazification's policy mechanisms are perhaps better understood in light of a growing body of law called "transitional justice," to be discussed in greater detail at the conclusion of this chapter. Transitional justice concerns legal actions taken against former authoritarian or totalitarian regimes and their agents.[69] As Ruti Teitel, a transitional justice scholar, writes, "Whereas postwar trial policy [primarily the Nuremberg tribunals] was rationalized as retributive measures designed to avenge Nazi wrongs, at Potsdam the proposed denazification was justified instead by the forward-looking purpose of democratization."[70] To an even greater extent than the so-called "truth commissions" in

various nations that have thrown off authoritarian regimes, denazification was part of a political reformation project. Such a project was extensive, from changing street signs and banning uniforms to prohibiting propaganda and dismissing former Nazis from employment. As such, administrative methods, not criminal justice ones, were better suited to achieve such a project's goal.

The Three Phases of Denazification from May 1945- June 1947

Three different denazification phases occurred in Bavaria between May 1945 and June 1947. During the first phase, from V-E Day until September 1945, denazification was left to the discretion of local military government units. Scandal erupted, particularly because of the appointment of Friedrich Schaeffer as Minister-President and the placement of other officials in Bavarian government with Nazi ties. Further controversy arose because of General George Patton's public statements on denazification. The replacement of Patton with a new Third Army commander and the removal of military government from Third Army command in October 1945 also coincided with the beginning of the second phase, when OMGUS imposed a more severe denazification law, Military Government Law Number Eight. The third and final phase began in March 1946, with the announcement of the Law of Liberation from National Socialism and Militarism. During this third phase, denazification became almost totally controlled by Germans. This apparent policy zigzag from 1945 to 1947 in Germany, and Bavaria especially, frustrated American officers on the ground trying to implement the policy. It also outraged some Americans at home, and inflamed many Bavarians who felt the policy was arbitrary, unfair, and excessively harsh. In the end, results were mixed.

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Denazification, along with democratization, and legal reform, appeared to have played a role in Bavaria's shaking off its Nazi past. Nonetheless, former Nazis who had held positions of power or prestige would emerge in the new Germany, perhaps reformed, but relatively unscathed.

<center>Phase I: V-E Day to September 1945: The Period of Patton and
the "Bavarian Scandal"</center>

Before V-E Day, U.S. denazification policy required that Germans appointed to public office down to the *Bürgermeister* level after 30 January 1933 (the date Hitler became Chancellor) would be removed from public office.[71] A more nuanced policy followed V-E Day. It moved the disqualification date four years forward. Only those high level government workers who had joined the party *before* 1 May 1937, the date when the Nazi party opened its membership to the masses, were to be removed from office.[72] Additionally, the new policy divided former Nazis into "active" and "nominal" categories. Active Nazis were those who had held offices at any level of government, "authorized or participated in Nazi crimes, racial persecutions, or discrimination, believed in Nazism or racial or militaristic creeds, or voluntarily gave moral, material, or political assistance of any kind to the Nazi party."[73] The policy mandated the removal of and/or barred active Nazis from certain offices.[74] Approval for any exceptions to the mandatory bar could only come from OMGUS level officials.

Perhaps surprisingly, reports indicated that Bavarians initially did not significantly complain about denazification. Indeed, intelligence reports indicated that some in the populace felt denazification was actually inadequate. Intelligence in early June, 1945 indicated that some "leading German citizens" were dissatisfied with the

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American efforts because Nazis still in power and still doing business "in comfortable positions now as ever."[75] Other Bavarians expressed concern that "many leading Nazi figures had escaped into the mountains . . . unapprehended."[76] Additionally, in some parts of Bavaria, the population felt threatened by Nazis in hiding. Reports indicated during the first few months after the surrender that SS troops hid in the mountains and terrorized farmers, and that various anonymous leaflets promised death to collaborators when Nazism returned to Germany. [77]

Despite the apparent desire of many Bavarians to proceed with denazification, the process soon ran into serious problems. Almost immediately after the surrender, the reestablished Bavarian government ran afoul of denazification. American military government officials had relied strongly on appointed Minister-President Schaeffer's selections for subordinate government officials and members of his cabinet.[78] Yet the Ministry of Interior had to be significantly reorganized after an examination of *Fragebogen* resulted in the dismissal of twelve ministry officials of thirty one examined. Furthermore, there was disagreement in the Bavarian government over the policy. The military government-approved Minister without Portfolio (responsible for denazification), Anton Pfeiffer, stated in an interview that the *Fragebogen* method would not bring a "real" denazification, and that a special court formed of proven anti-Nazi Germans should decide who should considered a Nazi.[79] By September 1945 intelligence reported a "notable stiffening in the attitude of Germans. Removal of officials for denazification reasons has evoked the sympathy of the people. Resentment is becoming more evident, open, and apparent in remarks and attitude."[80]

The appointed Minister-President, Friedrich Schaeffer himself brought considerable controversy.[81] The scandal involving him initially erupted in the pages of *The New Republic* in June 1945. Comparing unfavorably Russian and American denazification policies, the editors stated, "While the Russians are squarely tackling the problem of rejuvenating democracy in Germany by encouraging anti-Fascist democratic forces, American policy, under the 'non-political' label, is discouraging democracy by giving power to the most discredited and reactionary of Bavarian politicians."[82]

In another article in the same issue, entitled "Bavarian Scandal," journalist Philip Loewenfeld also scathingly attacked the recent appointment of Schaeffer as Bavaria's Minister-President. Such an appointment proved "the worst fears of those who expected American use of reactionary clerical forces in the administration of the defeated enemy country."[83]   Indeed, certain elements of the scandal, involving Bavarian nationalism, right-wing monarchism, Catholic influence, and Bavaria's often puzzling links to Nazism, revealed the complexities of the entire Bavarian occupation.

Loewenfeld charged that the appointment of Schaeffer had been made "apparently not accidentally" by Colonel Charles E. Keegan, the American Regional Military Governor who had been a former New York City Councilman and "staunch supporter of Boss Ed Flynn's Bronx Democratic machine."[84] The journalist connected the appointment with Flynn's recent trip to the Vatican, where supposedly a coterie of German Catholic reactionaries, to include the former Crown Prince of Bavaria, were present. According to Loewenfeld, Schaeffer, who had presented himself as a stalwart

anti-Nazi and a Dachau concentration camp survivor, was in fact a dangerous reactionary who had cozied up to the Nazis before the 1933 takeover.[85] Schaeffer thus represented a threat to democracy whose first victim would be the free labor movement. Schaeffer's apparent plan was to merge the free trade and Catholic unions, meaning to Loewenfeld, "reactionary control of trade unionism in Bavaria."[86]

Keegan had indeed appointed Schaeffer upon the advice of Cardinal Faulhaber, whose personality and presence gave such advice the force of edict. Schaeffer in fact represented many of the complex facets of Bavaria. The Nazis had twice arrested him, and eventually imprisoned him in Dachau after the failed 1944 assassination attempt against Hitler. But he also had been one of the last leaders of the conservative BVP to criticize the Nazis. He even tried to have the BVP incorporated into the Nazi government of Bavaria in 1933.[87]

Coupled with this dubious past were Schaeffer's criticisms of the current denazification policy as excessively harsh and unfair. In August 1945 he formally protested that the procedure caused "hardship and injustice."[88] It also became increasingly clear that Schaeffer, regardless of his extra political qualifications, appointed ministers who had ties to the Nazi party, or former high-ranking *Wehrmacht* officers. Two were in "mandatory removal" categories. Schaeffer also refused to release another, Otto Gessler, who had played a prominent role in Germany's secret rearmament in the 1920s.[89]

The scandal had lasting repercussions for the military government officials in Bavaria. Clay appointed a special board that investigated the matter. It ultimately

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concluded that, while liberals were underrepresented in Bavarian government, Keegan had not been influenced by Flynn, the Vatican, or right-wing extremists in making his appointment of Schaeffer.[90]   Nonetheless, in the wake of the Schaeffer incident, media attention remained especially focused on the military government in Bavaria and Munich.

Coupled with the problems of denazification at the top levels of government were concerns about implementing the policy at the local level. As summer turned into the first postwar autumn, throughout the U.S.-occupied zone, many U.S. military government officials concluded the policy too stringent and unworkable. The August 1945 report on denazification indicated that, because of a shortage of competent German replacements to positions of public office, U.S. military government officials needed to use a case-by-case approach to determine employment.[91] The same report also noted that denazification was being hindered by difficulty in determining if a person was more than merely a "nominal Nazi."[92]

Any such concerns took second place when controversy over Bavarian denazification reignited in the American press on 23 September 1945. Certain of Patton's statements--whose views about denazification as unworkable and "silly" were known to Eisenhower and other high ranking officials--became public knowledge.[93]   As reported in newspapers throughout the United States, he allegedly had said, "The Nazi thing is just like a Democrat and Republican election fight."[94] Eisenhower, who had previously rebuked Patton privately for criticizing the denazification policy, felt compelled at this point to replace him (Clay played a significant role in his removal as well).[95] Lieutenant General Lucian Truscott, formerly one of Patton's division

commanders, took command of the Third Army and Eastern Military District the next month.[96]

Other changes followed. In October 1945, military government, to include all ranches and detachments, no longer fell under the authority of the Third Army. Brigadier General Muller subsequently took over the military governorship role as the Director, OMGB.[97] In addition, during that month extensive changes occurred among the Bavarian ministries. Continuing dismay over Schaeffer's statements and appointments led to a government overhaul. The Ministers of Education, Economics and Agriculture, all Schaeffer appointees, were replaced. Schaeffer resigned and was replaced by Wilhelm Hoegner of the SPD, who had previously headed the Ministry of Justice. Clay considered him a steady moderate, and Hoegner would remain the Minister-President of Bavaria until replaced by Hans Ehard of the CSU following the December, 1946 elections.[98]

This first phase of denazification revealed the need for matching personalities to positions. Patton, a warrior-general in the classic mode, may have been temperamentally unsuited for his role as Bavarian proconsul. Keegan was a political appointee with little knowledge of Bavaria and few civil affairs skills. Vagueness and ambiguity in defining exactly which Nazis needed to be barred or removed from office also created confusion and uncertainty. It clearly indicated that at the highest levels, U.S. policymakers had not thought through a cogent denazification policy. Pressures from the press over the Schaeffer and Patton incidents, and a general feeling that the policy was adrift thus

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provided an impetus to Clay and other high-ranking officials to launch another, even more comprehensive, phase of denazification.

<u>Phase II: October 1945-June 1946: Military Government</u>
<u>Law Number Eight</u>

Military Government Law Number Eight, promulgated on 26 September 1945, set forth new denazification policy in the U.S. zone and marked a resurgence of denazification's intent and mission.[99] The October 1945 monthly report from the Military Governor on denazification made this clear: "Military Government in the U.S. Zone was again reminded that the United States entered this war as the foe of Nazism, and that victory will not be complete until every active adherent of the Nazi Party is eliminated from positions of responsibility, and that no compromise may be made with Nazism."[100]

The new law was the greatest and most sweeping attempt to bring this about. It prohibited employment of *any* Nazi party members or affiliate organizations in any sort of managerial public or private employment. Former Nazis could only work in "ordinary labor."[101] The date of joining the party was irrelevant.[102] It also required that any business wishing to stay open would have to certify that it employed no Nazi party members.[103] The law required German businesses to submit monthly lists of employees to local German labor offices, along with information on whether such employees had Nazi affiliations. Furthermore, it charged the various military government special branches with making spot checks to ensure the law was being complied within the various districts.[104]

Bavarians quickly felt the impact. In December 1945 alone, OMGB offices took control of 1,912 business properties (more than any other American-occupied *Land*).[105] Business owners who were determined to be Nazis were dismissed. The local detachments took the properties under their own control, and appointed non-Nazi trustees to maintain the businesses.[106]   In Munich, implementation of the new law meant that the military government detachment's new mission was to "eradicate Nazis from the fifty thousand small businesses in the city."[107]   No one was too small to escape scrutiny. In the words of the Munich detachment commander, "We figured that the corner druggist had a neighborhood influence, which, if he was [sic] a Nazi, was bad."[108]

As might be expected, the new law produced degrees of dismay among the population. In no other zone was anything like this being attempted, much less contemplated, and it was seen by many as unfair and rigid. According to the September Military Governor's report, "There is a widespread criticism of the lack of flexibility of the policies."[109]   There was also confusion and fear because of ambiguities in the law. In Hersberg, for example, the detachment reported "tension" because the population was confused as to "just what sort of work a Nazi is allowed to under the heading of ordinary labor," with the result that small businesses would "close one day, open the next, and close the third."[110]   In Munich, the detachment reported "a feeling of depression and uncertainty. There appears to be a genuine fear that the ex-members of the Army and NSDAP [Nazi party] who are redeemed or controlled, will become outcasts or go underground."[111]

Because of these problems, OMGUS made a modification of the new denazification law. A directive issued in November 1945 provided for local review procedures.[112] The directive allowed for employers and employees subject to removal or punishment with the right to appeal before either American or German local review boards in order to demonstrate nonmembership or only nominal membership.[113] The American review boards were composed of at least three officers or civilians, with one in the Counterintelligence Corps and one with legal training. The German review boards consisted of known non-Nazis who were representatives from labor unions and corporate management, as well as representatives from the various political parties.[114] The German boards could make recommendations regarding a prisoner's disposition, but could not, on their own, secure a prisoner's release.[115]

In December 1945, perhaps as a result of these modifications, the American military government, and even some Germans, were cautiously optimistic regarding the new law. Contrary to German fears, economic life was not brought to total standstill, and German review boards "induced the feeling that for the first time the Germans themselves had a real part and interest in denazification."[116] However, the German review boards also brought a new round of problems in the months to come. Having gone from strictness to some flexibility and German involvement, such flexibility and involvement seemed to defeat the very purpose of the new law. It soon became evident that many of the Germans boards were attempting to exonerate their fellow countrymen of culpability as much as possible.[117]

Other problems existed. Denazification policy was applied differently in each U.S. *Land*. Additionally, the sweeping effect of the new law made it very difficult to enforce. The January 1946 military government monthly report stated that local detachments were inadequate in strength to compel compliance of businesses and that special branches did not have personnel to fully investigate possible violations.[118] Furthermore, the maximum effort now devoted to denazification revealed an internal inconsistency in the American occupation efforts. Denazification required considerable time and personnel, yet these requirements ran contrary to the U.S. plan for a relatively short occupation, and to the goal of creating a functioning and autonomous German democracy.

All these various problems mandated a significant review of denazification policy. On 30 November 1945, Clay approved the establishment of a denazification policy board to solve these problems, to include "providing for the placement of as much responsibility as possible on German officials for the long-range program."[119] The board's findings, released in January 1946, reviewed the employment exclusion policies, handling of war crimes and war criminals, arresting and interning dangerous Nazis, and seizure and control of property.[120] It identified five weaknesses: denazification produced arbitrary results; it failed to reach all the active Nazis; it was not integrated into other OMGUS programs; it had did not have a long-range focus; and it did not have significant German participation.[121] Partly as a result, under U.S. guidance, the U.S. zone Minister-Presidents drafted a law that, beginning in the spring of 1946, largely turned denazification over to the Germans.

On 5 March 1946, General Clay, along with the Minister-Presidents of the U.S. zone *Länder*, signed the Law for Liberation from National Socialism and Militarism. It required all Germans over eighteen to fill out lengthy questionnaires about their past. Additionally, it turned over to the German people themselves the power to try denazification cases.[122] Beginning in the summer of 1946, Germans in the U.S. zone would try other Germans for Nazi activity and party membership.

Given the controversy denazification had already caused, it might seem strange to hand off a policy to the Germans after the occupiers themselves had such difficulty implementing it. By mid-1946, however, successful elections had been held throughout the U.S. zones at the *Gemeinde*, *Landkreis* and *Stadtkreis* level. Political parties had been revived, and preparations were underway for Constitutional Assembly elections. As John Gimbel states in his study of the occupation of the town of Marburg: "Denazification was placed under German control because it was felt that the local institutions were sufficiently revived by 1946 to permit German participation at this level. Moreover, it offered Germans the responsibility under this new leadership, and to have a stake in the changes that would ensue."[123]

Much like the U.S. military government laws and directives, the new law established five classes of Nazis or Nazi affiliates: (1) major offenders, (2) offenders, (3) lesser offenders, (4) followers, and (5) nonoffenders and those exonerated after trial.[124] Despite procedural similarities, however, the new law gave almost complete authority to

the various *Länder* governments. Under it, the Minister for Political Liberation would

have responsibility for the administration and control of the denazification procedures.[125]

In each *Kreis*, at least one denazification tribunal, called a *Spruchkammern*, would be set

up and staffed by a public prosecutor, investigators, and assistants.[126] Appellant tribunals

would also review the trial court decisions.[127] The standard investigatory procedure was

similar to U.S. military government methods: all persons over eighteen in the U.S. zone

filled out a form, called a *Meldebogen*, which would be filed with and reviewed by local

police or civil administrative offices.[128] If the investigation determined persons were

major offenders or offenders, a *Spruchkammern* would hear the case, though it also had

the option of pronouncing a judgment based on a written record for a minor offender.[129]

Overseeing the tribunals would be Ministers of Denazification, who reported to the

Minister for Political Liberation (previously the Minister without Portfolio).[130]

American involvement in implementing the new law greatly diminished. U.S.

detachments assisted public prosecutors by supplying them with information already

gathered by the special branches and document centers and monitoring the boards.

However, the military government officials were instructed not to influence in any way

the decisions of the tribunals. Primarily, the role of the special branches became

"supervisory rather than operational."[131]

Specifically, military government detachments in OMGB no longer directed

dismissals of persons for Nazi affiliations. As of 15 June 1946, screening operations on

all persons ceased except for certain key official members of certain ministries and U.S.

military government and military installation employees. Detachments also had to ensure

that appropriate German officials had "unhindered access" to all records relevant to their preparations for cases. Perhaps most striking, and of greatest emphasis, was the extreme "hands-off" policy that was also a part of the new law: "It cannot be overemphasized that higher Headquarters has indicated that it will tolerate absolutely no interference by Military Government with German officials charged with carrying out the Law for Liberation from National Socialism and Militarism."[132] Instead, the special branches would concern themselves with investigating the tribunals themselves to ensure that the tribunal members were committed "known opponents of National Socialism and Militarism" and "personally beyond reproach, fair and just."[133]

The new law, though passed in the spring of 1946, did not go into effect until summer. The first step was turning the removal notification over to the Bavarian government. Beginning in March, all appropriate *Fragebogen* went forward from the various detachments to the appropriate functional office at OMGB headquarters, which would then ensure that the appropriate ministry would take the action required.[134] On 14 June 1946, a military government directive rescinded all existing denazification directives and turned responsibility for denazification over to German officials.[135] Military government officials retained the ability only to "continuously review the performance of the German officials, and . . . [to] continue to screen candidates for key executive and policy-making positions in government and in agencies that directly influence public opinion, e.g., the press and radio."[136] By the end of the summer, much of the German-run denazification machinery was in place. Of the three U.S.-occupied *Länder*, Bavaria had by far the greatest number of tribunals and personnel. By August,

190 tribunals (of the 394 total in the U.S. zone) had been established in Bavaria, and 314 *Spruchkammern* chairmen and 299 prosecutors appointed.[137]

The new law began with some promise in certain locations. In Nuremberg, during the early phase of the new law, the German judges were not passing lenient sentences despite pressure to do so.[138] In Munich, however, reports were less hopeful. According to the detachment there, "[I]nitial reports were not encouraging; there was ample evidence that whitewash was being liberally applied."[139] In July 1945, investigations by OMGB into three Bavarian cities--Augsberg, Munich, and Passau, revealed that 30 percent of German private enterprises had failed to comply with the German denazification laws, and field checks by OMGUS advisory teams revealed that the denazification ministry was failing to instruct local prosecutors and *Spruchkammern* chairmen in the rudiments of German law. OMGB thus required the ministry to being an immediate education program.[140]

The *Spruchkammern* procedures were also a source of concern for military government. The first such case in Bavaria was held on 20 May 1946, in which three defendants pleaded guilty to being "major offenders" and having assaulted an anti-Nazi in 1933. Even though the case was relatively simple, since the defendants had pleaded guilty, it nonetheless took two weeks of great effort on the part of the public prosecutor to gather the necessary evidence for the tribunal.[141] Furthermore, bureaucracy threatened a backlog of cases. In June, the Minister for Political Liberation reported that with 220 *Spruchkammern* in operation at current strength, execution of the new law would take at least two years to complete.[142] Noncooperation among the population was a problem as

well. Some witnesses failed to appear before a *Spruchkammern* out of fear. One public prosecutor stated that such fear was for "the people who are responsible for the years 1933-1945 and in whose wake the misery and distress of our times follow."[143]

The overall numbers announced an even more damning conclusion, indicated in the Military Governor's August 1946 report. While 20,393 persons had charges filed against them in Bavaria since the promulgation of the new law, already 16,568 cases had been terminated, the majority having simply been dismissed without trial.[144] It appeared that the *Spruchkammern* in Bavaria often considered the process a cursory formality. One field study indicated that of 575 ardent Nazis tried in Bavaria, tribunals had determined nearly 400 merely to be followers and only twenty five as major offenders.[145] Furthermore, Denazification Ministers were apparently doing nothing more than simply reviewing the final decisions of cases, rather than the records themselves.[146] More ominously perhaps was the conclusion by both the OMGB special branches and the Ministry of Political Liberation that 60 percent of the trials held up to September 1946 were "erroneous."[147]

Bavaria's intransigence again was in part due to its Catholicism and conservatism, though the leftists in the *Land* government also helped prevent the policy's uniform application. On the right, the leader of the CSU, Joseph Müller (who took over Schaeffer's role), contended that while he agreed with denazification generally, he did not like the current denazification law.[148] Additionally, the Catholic Church in Bavaria had become increasingly critical of the denazification policy. This was due to a variety of reasons: the preference for conservatives, even if former Nazis, in positions of power

as a check against Communist growth; the feeling that former Nazis who were now (at least outwardly) devout Catholics had reformed from their old ways; and even because some clergy had counseled some of their parishioners to join the party in the 1930s.[149] Paradoxically, while the Catholic Church, at least as compared to most of the German Protestant denominations, had effectively denazified its own clergy, the Church was far more reluctant to accept the denazification policies of the Americans.[150] By 1946, not only were many priests in Bavaria instructing that their parishioners vote for the CSU, they also appeared to be highly sympathetic to former Nazis. A military government detachment at Dillingen reported, "The local Church is becoming more and more outspoken in its criticism of denazification policy."[151] Other detachments reported that priests were issuing "certificates of political integrity" (affirmations that parishioners not active Nazi party members) "indiscriminately" to former Nazis.[152]

Problems with the new law were not confined to the political right. Heinrich Schmitt, the Minister for Political Liberation, was a leader in the KPD in Bavaria and had been given the position in part to refute charges of rightwing cover-ups in Bavarian denazification. When Schmitt resigned in July, 1946, he proclaimed that the conservative CSU was attempting to sabotage denazification in the Bavarian government (though Hoegner himself was a member of the moderate-progressive SPD).[153] Denazification--or its alleged failure--thus was a political weapon for respective party members to use to their advantage as a means to strengthen positions and garner votes. In Schmitt's case to rally support for the Communist party as the only party serious about removing Nazis from power.[154]

Bavaria was not alone in having problems with German-run denazification, and ultimately, on 5 November 1946, General Clay addressed the assembled *Länderrat* at Stuttgart to voice his concerns. He expressed clear disappointment over how the Germans seemed to administering the law. [155] The tribunals seemed to have exonerated or drastically reduced penalties of offenders in great numbers.[156] Clay was also "greatly concerned over the wide disparity in the classifications by the public prosecutors and by the tribunals."[157] The ability of the Germans to self-govern was also now called into question: "I do not see how you can demonstrate your ability for self-government nor your will for democracy if you are going to evade or shirk the first unpleasant and difficult task that falls upon you."[158] Clay gave the tribunals sixty days: "Unless there is real and rapid improvement, I can only assume that Gmeran administration is unwilling to accept this responsibility."[159]

The political fallout in Bavaria was immediate: Anton Pfeiffer, the Minister for Political Liberation, tendered his resignation the next day. [160] Clay's words had other considerable effects. Military government detachments reported a renewed emphasis on the part of the German tribunals.[161] In December 1946, the special branches took on a new role. The officers supervising the denazification process regularly met with the *Spruchkammern* prosecutors, reviewed individual cases, and forwarded to the Denazification Ministers any cases in which no agreement could be made because of perceived errors or false sentences.[162]

Despite these efforts, the fundamental problem in the denazification policy had once again been revealed: strident efforts at denazification--set forth in JCS 1067 and

announced at Potsdam--seemed at cross-purposes with making Germany a self-governing democracy, also goals of JCS 1067 and Potsdam. Germans had been given the denazification program as a step towards political autonomy, and yet only a few months later, the Americans had needed to step in and threaten to retake the program. Clay's address also stood in sharp contrast to Secretary of State James Byrnes' announcement to the Germans less than two months before, proclaiming the need for German independence and autonomy.[163] Furthermore, the year and a half of shifting policies seemed arbitrary to many Germans in the American zone. Among Bavarians, according to intelligence reports, the "uniform treatment" of the denazification policy had become the most important political concern.[164]

In retrospect, Clay's protestations at the November *Länderrat* meeting can be seen as the last significant American attempt to advance denazification. The increased interest the *Land* governments took in denazification proved relatively short-lived. Byrnes' September address, not Clay's November speech, indicated the way of the future. Indeed, around the time of Clay's address, the amnesty of thousands of so-called "little Nazis" had been granted, and thousands more would be given amnesty in December 1946. The winter of 1946 was particularly brutal and provided an additional rationale for the Germans to focus more on the necessities of survival and less on a long-range campaign of denazification.[165] By mid-1947, with Germans in the U.S. zone largely governing themselves, and with an evermore worrisome Soviet threat looming in the east, denazification significantly diminished in scale and importance. According to the June 1947 Military Governor's report, the application of the Law for Liberation from

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National Socialism was in its "final stages," with 90 percent of those who had registered under the law having had their status legally determined.[166]

The summer of 1947 provided a significant watershed in other respects. The Marshall Plan, announced in June, was a major shift toward engagement with Europe and Germany. Relations with the Soviet Union had by this point broken down almost completely. The Soviets vigorously objected to the Marshall Plan and to any rehabilitation of the western occupied zones without four party agreement.[167] Finally, indicating the new deemphasis on denazification, a new directive, JCS 1779, on 11 July 1947 replaced JCS 1067.[168] The change in tone from JCS 1067 was remarkable: "It is an objective of the United States Government that there should arise in Germany *as rapidly as possible* [emphasis added] a form of political organization and a manner of political life which, resting on a substantial basis of economic well-being, will lead to tranquility within Germany and will contribute to the spirit of peace among nations."[169] Whereas much attention was spent on German self-government, economic unity and recovery, and financial policy, denazification was dealt cursorily, in one sentence, which simply stated that denazification policy would be implemented based upon an April meeting of the occupying nations' foreign ministers.[170]

<u>Denazification in Bavaria: An Assessment</u>

After mid-1947, though the occupation would last two more years, few meaningful policy changes occurred regarding denazification. Indeed, for the remaining years of the occupation, as the Germans took full control of it, former Nazis returned to public life and positions of importance in the private sector. Thus if denazification's goal

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was to punish and keep former Nazis from power, the program failed. According to the Prosecutor General of Hesse, of 15,000 judges and prosecutors in the new Federal Republic in 1950, between two-thirds and three-quarters had held such positions under the Third Reich.[171] As John Kormann, a critic of the U.S. policy, stated: "The denazification program failed to meet the objectives set for it by the American policy planners. It attempted to permeate every level of society and to ferret out vast numbers of individuals."[172]

The Morgenthau Plan's extremism, expressed somewhat vaguely in JCS 1067, was tempered during the first phase of denazification. A second phase followed in which denazification most closely resembled a Morgenthau-style system of reform. Yet this extremism seemed contrary to the self-governing democratic policy military government contemporaneously sought. The third phase, in which Germans gained control of the denazification process, was logically related to democratic reform, but at the cost of what many thought was proper enforcement and punishment. In the end, both occupiers and occupied wanted to end the program. According to Kormann, denazification had "embittered Nazis and anti-Nazis alike" in its arbitrary and inconsistent application.[173] In all three phases of denazification, the problems and seeming contradictions of the policy became most evident in Bavaria.

If, in the end, many Nazis returned to power, was this due to an unwritten plan on the part of American military government in Germany, in defiance of JCS 1067 and Potsdam? While sensational tales of high-ranking Nazis being shielded from justice exist,[174] there is little to support such a claim that American military government officials

sanctioned such efforts or deliberately impeded denazification to safeguard certain Nazis. Indeed, the very unsystematic nature and arbitrariness of denazification policies imposed by OMGUS and Washington indicates that such a claim has little credibility. Within OMGB's own offices there were deep reservations about using former Nazis in what appeared to be an imminent struggle against Communism. The OMGB officer chiefly responsible for denazification, William E. Griffith, expressed such concerns: "Why should we now employ and use as our allies the same person whom we only a short time ago were attacking as blood-stained criminals?"[175] Griffith further pointed out that even by "using the assumptions of Realpolitik . . . it is a very dangerous fallacy to assume that we can use former Nazis, pan-Germans, and militarists as shock troops for the West in a struggle against the Soviet Union."[176] Placing former Nazis into powerful positions might only play into the hands of extreme German nationalists who would seek a *rapprochement* with Russia to regain power: "Only through Russia can the Germans obtain unity; only through Russia can Germany again become a powerful nation."[177] In fact, intelligence reports indicated that German themselves seemed at the beginning to support the program. Richard and Anna Merritt, in a study of German public opinion of the American denazification policy, conclude that denazification was not, at least initially, unpopular with Germans. Between 1945 and 1946, three quarters of respondents knowledgeable of the policy considered denazification policies justified. The Merritts conclude that it was not until early 1949, almost three years after the U.S. had an active role in the policy, that opinion began to shift in overwhelming numbers against denazification.[178] During the first years of the U.S. occupation, the Merritts determined

that Germans "saw denazification as a means to punish those who had led their country to disaster and to prevent them from regaining political, economic, or social power."[179] Only later, when inequities became evident, such as nominal party members being tried and punished and more active members getting away unscathed, did the population in the American zone turn away from the policy.[180]

Bavaria was by far the greatest challenge for the denazification program. Here, cultural and political factors manifested themselves in often strange ways. Bavarian conservatives, Catholics, and Communists all resisted or disputed denazification efforts to certain degrees, not because those groups sought a restoration of Nazism--indeed all three groups had been persecuted in varying degrees by the Third Reich--but because denazification at times worked against their own agendas. Ultimately, U.S. policymakers came to view absolute denazification as inimical towards the advancement of German democracy itself.

In Bavaria, the birthplace of Nazism, a small number of individuals in the military government doggedly performed an overwhelming task, however imperfectly. The failures of denazification were not due to lackluster effort, nor much less to sinister complicity. The failures lay in the ambition of the program, the cultural peculiarities of Bavaria, and the frequent and sometimes radical shifts in the policy itself. Total denazification could have succeeded in Germany and especially Bavaria only if American military government itself conducted it with total control and full resources, all of which would have required a much longer military occupation. In light of the need to

create a self-governing, democratic Germany, the need to contain Soviet expansionism, and the desire to reduce American military forces, the United States chose not to do so.

Total denazification failed. Its failure has led critics of the occupation to conclude that the American effort in Germany achieved at best limited success. If the goal of the Americans was to bring about an "artificial revolution" in Germany, as occupation scholar John Gimbel contends, and cause a sweeping transformation, then any remnants of a Nazi elite would have to have been eradicated. Gimbel argues this eradication was one of the central parts of the American military government's plan. According to him, the methods used by the Americans to transform German society was comprised of four parts: (1) identifying and removing the "ruling Nazi elite; (2) identifying and destroying (or modifying) the institutions by which the Nazi elite maintained itself in power; (3) substituting new or transformed institutions within which new democratic leadership could flourish; and (4) encouragement and support of new democratic leadership to take the place of the removed Nazi elites.[181] Since some "ruling Nazi elites" still remained in power after denazification ended, then by definition, the "artificial revolution" did not succeed.

There are two significant problems with this line of thought, however. First, it assumes that the *removal* of the ruling elites was, in itself, a prerequisite to the social transformation. This was, in fact, central to the Morgenthau-style plans for the occupation. According to this view, structural change would not suffice: German militarism and authoritarianism were so endemic that leaders who had served under the Nazi regime were, by definition, unacceptable. If, however, one rejected the

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Morgenthau premise and focused efforts more on structural change, then denazification, while still important, lost its predominance. While still important to social transformation, the failure to thoroughly eradicate all remnants of Nazism through a total purge would not prove fatal to the goals of the occupation.

Secondly, such a concept of "artificial revolution," with its grandiose ideas of societal transformation can be seen, in retrospect, as a rather questionable concept that Americans, flushed with postwar confidence, perhaps felt that they could achieve. As Gimbel points out, "Americans seemingly believed that they could bring into being a democracy based upon man's "natural" political instincts."[182] While such an effort might have been attempted in Japan, and while many wished to achieve such a revolution in Germany, conditions beyond the control of the most fervent reformers prevented it from happening. Unlike Japan, dominated by General MacArthur, Germany had four zones with four different ideas on how to "fix" Germany, with compromises among the four powers inevitable. Unlike Japan, a Soviet threat did not develop within the occupied nation itself.

All the complexities of denazification magnified in Bavaria. Bavaria's unique history and culture provided what might be perceived as a paradox: the *Land* most autonomous and most disposed to the democratic federalism proposed by the Americans was also the *Land* most resistant to denazification. Confronted by such a reality, any theory of "artificial revolution" lost its luster. John Dower points out in his book on the occupation of Japan that "the ideals of peace and democracy took root in Japan--not as a borrowed ideology or imposed vision, but as a lived experience and a seized

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opportunity."[183] Perhaps an artificial revolution, of which the denazification was a central part, failed because it existed *only* as a political theory. The "lived experience" of the American military government and the Bavarian people themselves was what ultimately mattered.

Thus, if seen as an ancillary part of the larger task of democratization, the denazification effort was not as great a failure as its critics contend. Denazification, at least as pronounced by policy makers in Washington and Germany, did not have as its overriding goal a Nuremberg-like war tribunal for the hundreds of thousands of "ordinary" Nazis.[184] Its final goal was not, after all, simply mass punishment. Rather, its goal was to rid the country of Nazi *ideology*--Nazism as a viable idea. This was largely done during the first two phases of denazification. Nazism was seen as both a source of overwhelming defeat and ongoing privation, whether in the loss of a job or outright punishment. Furthermore, in Bavaria, denazification did connect, to some degree, with Bavarian attempts to forge a new political identity. Nazism was seen as a disease that came from "Prussia-Berlin" that federalism and self-determination would cast out forever. Whether this was somewhat distorted history or not, viewed in this light, the American policy of turning over to Bavarians political controls furthered the process of self-determination after the more symbolic purpose of denazification had served its main purpose.

This view is consistent with that advanced by legal scholar Ruti Teitel in her analysis of so-called "transitional justice." Rather than the totalizing political concept of artificial revolution, the concept of transitional justice, with more modest means and

aims, provides a surer way to look at denazification. Transitional justice is a body of law that concerns the punishment of those in former regimes who, perhaps under the color of law, committed acts or were complicit in acts that constituted grave violations of human rights.[185] It is true that the analogy between denazification and the recent efforts by some governments to establish "truth commissions" and to punish past wrongdoers is not completely on point. Denazification had *more* than a "truth-revealing" policy goal and extended beyond punishing actual wrongdoers. Rather, denazification was premised upon membership as well as action by former officials. As Teitsel points out, the American military government distinguished denazification from the Nuremberg tribunals: it was not designed to "avenge Nazi wrongs" but was "justified instead, by [a] forward-looking purpose."[186]

Nonetheless, transitional justice analysis assists in understanding the denazification effort. As Teitsel points out, the criticism of denazification as incoherent and contradictory to the American goal of democratic reform through institutional decentralization seems, at first glance, justified. According to liberal democratic theory, democracies are shaped more by institutional structures than individuals.[187] Yet, the methods of transitional justice are, while not socially transformative themselves, nonetheless critical in providing pathways for such a transformation. The administrative purge of denazification stigmatized Nazism and made a professed Nazism "fatal to political participation" as a way to bestow legitimacy to the successor regime. However, such measures were invariably "provisional and often temporized over the period of

political transformation. From the start these measures [were] pragmatic resolutions intended as transitory for a particular period of reconstruction."[188]

Such analysis helps bring historical clarity to the controversies at the beginning of the occupation. Schaeffer's appointments and Patton's comments, however intended, disrupted the transition from Nazi to democratic regime, for they implied a lack of difference between the two forms of government. A transitional period of stigmatization, reinforced through the outlawing of symbols and literature, and combined with a enforced prohibition of Nazism from political life, demonstrated with clarity and finality the shift from Nazism to democracy.

Despite its haphazardness, and even, at least in terms of removing many from positions of power, its futility, denazification was a controlled and legal process in the American zone. There were no violent back alley shootings, riots, or lynchings.[189] And when it was over, there was no question of a return to Nazism. This was by no means self-evident in 1945. As Constantine Fitzgibbons writes in her study of denazification: "Few would have believed this possible in 1945. For all its faults and follies, denazification may have helped to achieve this admirable end."[190]

In Bavaria, the American military government viewed denazification as part of a larger effort of reform. American idealism, probably at its height in the early postwar period, received a rude awakening when it met Bavarian particularism. In Bavaria, America confronted bewildering paradoxes which defied political theories of sweeping social change. Denazification did not root out all Nazis from power in Bavaria, but it did set a new tone for democracy, a way to separate Bavarians from their recent past, and it

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did provide a way to transition to democratic self-government in the region. Nazism has never resurfaced in Bavaria as a viable political alternative. This achievement, however gained, was considerable.

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[1]Lucius D. Clay, *Decision in Germany* (New York: Doubleday, 1950), 43.

[2]OMGUS, *Denazification Monthly Report of the Military Governor*, no. 1 (Headquarters, OMGUS, 20 August 1945), 2. CARL N-11566.

[3]Elmer Plischke, "Denazification in Germany: A Policy Analysis" in *Americans as Proconsuls, United States Military Government in Germany and Japan, 1944-1952*, ed. Robert Wolfe (Carbondale, IL: Southern Illinois University Press, 1984), 223.

[4]Ibid.

[5]John Kormann, *U.S. Denazification Policy in Germany, 1944-50* (Office of the Historical Division, U.S. High Commissioner for Germany, 1952), 2. CARL 943.087K84U.

[6]OMGUS, *Denazification Monthly Report of the Military Governor*, no. 1 (20 August 1945), 1.

[7]Boyd L. Dastrup, "U.S. Military Occupation of Nuremberg, Germany, 1945-1949" (Ph.D. diss., Kansas State University, 1980), 46.

[8]OMGB, *Weekly Detachment Report*, no. 15 (Headquarters, OMGB, 31 August 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[9] OMGB, *Weekly Detachment Report*. Number 55 (Headquarters, OMGB, 30 May 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[10] OMGB, *Weekly Detachment Report*, no. 7 (Headquarters, OMGB, 29 June 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[11]Schaeffer drew an explicit comparison between Nazism and Prussian dominance in other statements, such as this one in June, 1945: "Prussia-Germany, and all it stood for, is dead. There will never be a dictatorship in Germany again. Bavaria can show new ways and new ideas, opposed to political dictatorship, militarism, and blind subordination." Friedrich Schaeffer, quoted in OMGB, *Weekly Detachment Report*, no. 5

(15 June 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[12]A.J. Ryder, *Twentieth Century Germany From Bismarck to Brandt* (New York: Columbia University Press, 1973) 463. Ryder does point out that "What Hitler did was to take over and use for his own purposes the Prussian myth, and to claim that he was the heir of Frederick the Great and Bismarck. Although much in the Nazi ideology was repugnant to Prussian tradition, he presented National Socialism as its apotheosis." Ibid.

[13]At the same time Hitler manipulated Prussian history, he also skillfully preached a kind of pan-Germanic "brotherhood" (excepting Jews) that, within its racial confines, appealed to a vast cross-section of German society. He made this point emphatic in a speech he gave on 3 September 1928 to Nazi party leaders, when he indicated that Nazism drew no boundaries between Catholic and Protestant, or bourgeois and proletarian, or Prussian and Bavarian. Robert S.Garnett: *Lion, Eagle, and Swastika: Bavarian Monarchism in Weimar Germany, 1918-1933* (New York: Garland Publishing, 1991), 220.

[14]OMGB, Intelligence Division, Analysis Branch, "The Catholic Church in Bavaria," in *Trend, A Weekly Report of Political Affairs and Public Opinion*, no. 13 (Headquarters, OMGB, 3 September 1946), 11. National Archives Record Group No. 260.71. National Archives, College Park, MD.

[15]On 12 February 1931, the Bishops of Bavaria issued the following warning to the clergy in a pastoral letter entitled "*Nationalsozialismus und Seelsorge*":

> National Socialism contains in its cultural-political program grave errors, because contained therein are numerous ideas which Catholic belief abjures or looks askance at. . . . Leading proponents of National Socialism put race on a higher level than religion. They abjure the revelation of the Old Testament and even set aside the Mosaic law of the Ten Commandments. . . . It is forbidden for a Catholic priest to have any part in the National Socialist movement. . . . For a priest there can be no question in this matter of a guiltless erring conscience. For the same reason, the clergy have a duty to instruct the faithful in a calm and factual manner that although National Socialism had at its inception a violent anti-Marxist tone, it has more and more come in its cultural policies in open war against the Church and her Bishops. . . . The participation of National Socialism in Church functions in a uniformed body is and remains forbidden, lest the people gain the impression that the conflict between National Socialism and the Church has been healed."

Quoted in Eugene Donohoe, *Hitler's Conservative Opponents in Bavaria, 1930-1945: A Study of Catholic, Monarchist, and Separatist Anti-Nazi Activities* (Leiden, The Netherlands: E. J. Brill, 1961), 32. The denial of the sacraments to individual members of the Nazi party was left to the discretion of the administering priests. Ibid.

[16]The 1933 Concordat remains one of the most controversial political matters in modern Roman Catholic history, viewed by some as a pragmatic necessity to ensure Catholic survival and by others as a ruthless deal struck with Hitler. In recent years it has been one of the matters at the center of debate over the relationship between Pope Pius XII (who, as the German nuncio, played a role in the Concordat) and the Third Reich. John Cornwell, *Hitler's Pope* (New York: Viking Press, 1999); Michael Phayer, *The Catholic Church and the Holocaust, 1930-1965* (Bloomington, IN: Indiana University Press, 2000); James Carroll, *Constantine's Sword* (New York, Houghton Mifflin, 2001); Margherita Marchione, *Pope Pius XII: Architect for Peace* (New York: Paulist, 2000); Ronald J. Rychak, *Hitler, the War and the Pope* (Huntington, IN: Our Sunday Visitor, 2000); Ralph McInerney, *The Defamation of Pius XII* (South Bend, IN: St. Augustine's, 2001).

[17]Ibid. 19-20. Faulhaber was not, at least as understood in his day, anti-Semitic. In his 1934 book, *Judaism, Christianity, and Germany*, he quoted Cardinal Manning's words in speaking of the Jewish faith: "I should not understand my own religion, had I no reverence for yours." Quoted in Donohoe, 43.

[18]Ibid. 19-20.

[19] OMGB, *Weekly Detachment Report*, no. 62 (Headquarters, OMGB, 18 July 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[20]Kormann, 134-141.

[21]For a study of Bavaria's reemergence as a leader of the new German federalist system, see D. R. Doronodo, *Bavaria and German Federalism: Reich to Republic, 1918-33, 1945-49* (London: St. Martin's Press, 1992).

[23]U.S. Army Civil Affairs School, *Handbook for Military Government in Germany Prior to Defeat or Surrender* (Fort Gordon, GA: 1944), passim. CARL N-16539.8-A.

[24]Ibid. The Handbook provided that public officials who joined the Nazi party prior to 1933 and others (such as members of the SS) would be removed and/or disqualified from public office. It also provided for the removal of Nazis from "quasi-governmental" positions (positions similar to those in chambers of commerce and trade associations) and the judiciary, police, and education. Ibid., 79-82. The handbook also referred to the use of the *Fragebogen* as a means of vetting public officials. Ibid., 80.

[25]The relevant portions of the JCS 1067 text relating to denazification state:

A proclamation dissolving the Nazi party, its formations, affiliated associations and supervised organizations, and all Nazi public institutions which set up as

instruments of Party domination, and prohibiting their revival in any form, should be promulgated by the Control Council. You will assure the prompt effectuation of that policy in your zone and will make every effort to prevent the reconstitution of any such organization in underground, disguised, or secret form.

[All laws which] establish discriminations on grounds of race, nationality, creed or political opinions should be abrogated by the Control Council.

All members of the Nazi party who have more than nominal participants in its activities, all active supporters of Nazism or militarism and all other persons hostile to Allied purposes will be removed and excluded from public office and from positions of importance in quasi-public and private enterprises such as (1) civic, economic, and labor organizations, (2) corporations and other organizations in which the German government or subdivisions have a major financial interest, (3) industry, commerce, agriculture and finance, (4) education, and (5)the press, publishing houses and other agencies disseminating news and propaganda. Persons are to be treated as more than nominal participants in Party activities and as active supporters of Nazism or militarism when they have (1) held office or otherwise been active at any level from local to national in the party and its subordinate organizations, or in organizations which further militaristic doctrines, (2) persecutions or discriminations, (3) been avowed believers in Nazism or racial and militaristic creeds, (4) voluntarily given substantial moral or material support or political assistance of any kind to the Nazi party or Nazi officials and leaders. No persons shall be retained in any of the categories of employment listed above because of administrative necessity, convenience or expediency.

"Directive to the Commander in Chief of the United States Forces of Occupation Regarding the Military Government of Germany, May 10, 1945" in United States Department of State, *Documents on Germany, 1944-1985* (Washington, DC: Department of State, 1985), 18-19. For an analysis of JCS 1067 denazification policy, see Earl F. Ziemke, "The Formulation and Initial Implementation of U.S. Occupation Policy in Germany," in *U.S. Occupation in Europe after World War II,* ed. Hans Schmitt (Lawrence, KS: Regents Press of Kansas, 1978), 28.

[26]"Directive to the Commander in Chief of the United States Forces of Occupation Regarding the Military Government of Germany, May 10, 1945."

[27]Other aspects of the program included reparations, restitution of property, and proper care repatriation of prisoners of war and displaced persons. Walter J. Muller, "Subject: Military Government" (speech to students of the U.S. Army Quartermaster School, Camp Lee, Virginia, 3 March 1949), 4. Papers of Walter J. Muller, Box 13, Volume 2, Tables of Organization. Hoover Archives, Stanford University, Palo Alto, CA.

[28]OMGB, *Summary of Activities, Office of the Military Government for Bavaria,* (Headquarters, OMGB). Papers of Walter J. Muller, Box 15. Hoover Archives, Stanford University, Palo Alto, CA.

[29]Ibid.

[30]OMGUS, *Denazification Monthly Report of the Military Governor,* no. 1 (Headquarters, OMGUS, 20 August 1945), 1. CARL N-11566.

[31]H.H. Newman, "Administration of Military Government in U.S. Zone in Germany" (Headquarters, USFET, 20 October 1945). CARL N-11908.

[32]OMGUS, *Denazification Monthly Report of the Military Governor,* no.1 (Headquarters, OMGUS, 20 August 1945), 4. CARL N-11566.

[33]Ibid.

[34]Ibid.

[35]There was no question that there were large numbers of Nazis in Bavaria--as Earl Ziemke, the official Army historian on the early occupation points out, the entire party registry, 12 million names with photographs, was found in Munich in a trash heap. Earl F. Ziemke, *The U.S. Army in the Occupation of Germany, 1944-46* (Washington, DC: Center of Military History, 1975), 380. Indeed, one military government detachment commander rounded up the Nazi party members in his detachment's *Landkreis* by simply sending out postcards to them and telling them to report to the detachment office. Ibid.

[36]Clay, *Decision in Germany*, 48.

[37]According to one member of the U.S. military government, the party had infiltrated every aspect of professional life: teachers had to belong to Nazi teacher associations, and doctors and lawyers to their respective professional organizations if they wished to continue practicing. Harold Zink, *American Military Government in Germany* (New York: MacMillian, 1947), 135.

[38]See John Gimbel, *A German Community Under American Occupation* (Stanford, CA: Stanford University Press, 1961), 208.

[39]The POLAD prepared a coordinating document designated ANNEX XXXII to the "Basic Preliminary Plan: Allied Control and Occupation of German" which first introduced the term denazification into occupation operations. Plischke, 207-08.

[40]Kormann, 24. The denazification policies developed by American military government officials were not derived from the Nuremberg convictions. On 30 September and 1 October 1946, the International Military Tribunal (IMT) at Nuremberg rendered a judgment convicting "convicting" three Nazi groups: the Nazi leadership, the SS, and the Gestapo. For an analysis of the organizational convictions see Robert K. Woetzel, *The Nuremberg Trials in International Law* (New York: Praeger, 1962), 7-16;

190-217. This conviction derived in part from a concept developed by Colonel Murray Bernays. Bernays resorted to Anglo-American conspiracy law theory and proposed that Nazi organizations themselves be declared criminal enterprises and thus "eliminate the need to prove complicity of the individual members of the organizations, primarily the SS, which were responsible for many if not most of the crimes, by making membership itself sufficient proof of guilt." Telford Taylor, *The Anatomy of the Nuremberg Trials* (New York: Knopf, 1992), 41. However, the denazification review board earlier established by Clay in November, 1945 had recommended that the "organization cases" be handled under the denazification program based on a "category basis" rather than through the Nuremberg organizational convictions. According to Taylor, this proposal was "highly desirable," because the Nuremberg prosecutors could focus on the major war criminals rather than concern themselves with potential hundreds of thousands of cases. Ibid., 279-80.

[41]Ibid, 214. The *Fragebogen* had 131 questions and consisted of 9 parts: (1) personal information; (2) secondary and higher education; (3) membership in professional or trade examinations; (4) chronological record of full time employment and military service, beginning in January 1931; (5) membership in organizations (either Nazi or Nazi affiliated); (6) part-time (to include part-time, unpaid, or honorary positions) service in either Nazi or Nazi-affiliated organizations; (7) writing and speeches (titles and publications beginning in 1923, written or edited by the subject; (8) income and assets; and (9) travel or residence abroad; and a remarks column. The document also had to be signed and sworn to by the subject's immediate superior. OMGUS, *Fragebogen*, (Headquarters, OMGUS, 1945). Papers of Walter J. Muller, Box 15, Item 90, Hoover Archives, Stanford University, Palo Alto, CA.

[42]Kormann, 26.

[43]One major distinction between the American and British denazification efforts were the rather limited due process rights involved in U.S. zone denazification. As stated in the September Military Governor denazification report, the British military government emphasized the "investigation of the individual prior to removal." The American zone practice involved "wide-sweeping mass dismissals with review of the individual case *after* [emphasis added] dismissal. OMGUS, *Denazification Monthly Report of the Military Governor,* no. 3 (Headquarters, OMGUS, 20 September 1945), 2. CARL N-11566.

[44]OMGUS, *Monthly Report of the Military Governor, U.S. Zone,* no. 16 (Headquarters, OMGUS, 1-31 October 1946), 7. CARL N-11566.

[45]Plischke, 214.

[46]Ibid.

[47]OMGUS, *Denazification Monthly Report of the Military Governor,* no. 1 (Headquarters, OMGUS, 20 August 1945), 3. CARL N-11566.

[48]OMGB, *Summary of Activities, Office of the Military Government for Bavaria,* 35.

[49]Plischke, 216-17. In comparison, in the British zone, despite having a greater population, 2.1 million people were charged with being affiliated with Nazism and 156,000 persons removed from office between May 1945 and September 1946 using similar methods (such as use of the *Fragebogen*). Reportedly, half a million Nazis were dismissed in the Soviet zone, though in that zone denazification proceeded along political and economic lines (e.g., membership in a suspect class, such as landowners) rather than individual membership or conduct. Ryder, 469.

[50]The OMGB, *Summary of Activities, Office of the Military Government-Bavaria* discusses these branches in detail.

[52]U.S. Army Military Police School, *Case Studies on Field Operations of Military Government Units* (Fort Gordon, GA, 1950), 77. CARL N-16359.8-A.

[53]Ibid.

[54]Ibid.

[55]Ibid, 77-8.

[56]Ibid., 78

[57]Ibid.

[58]Ibid.

[59]OMGB, *Summary of Activities, Office of the Military Government for Bavaria*, 26.

[60]The following literature was prohibited to sell, lend or distribute under Allied Control Council Law No. 4: "any newspaper, book, pamphlet, periodical, poster, or other publication, or any music in printed form, or any sound recording which: A. Propagates National Socialism or related "*Voelkisch*" ideas including racism or race hatred; B. Propagates fascist or anti-democratic ideas; C. Attempts to create divisions between, or foster disrespect for, the United Nations; D. Propagates militaristic ideas, including pan-Germanism and German imperialism; E. Constitutes an incitement to riot or disorder, interferes in any way with the process of military government." Walter J. Muller, "Confiscation of Literature and Material of a Nazi and Militarist Nature" (Headquarters,

OMGB, 22 July 1946). Papers of Walter J. Muller, Box 19, Item 120. Hoover Archives, Stanford University, Palo Alto, CA.

[61]*Summary of Activities, Office of the Military Government for Bavaria*, 27.

[62]Ibid., 39.

[63] Frank A. Ninkovich, *Germany and the United States: The Transformation of the German Question Since 1945* (Boston: Twayne Publishers, 1988), 35.

[64]This point is made by Jeffrey Raab in his analysis of the restoration of the Bavarian legal system:

> A special questionnaire existed for legal personnel, consisting of 200 questions scrutinizing the respondent's education, professional career and political affiliation. But the questionnaire was merely a collection of ordinary facts. The respondent could have an exemplary record on the questionnaire, which did not examine the candidate's behavior in office or his legal decisions. The questionnaire did not probe whether a judge molded his decisions to please the regime or, in the case of attorney's, whether they represented any of the top National Socialist leadership. In short, the *Fragebogen* facilitated the reemployment of active Fascists, who for whatever reason never joined the Party or its affiliated organizations. Yet, any party member, even those with no criminal record, remained barred from service.

Jeffrey S. Gaab, *Justice Delayed: The Restoration of Justice in Bavaria Under American Occupation, 1945-1949* (New York: Peter Lang Publishing,1999), 59.

[65]On 5 August 1946, Clay granted youth amnesty to all those born between 1 January 1919 and 5 March 1928 (those under 18 had not been required to fill out a *Fragebogen*) not classified as class I or II offenders. It affected approximately 2,000,000 persons (900,000 males and 1,100,000 females). As the Nazi records indicated, approximately 30% of males and 10% of females were directly admitted into the party from the Hitler Youth organizations. Kormann, 95-96. That same year, General McNarney granted Christmas amnesty to so-called "little Nazis"--those who were in low income groups, and were not class I or II offenders. Approximately 800,000 were amnestied. Ibid., 114.

[66]Each question was written in both English and German. OMGUS, *Fragebogen.*

[67]Julian Bach, Jr., who was a firsthand observer of the occupation, cites this as an example. Bach, 177.

[68]Kormann, 26. He also states that, "The paper work entailed, as can readily be surmised, was immense." Ibid., 27.

[69]The concept of "transitional justice" is, to a large degree, a post Cold War development, perhaps best illustrated in the "lustration" policy of the new Czech government, as well as similar policies in former East Germany, Poland, South Africa, and other former authoritarian regimes. Literature on the subject includes: James McAdams, ed., *Transitional Justice and the Rule of Law in New Democracies* (South Bend, IN: University of Notre Dame Press, 1997); Ruti G. Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000); and Neil Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 vol. (Washington D.C.: United States Institute of Peace Press, 1995).

[70]Teitel, 157.

[71]Ziemke, *U.S. Army in the Occupation of Germany*, 383. The *Handbook for Military Government in Germany Prior to Defeat or Surrender* listed a series of public and quasi-public offices from which Nazi officials should be removed, from Reich Ministers to heads of rural *Kreise*. *Handbook for Military Government in Germany Prior to Defeat or Surrender*, 83-91.

[72]Boyd L. Dastrup, "U.S. Military Occupation of Nuremberg, 1945-49." (Ph.D. dissertation, Kansas State Univ., 1980), 48.

[73]Ibid.

[74]This actually was a relaxation of early SHAEF policy which set a blanket cutoff date of January 1933 for both public and private sectors. Ziemke, *U.S. Army in the Occupation of Germany*, 381.

[75]OMGB, *Weekly Detachment Report*, no. 3 (Headquarters, OMGB, 4 June 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[76]Ibid.

[77]OMGB. *Weekly Detachment Report*, no. 4 (Headquarters, OMGB, 11 June 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD. Nazi activity was reported in various parts of Bavaria throughout the summer of 1945, to include anonymous distribution of leaflets in some areas that stated "We are coming back and vengence will be dreadful! Death follows treason! Not only the individual, but his family and the whole village are liable for the life of our comrades. *Freikorps* Adolph Hitler." OMGB, *Weekly Detachment* Report, no. 7 (Headquarters, OMGB, 29 June 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[78]J. F. J. Gillen, *U.S. Military Government in Germany: American Influence on the Development of Political Institutions* (Historical Division, U.S. Army European Command, 1950), 4-5. CARL N-17500.

[79] OMGB, *Weekly Detachment* Report, no.15 (Headquarters, OMGB, 23 August 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[80]OMGB. *Weekly Detachment Report*, no. 20 (Headquarters, OMGB, 27 September 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[81]Schaeffer had been appointed by Colonel Charles S. Keegan, Regional Military Government Officer, Bavaria. Gillen, 5.

[82]"Germany: East & West," *The New Republic*, 18 June 1945, 827.

[83]Philip Loewenfeld, "The Bavarian Scandal," *The New Republic*, 18 June 1945, 841.

[84]Ibid. According to Ladislas Farago, Keegan, a reserve officer, actually held the formal position of military governor of Bavaria during the summer of 1945, and was appointed to the assignment because of his experience in municipal matters. Ladislas Farago's *The Last Days of Patton* (New York: McGraw Hill & Co., 1981), 73-75. Keegan's apparent failure to screen out former Nazis from position of power in Bavaria led to Patton abolishing his position on 4 September 1945. Farago, 144-45.

[85]Lowenfeld, 841.

[86]Ibid., 842.

[87]Doronodo, 32. According to J. F. C. Gillen in a much earlier (1950) history of American military government, the recommendation of Schaeffer to be Minister-President was made because Schaeffer had been the leader of the BVP, had been the Bavarian Minister of Finance, thus having administrative ability and experience, and his imprisonment in Dachau meant that he "was definitely not a Nazi." Gillen, 5.

[88]Ziemke, *U.S. Army in the Occupation of Germany*, 384. Controversy surrounds Schaeffer's appointments. One analysis regards Schaeffer's controversial appointments as driven purely by pragmatism. This so-called "Schaeffer experiment" involved appointing personnel from various political parties regardless of affiliation, primarily because they had the requisite specialist knowledge in their particular field. Such specialists thus included former Nazi party members and others with ties to the Nazi party, not by design to reempower them, but because they were the best technically qualified. Gaab, 44.

[89]An OMGB investigation determined that Schaeffer: (1) had appointed three ministers that had to be removed because of close Nazi associations; (2) after being forced to dismiss some key officials, attempted to use them in other capacities; (3) continued to employ key officials weeks after their removal had been ordered; and (4) "openly recommended dilatory practices" in denazification (e.g., methods to slow down processing of *Fragebogen*); and other problems related to Nazi and militarist involvement. Schaeffer, who became Chairman of the Christian Social Union, was also forced from that position by OMGB because he was considered a Nazi sympathizer and collaborator. Walter J. Muller, "Subject: Fritz Schaeffer" (Headquarters, OMGB, 28 March 1946). Papers of Walter J. Muller, Box 14, Item 86. Hoover Archives, Stanford University, Palo Alto, CA.

[90]Ziemke, *U.S. Army in the Occupation of Germany*, 383.

[91]OMGUS, *Denazification Monthly Report of the Military Governor*, no. 2 (Headquarters, OMGUS, 20 September 1945), 2. CARL N-11566. The report also indicated there was reluctance on the part of alleged anti-Nazis to assist in pointing out Nazi party members. Ibid.

[92]Ibid.

[93]According to Ladislas Farago, one of Patton's premiere biographers, Colonel George Fisher, Patton's chemical officer, allegedly stated, "Instead of killing Germans, what he knows best, Patton is asked to govern them, what he knows least." Farago, 74.

[94]The story appeared in *The New York Times* on 23 September 1945. As reported by Raymond Daniell, Patton made "three main points" in a press conference on 22 September 1945: first, he indicated denazification had been given too much importance; second, that many Germans had been forced to join the Nazi party; and third that the best hope for the future was "showing the German people what grand fellows we are." As elsewhere reported in the article, Patton allegedly said that he had "never seen the necessity of the denazification program," and that "The thing was that those damned Nazis got other people by the scruff of the neck and other Germans just didn't have the guts to go back." Raymond Daniell, "Patton Belittles Denazification; Holds Rebuilding More Important," 23 September 1945, *The New York Times*, 26. Three days later, Patton held a second press conference in which he said he had been "unfortunate" in his selection of "analogies" but nonetheless maintained his position that it would be necessary to tolerate some Nazis in business in order to endure the upcoming winter. In the same article Raymond Daniell reported this second press conference, he also reported the promulgation of Military Law No. 8, clearly contrasting the new law with Patton's statements. Raymond Daniell, "Patton Alters Stand on Nazis; Eisenhower Pushes Purge," 26 September 1945, *The New York Times*, 1.

[95]Farago points out other reasons for Patton's ultimate relief, including apparent preferential treatment of German (to include Nazi) prisoners in internment camps and the keeping intact of SS and Waffen SS units. Farago, 163, 202-204. In his biography, Clay states that his deputy, Major General Clarence Adcock, made the recommendation that Patton be replaced. Clay also stated that

> It wasn't just [Patton's statement] that made me do it. It was my firm belief that military government should not be under an Army commander. So I was relieving General Patton not just because of that statement, but because I would have liked to have gotten all of the Army commanders out of the picture--and did. They did not belong in it. In the first place, they were not going to be there very long. It was obvious that we were not going to keep our armies in Germany. In the second place, I did not want military government handled as a General Staff matter. I wanted it distinct and separate and reporting to General Eisenhower in a parallel structure with the military. And General Eisenhower quickly accepted this concept.

Quoted in Jean Edward Smith, *Lucius D. Clay: An American Life* (New York: Henry Holt & Co., 1990), 227.

[96]Truscott had been the Commanding General of the Third Infantry Division under Patton during the Sicily Campaign and later commanded the Fifth U.S. Army. He assumed command from Patton on 7 October 1945. Third Army, *Mission Accomplished: Third United States Army Occupation of Germany* (Third Army Historical Section, 1947), 19. CARL 940.5343U56m.

[97]Muller had served as Patton's Chief of Logistics (G-4) throughout the war.

[98]Clay wrote to John McCloy on 5 October 1945 that "Extensive changes have been made in the Bavarian administration. . . . Now Dr. [Fritz] Schaeffer himself is out of office. . . . There is no question that Schaeffer felt our program for removing Nazis went too far and would destroy the essential administrative machinery and unduly increase the confusion and difficulties of the people. . . . Wilhelm Hoegner, who headed the Ministry of Justice under Schaeffer, has been named Minister President. He is an active man, about 50, who is considered to be liberal and reliable." Lucius D. Clay to John McCloy, "Conditions in Germany," 5 October 1945, in *The Papers of General Lucius D. Clay, Germany 1945-1949*, Vol. 1., ed. Jean Edward Smith (Bloomington, IN: Indiana University Press, 1974), 94.

[99]This was at least the perception of some in the American press corps. According to Paul Bellamy, an editor for the *Cleveland Plain Dealer*, sent to cover the occupation in the spring of 1946, Patton's remarks were the underlying cause of the new law: "The result of Gen. Patton's remark was the issuance by Gen. Eisenhower of a rule called Law Eight, which really did the business on denazification." Paul Bellamy, *A Trip Through Hell: A Series of Articles Containing Observations on a Recent Trip through*

Central Europe (Cleveland, OH: Cleveland Plain Dealer, 1946), 10. Papers of Walter J. Muller, Box 13, Item 74. Hoover Archives, Stanford University, Palo Alto, CA.

[100]OMGUS, *Denazification Monthly Report of the Military Governor*, no. 3 (20 October 1945), 2. CARL N-11566.

[101]"Ordinary labor" did not mean only manual or menial labor. Former Nazis could work in positions as long as they held no supervisory or managerial authority. They could not "hire, fire, set policy, or supervise people." Boyd L. Dastrup, *Crusade in Nuremberg* (Westport, CT: Greenwood Press, 1985), 28.

[102]The full title of the law was "Prohibition of Employment of Members of Nazi Party in Positions in Business Other than Ordinary Labor and for Other Purposes." It only permitted employment of Nazi party members "as expressly authorized by Military Government only to those persons discharged or refused employment under this law, who claim that they were not actively engaged in any of the activities of the Nazi Party or its affliate organizations." Ibid. In addition to applying only to supervisory and managerial positions, there were exceptions to the policy. According to Earl Ziemke, Military Government Law No. Eight did not apply to agricultural workers; doctors and dentists who otherwise fell under the law could apply for temporary work permits; and USFET railroad workers, considered indispensable, were initially exempt. Ziemke, *U.S. Army in the Occupation of Germany*, 388-89.

[103] OMGUS, *Denazification Monthly Report of the Military Governor*, no. 3 (Headquarters, OMGUS, 20 October 1945), 3. CARL N-11566.

[104]Ibid.

[105]By way of contrast, Earl Ziemke states that military government detachments in Wuerttemberg-Baden took over a total of 1952 properties from November, 1945 to May, 1946, just slightly higher than the number of properties seized in just one month in Bavaria. Ziemke, *U.S. Army in the Occupation of Germany*, 388.

[106]Ibid.

[107]U.S. Military Police School, *Case Studies on Field Operations of Military Government Units,* 78.

[108]Ibid.

[109]That report did note that some anti-Nazi Germans looked at the new law with "hearty approval." OMGUS, *Denazification Monthly Report of the Military Governor*, no. 2 (Headquarters, OMGUS, 20 September 1945), 3. CARL N-11566.

[110]OMGB, *Weekly Detachment* Report, no. 23 (Headquarters, OMGB, 18 October 1945). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[111]Ibid.

[112]Kormann, 34. The review boards were formally established on 15 December 1945. OMGUS, *Monthly Report of the Military Governor, U.S. Zone,* no. 6 (Headquarters, OMGUS, 20 January 1946), 4. CARL N-11566.

[113]Ibid.

[114]OMGUS, *Monthly Report of the Military Governor, U.S. Zone,* no. 5 (Headquarters, OMGUS, 20 December 1945), 4. CARL N-11566.

[115]Earl Ziemke states that initially military government officials believed the review boards process was unfair because the burden of proof was placed upon the appellant. However, the officials soon thought otherwise when the German boards were willing to take the appellants' evidence as sufficient for exoneration. Ziemke, *U.S. Army in the Occupation of Germany*, 389.

[116]OMGUS, *Monthly Report of the Military Governor, U.S. Zone,* no. 5 (Headquarters, OMGUS, 20 December 1945), 4. CARL N-11566.

[117]In *Landkries* Eggenfelden in Bavaria, for example, the German boards classified 810 appellants as nominal Nazis and 36 as active, out of 864 cases. Ziemke, *U.S. Army in the Occupation of Germany*, 389. According to Julian Bach, the German review boards evaluated whether the suspected person had become a Nazi "only as a formal concession." If it could be demonstrated that "he did not participate actively in any activity of the party, then he [stood] a good chance of being taken off the black list." Bach, 188.

[118]OMGUS, *Monthly Report of the Military Governor, U.S. Zone,* no. 6 (Headquarters, OMGUS , 20 January 1946), 2-3. CARL N-11566.

[119]Ibid., 4.

[120]Ibid.

[121]John Gimbel, *The American Occupation of Germany* (Stanford: Stanford University Press, 1968), 103. As noted by Gimbel, "The effort to secure German participation in a program to meet such revolutionary American objectives [e.g. democracy and decentralization] produced a number of confrontations on denazification . . . . [T]he issue was extremely complex, especially because OMGUS was insisting on

elections and responsible German government at the local and state level at the same time it was trying to bring Germans into line with a basic American objective." Ibid.

[122]The new law had a four point program: (1) every German above 18 had to register; (2) each German would be classified, according to evidence, into one of five classes; (3) each accused person would be tried before a tribunal; and (4) those found guilty would be punished, "according to a graded system of mandatory and discretionary penalties, in accordance with the severity of their offenses." OMGUS, *Monthly Report of the Military Governor, U.S. Zone,* no. 8 (Headquarters, OMGUS, 20 March 1946), 42.

[123]Gimbel, *A German Community Under American Occupation,* 3.

[124]Gimbel, *The American Occupation of Germany*, 105.

[125]Kormann, 67.

[126]Ibid.

[127]Ibid.

[128]Ibid. OMGB discontinued the use of *Fragebogen* for almost all cases after February 1947, instead relying on the German *Meldebogen*. Al D. Sims, "Discontinuance of the Use of *Fragebogen*" (Headquarters, OMGB, 3 February 1947). National Archives Record Group, No. 260.71. National Archives, College Park, MD.

[129]Kormann, 69. As in the previous military government denazification legislation, if an investigation determined a person fell into one of the five categories, he was presumptively guilty and had to be exonerated at the tribunal. Ibid. Penalties varied from two to ten years of forced labor on reparations and reconstruction work, property forfeiture, exclusion from public employment, and loss of voting privileges for major offenders to payment of contributions or reparations for minor offenders. OMGUS, *Monthly Report of the Military Governor, U.S. Zone,* no. 8 (Headquarters, OMGUS, 20 March 1946), 42. CARL N-11566.

[130]OMGUS, *Monthly Report of the Military Governor, U.S. Zone,* no. 8 (Headquarters, OMGUS, 20 March 1946), 42. CARL N-11566.

[131]G. H. Garde, "Instructions to Public Safety Special Branches for Denazification under the "Law for Liberation from National Socialism and Militarism" (Headquarters, OMGUS, 17 May 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[132]Robert A. Reese, "Elaboration of 17 May Denazification Directive" (Headquarters, OMGB, 10 June 1946). National Archives Record Group, No. 260.71. National Archives, College Park, MD.

[133]G. H. Garde, Instructions to Public Safety Branches for Denazification under the "Law for Liberation from National Socialism and Militarism." These instructions did point out that military government would "continue to exercise its right to express approval or disapproval of appointments to a limited number of key policymaking or executive positions in government and business where the holder of such position must meet more than the normal standards of personal reliability set forth in the law and where his qualifications and readiness to carry out the objectives are important considerations." Ibid.

[134]Walter J. Muller, "Suggested Action Sheet SOP for Functional Offices" (Headquarters, OMGB, 25 March 1946). National Archives Record Group 260.71. National Archives, College Park, MD. Thus for example, a special branch office in *Stadtkreis* Passau would forward a *Fragebogen* requiring mandatory removal on a certain physician to the public health division at OMGB, which would forward a letter of dismissal to the German Minister of Public Health, who would then notify the public health branch that the dismissal had occurred. Ibid.

[135]OMGUS, *Monthly Report of the Military Governor, U.S. Zone,* no. 12 (Headquarters, OMGUS, 20 July 1946), 3. CARL N-11566. Muller and Walter Dorn, an OMGUS denazification expert, also worked with the Bavarian government and the major Bavarian political parties in order for them to issue a statement expressing their firm commitment to the new law. On 14 June 1946, a proclamation signed by Hoegner and all the major Bavarian party leaders stated that "Liberation of our people from National Socialism and Militarism is an essential condition for the reconstruction of a democratic Bavaria. The Law for Liberation from National Socialism and Militarism serves as a medium for the elimination of Nazism from our public and political life." The full text of the proclamation is at Kormann, 90-91.

[136]Ibid.

[137]Of the 397 *Spruchkammern* established in the U.S. zone, 103 were in Wuerttemberg-Baden, 104 in Hesse, and 190 in Bavaria. Wuerttemberg-Baden had appointed 93 *Spruchkammern* chairmen and 95 public prosecutors. Hesse had appointed 148 *Spruchkammern* chairmen and 135 public prosecutors. OMGUS, *Monthly Report of the Military Governor U.S. Zone,* no. 14 (Headquarters, OMGUS, 20 September 1946), 5. CARL N-11566.

[138]Dastrup, *Crusade in Nuremberg*, 64.

[139]United States Military Police School, *Case Studies on Field Operations of Military Government Units,* 78.

[140]The goal of the education program was to instruct the prosecutors and *Spruchkammer* chairmen with the "basic fundamentals" of the denazification law.

OMGB. *Weekly Detachment Report*, no. 61 (Headquarters, OMGB, 11 July 1946).
National Archives Record Group No. 260.71. National Archives, College Park, MD.

[141]OMGB, *Weekly Detachment* Report, no. 54 (Headquarters, OMGB, 23 May
1946). National Archives Record Group No. 260.71. National Archives, College Park,
MD.

[142] OMGB, *Weekly Detachment Report*, no. 59 (Headquarters, OMGB, 27 June
1946). National Archives Record Group No. 260.71. National Archives, College Park,
MD.

[143]"The Dreaded Follower: Embarrassing Occurrences in Connection with a
Spruchkammern Proceeding at Augsburgland." *Schwabische Landeszeitung*, 29
November 1946, trans. OMGB Intelligence Branch. Papers of Walter J. Muller, Box 14,
Item 86. Hoover Archives, Stanford University, Palo Alto, CA.

[144]In Wuerttemberg-Baden, 16,881 persons had charges filed against them, with
only 6,296 cases terminated. In Hesse, 16,497 persons had charges filed against them,
with 7,483 cases terminated. OMGUS, *Monthly Report of the Military Governor, U.S.
Zone,* no. 14 (Headquarters, OMGUS, 20 September 1946), 5. CARL N-11566.

[145]The field study was conducted by George Meader, chief counsel for the U.S.
Senate Special Committee Investigating the National Defense Program, and reported to
Clay. Clay used Meader's study in his 5 November 1946 speech to the *Länderrat* as
evidence of the Germans' lack of commitment to denazification. Gimbel, *The American
Occupation of Germany*, 108-09.

[146]According to the OMGB weekly report, "The Ministry indicates that the
program of reviewing eleven thousand cases would be impossible for them to handle;
however this office feels that if sixty percent of the eleven thousand cases are wrong,
there must be a review, and has ordered the Ministry to draw up a plan to accomplish this
purpose. This illustrates the extremely close supervision that the Military Government
must exercise even when dealing with members of the Ministry in which it has
confidence." OMGB, *Weekly Detachment Report*, no. 69 (Headquarters, OMGB, 12
September 1946. National Archives Record Group No. 260.71. National Archives,
College Park, MD.

[147]OMGB, *Weekly Detachment Report*, no. 69 (Headquarters, OMGB, 12
September 1946). National Archives Record Group No. 260.71. National Archives,
College Park, MD.

[148]Kormann, 83.

[149]OMGB, Intelligence Division, Analysis Branch, *Trend, A Weekly Report of
Political Affairs and Public Opinion*, no. 14 (Headquarters, OMGB, 3 September 1946),

13. National Archives Record Group No. 260.71. National Archives, College Park, MD. The OMGB intelligence report also stated that "It is also because ingrained German respect for authority makes it hard for the parish priest to visualize any locally prominent member of his flock as a Nazi. The priest usually welcomes elimination of Nazis from public and economic life in a vague, theoretical way, but he visualizes a Nazi as an SS leader or a concentration camp guard." Ibid.

[150]According to *Trend*, this clerical housecleaning thus spared OMGB a potential confrontation with the Church, since canon law stated that no secular agency could provide for the removal of politically undesirable clerics. Ibid.

[151]Ibid, 12.

[152]Ibid.

[153]According to John Kormann, Schmitt alleged that attempts were being made by the CSU to oust him from his position and replace him with a CSU member. In view of rightwing hostility (of which the CSU was the prominent Bavarian party) to denazification this represented a "virtual sabotage of the denazification program." Kormann, 93.

[154]Another controversy from the left involved the exoneration at a *Spruchkammer* of the leader of the Communist party, a party member since 1933 and a former advisor to the *Reichsleiter*. This created great consternation among many Bavarians who believed that the basis for his exoneration--that he allegedly spied for the Communists while in the Nazi Party--set a dangerous precedent for the tribunals. OMGB, *Weekly Detachment Report*, no. 61 (Headquarters, OMGB, 11 July 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[155]The occasion of Clay's address was the 14th meeting of the *Länderrat*. Ironically, it was the one year anniversary of the council. Kormann reproduces nearly all the text of the address in his work. Kormann, 105-08.

[156]Ibid., 106-07.

[157]Ibid., 106

[158]Ibid.

[159]Clay stated that "Military government will necessarily have to take measures to see that denazification is carried out in that zone for which we are responsible" regardless of the effect on the German economy. Ibid., 107.

[160]Hoegner refused the resignation. Ibid.

[161]Ibid., 110-11.

[162]"Increased Control in Denazification--More Consideration Expected for Followers" *Die Neue Zeitung* (2 December 1946), trans. OMGB Intelligence Branch. Papers of Walter J. Muller, Box 14, Item 86. Hoover Archives, Stanford University, Palo Alto, CA.

[163]Discussed in Chapter 3.

[164]OMGB, *Weekly Detachment* Report, no. 75 (Headquarters, OMGB, 17 October 1946). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[165]According to the January 1947 military governor's report, "Legal processes under the Law for Liberation from National Socialism and Militarism were handicapped during January by the abnormally cold weather. Because of fuel and power shortages, tribunals were forced to discontinue their operations or to work shorter periods. No data with respect to working hours lost are available, but they are believed to be considerable." OMGUS, *Monthly Report of the Military Governor, U.S. Zone,* no. 19 (Headquarters, OMGUS, 20 January 1947), 7. CARL N-11566. In Bavaria, one weekly OMGB report in January reported that coal and power shortages had so crippled industry that economic life had been brought to a standstill. The extreme cold so strained basic operations that political issues such as denazification were largely ignored. OMGB, *Weekly Detachment Report*, no. 90 (Headquarters, OMGB, 30 January 1947). National Archives Record Group No. 260.71. National Archives, College Park, MD.

[166]OMGUS, *Monthly Report of the Military Governor, U.S. Zone,* no. 24 (Headquarters, OMGUS, 1-30 June 1947), 9. CARL N-11566.

[167]Gimbel, *The American Occupation of Germany*, 167.

[168]"Directive From the Joint Chiefs of Staff to the Commander-in-Chief of the United States Forces of Occupation" (11 July 1947) in United States Department of State, *Documents on Germany, 1944-1985* (Washington, DC: Department of State, 1985), 124-35.

[169]Ibid., 125.

[170]"You will implement in your zone the decisions on denazification taken April23, 1947 by the Council of Foreign Ministers, as may be agreed in ACC." Ibid., 126. The April meeting of the foreign ministers directed that denazification in the zones be completed and to turn the procedure over to the Germans as soon as possible. Plischke, 208.

[171]Theo Sommer, political editor of the Hamburg newspaper *Die Zeit*, reported these approximate figures in his essay "The Nazis in the Judiciary." He also reported another figure of being "above 5,000." Sommer did not call for the wholesale removal of all the judges, but for an examination of existing records and the removal of those judges (termed "Nazi blood judges") who participated in or sanctioned miscarriages of justice (e.g., a death sentence pronounced against a German who gave a British prisoner six cigarettes; a death sentence pronounced against a pregnant Polish woman for stealing clothes during an air raid). Theo Sommer, "The Nazis in the Judiciary," in *The Politics of Postwar Germany* ed. Walter Stahl (New York: Praeger, 1963), 240-48.

[172]Kormann, 140.

[173]Ibid.

[174]See for example, Thomas M. Bower, *The Pledge Betrayed: America and Britain and the Denazification of Post-War Germany* (New York: Doubleday, 1980).

[175]William E. Griffith, "Notes on Nazism and Communism" (Headquarters, OMGB, undated). Papers of Walter J. Muller, Box 14, Item 86. Hoover Archives, Stanford University, Palo Alto, CA. While the document is undated, it appears to have been written in late 1946 or early to mid-1947. This assumption is based on the use of the term "Cold War" in the document, a term that came into use in late 1946, and that it is addressed to General Muller (who left the post of Director in November, 1947).

[176]Ibid.

[177]Ibid.

[178] Richard Merritt and Anna J. Merritt, "Denazification" in *Democracy Imposed: U.S. Occupation Policy and the German Public, 1945-1949* (New Haven, CT: Yale University Press, 1995), 187-88.

[179] Ibid, 193.

[180] Ibid.

[181]John Gimbel, "The Artificial Revolution in Germany" *Political Science Quarterly* 76 (March 1961): 89.

[182]Ibid. 103. As John Dower points out in his much acclaimed history of the occupation of Japan, "With a minimum of rumination about the legality or propriety of such an undertaking, the Americans set about what no other occupation force had done before: remaking the political, social, cultural, and economic fabric of a defeated nation, and in the process changing the very way of thinking of its populace." John Dower, *Embracing Defeat* (New York: Norton, 1999), 78.

[183]Ibid., 23.

[184]This appears to be one of John Kormann's conclusions, despite being highly critical of American denazification and its implementation: "It would be a mistake to view denazification apart from the total picture in Germany and in the world at large. Admittedly denazification was negative in character. But from 1946 onward, U.S. policy increasingly stressed a positive approach designed to encourage the Germans to revive the democratic institutions of the pre-Hitler period and to learn from the practices of western democracies." Kormann, 140.

[185]Teitel, *Transitional Justice*, passim.

[186]Ibid., 158.

[187]"[T]he force of the democratic justification for political disabilities[the denazification laws' prohibition on former Nazis holding governmental offices] was seemingly premised on the assumption that democracies were shaped more by their personnel than by their structures, institutions, and procedures. Yet this reasoning appears to run counter to liberal political theory." Ibid., 160.

[188]Ibid.

[189]"[T]ransitional justice offers a controlled means of reform, more measured than changes guided solely on the basis of other normative sources, such as morals." Teitsel, 228. Teitsel goes on to point out, however, that the "accommodations and temporizing [in transitional justice] should not be confused with ideal justice. The transitional response ought not to be generalized as the human rights standard of how to respond to violations, whether ongoing or in the past." Ibid. The larger question of whether a more ambitious postwar policy of prosecuting Nazi human rights violators, after the German government had achieved a degree of legitimacy and stabilization, is beyond the scope of this study.

[190]Constantine Fitzgibbon, *Denazification* (London: Michael Joseph, 1969), 184.

CHAPTER 5

CONCLUSION

Military occupation scholars Martin and Joan Kyre assert that: "When considered on a theoretical plane, the relationship of occupation policy to long-range national purposes is often minimized or even ignored."[1] At first glance, the Morgenthau Plan, JCS 1067, and the Yalta and Potsdam Conferences indicate that the United States took its postwar occupation duties very seriously and that postwar occupation was part of a larger postwar foreign policy strategy. Furthermore, the preparation for the postwar occupation--at least by the Americans and British--was not ignored at the operational level either. Beginning as early as May 1943, staffers at Supreme Headquarters, Allied Expeditionary Force (SHAEF) began to plan for Germany's occupation.[2]

On the other hand, it is true that the operational plans, RANKIN, TALISMAN, and ultimately ECLIPSE were largely procedural. A major reason for this was due to the fact that SHAEF planners received ambiguous and often unclear political guidance. Lieutenant General Sir Frederick Morgan, Chief of Staff to the Supreme Commander, recognized this failing while planning RANKIN, pointing out "the essential difficulty in planning operations before the clear establishment of the political policy whence those operations derive their necessity."[3]

The lack of clear political guidance, or its sudden and reactive shifting, as seen for example in the various changes in the denazification policy, accounted for the improvisatory, even chaotic nature of U.S. postwar occupation policy. One might argue that if Clay's successes were due to his improvisational skill, the failures of the American military government could be traced to a lack of a coherent "strategy of occupation."

Had the planners received more definite strategic direction about the long term goals of the occupation, and had they themselves incorporated the received policy goals into their plans, the postwar occupation may have had a less chaotic, improvisatory quality than it did, and some of its programs a better chance at success.

Proponents of "war termination" would perhaps make such an argument. In recent years, military scholars have used the concept of war termination as a way to bridge war and peace, and to tell strategists that they must not "view war and peace as wholly distinct states."[4] Citing the American experience in Lebanon in 1983 as a prime example, James Reed points out that "flaccid strategic objectives are perhaps more likely to produce confusion and failure at the operational level. Clarity of strategic objectives is the essential precondition to the adequate definition of operational military objectives; there is, after all, little to be gained from confusing or deceiving ourselves."[5]

Viewed this way, one can look at the U.S. occupation policy, as applied specifically in Bavaria, as suffering from a lack of strategic coherence. Perhaps it appeared contradictory on the one hand to pursue a policy of decentralization, governmental autonomy, and German political self-recovery, and on the other to attempt a widespread denazification program. A government, much less a populace, can hardly be said to be autonomous and self-governing when an occupying force vets every single member of its public service and bars from employment any with a suspicious background. In this light, American efforts at democratic reform and denazification were essentially contradictory policies from the outset, regardless of the fact that later U.S. foreign policy viewed German political recovery as essential to serve as a check against Soviet expansionism.

Yet the historical results reveal something that does not fit into the neatly fashioned categories of "war termination" policy. In fact, the results beg the crucial question: *Why*, despite the apparent failure of denazification, and the speed by which the U.S. Army brought in democratic reform, did democracy "take," especially in Bavaria, considered in many ways the most reactionary *Land* in Germany? There were many American policymakers who doubted that democratization would be possible in a generation, much less in four years. According to the Morgenthau Plan,

> The Nazi regime is *not* an excresecence on an otherwise healthy society but an organic growth out of the German body politic. . . . The dissolution of the Nazi party will not, therefore, by itself ensure the destruction of the militaristic spirit instilled into the German people over generations and given an overwhelming impetus the last decade. This will of necessity be an arduous process, and for a long time to come it would be gambling with the very destiny of civilization to rely on an unproven German capacity for self-regeneration in the face of its proven capacity for creating new weapons of destruction to be used in wars of aggression.[6]

Others shared doubts for a smooth and relatively swift transition to democracy. Scholar Ernst Fraenkel, writing in 1944 on the Rhineland Occupation of 1918-23, stated in regards to the next potential occupation that "It is most unlikely that a revolution after Hitler's downfall will result in a working democratic self-government in Germany, or that general democratic elections will be possible during the first stages of post-Hitler development."[7]

In hindsight, it appears as if these pessimistic assessments were wrong, for a variety of reasons. Some scholars who have examined the failure of the Weimar Republic have noted that the crisis in liberal democracy in the interwar years was not an exclusively German phenomenon, that the Weimar Republic's collapse was due to a series of complicated political choices of which the anti-democratic aspect of Nazism was

only a part, and that the Nazi regime did not succeed in creating a true social revolution.[8] The thorough, generation-spanning reeducation of the German people, in which occupation reformers and certain policymakers believed denazification would play such a transformative role, proved to be, to a great degree, overstated.

Rather, the role of denazification appears to be one which is better described as "transitional" rather than transformative, as described earlier in this study. Its role was, in hindsight, far more limited in the democratization process, and its successes largely administrative, temporary, and symbolic. But even these temporary, symbolic successes played an important role. The outlawing of Nazism, the suppression of Nazi symbols and monuments, the administrative sanctions taken against Nazis and Nazi sympathizers, all aided in transitioning the German populace away from Nazi ideology. In Bavaria in particular, the American programs aimed at decentralizing government linked with this effort, and also connected with resurgent Bavarian nationalism. The result was a successful, if imperfect, transition to democratic, federalist-style government.

The democratic reform policies initiated by Clay and successfully achieved by the American military government (and against many of Clay's subordinates' advice) were not the result of any gradual, long-range plan. Many experts undoubtedly thought that democracy would not return to Germany for a generation. Clay, however, determined almost immediately that democracy could be achieved quicker by allowing it to flourish as soon as possible. He went against expert advice and very soon allowed political parties and local elections. Clay's policies thus had a sometimes *ad hoc* quality about them. As German historian Frank Ninkovich writes, the American occupation was more akin to jazz than classical music: "occupational routines were of necessity less

orchestrated than improvised."[9] Jazz, of course, is a distinctly American idiom, and improvisation a distinctly American virtue. In retrospect, the American military government's willingness to improvise and to risk empowering Germans with democracy proved a risk worth taking.

The role of Bavarians in this democratizing process was important as well. The Bavarians' stubborn particularism, religious belief, and traditionalist views could prove especially difficult for the Americans. At the same time, these very traits proved beneficial. They provided a means for Bavarians to break away from Nazism. Bavarians looked back to their own history and faith for renewal. Ultimately, Bavaria's unique role in Germany and Bavarian emphasis on *Land* autonomy helped pave the way for a federalist German state with governmental structures that would provide a counterweight to any future centralizing totalitarianism.

There are no ideal military occupations. The American military government in Bavaria made mistakes during the years 1945-47. The results, in particular the denazification policies that were implemented, were uneven. What matters ultimately, however, is not the opinions of particular columnists, scholars, generals, or statesmen, but the verdict of history. Bavaria continues to flourish into the twenty-first century as part of a now united, democratic Germany. If a half-century of peace, prosperity, and democracy is taken as evidence, the verdict must be that the American military government in Bavaria achieved success.

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[1]Martin and Joan Kyre, *Military Occupation and National Security* (Washington, DC: Public Affairs Press, 1968), 36.

²For an overview of planning at the operational (SHAEF) level for the Anglo-American postwar occupation of Germany, see U.S. Army Civil Affairs School, *Planning for the Occupation of Germany* (Fort Gordon, GA: 1947). CARL N-165359.38.

³Ibid., 32.

⁴James W. Reed, "Should Deterrence Fail: War Termination in Campaign Planning," in *Parameters* 23 (summer 1993): 41.

⁵Ibid., 45.

⁶"Briefing Book Prepared in the Treasury Department, September 9, 1944" in United States Department of State, *Foreign Relations of the United States: The Conference at Quebec, 1944* (Washington, DC: United States Government Printing Office, 1972), 140.

⁷Ernst Fraenkel, *Military Occupation and the Rule of Law: Occupation Government in the Rhineland, 1918-1923* (London: Oxford University Press, 1944), 231.

⁸This view is put forth in Peter Fritzche, *Germans Into Nazis* (Cambridge, MA: Harvard University Press, 1998) and essays by Harold James, "Economic Reasons for the Collapse of the Weimar Republic," and Richard Bessel, "Why Did the Weimar Republic Collapse" in *Weimar: Why Did German Democracy Fail?* ed. Ian Kershaw, (New York: St. Martin's Press, 1990), 30-57, 120-152. Ian Kershaw also discussed the failure of the Nazi social revolution in his own work. Ian Kershaw, *The Nazi Dictatorship: Problems in Perspectives of Interpretation*, 4th ed. (London: Arnold, 2000), 177-182.

⁹Frank A. Ninkovich, *Germany and the United States: The Transformation of the German Question Since 1945* (Boston: Twayne Publishers, 1988), 28.

APPENDIX A

BRIEF CHRONOLOGY OF KEY EVENTS

Pre-World War II

<u>1806</u>	Napoleon raises Bavarian Elector Maximilian Joseph to title of King of Bavaria; Bavaria becomes part of Napoleon's Confederation of the Rhine and acquires Franconia (Franken) and Swabia (Schwaben), doubling in size.
<u>1848</u>	King Ludwig I abdicates; Maximilian II takes throne, claiming "I am proud to call myself a constitutional monarch." Monarchy loses effective control of Bavaria; Bavaria becomes a constitutional *Beamtenstäat* (ministerial state).
<u>1860s</u>	Rise of rudimentary political parties in Bavaria.
<u>1866</u>	"Mad" King Ludwig II ascends to throne. Bavaria and South German neighbors mobilize with Austria against Prussia to preserve existing German Confederation. Bavaria/Austria decisively defeated, making Prussia preeminent German power.
<u>1870</u>	
August	Beginning of Franco-Prussian War stirs desire in Bavaria for German unification. Bavaria joins war with Prussia against France.
November	German unification; Bavaria becomes part of German state, retaining some autonomy.
<u>1871</u>	Bavarian *Landtag* ratifies unification.
<u>1871-1880s</u>	Bismarck wages *Kulturkampf* against German Catholics. Jesuits banned from Germany; many monastic orders closed; many bishops and priests expelled from Reich.
<u>1914</u>	Beginning of World War I: Bavaria sends approximately 1 million men to front; 130,000 Bavarians killed in action during war.

<u>1918</u>

November   Revolution in Bavaria. Monarchy (House of Wittelsbach) overthrown. Kurt Eisner comes to power, elected Socialist Minister-President of Provisional Workers' and Soldiers' Council.

<u>1919</u>

April   In midst of economic breakdown, Bavarian Soviet Republic formed. (*Räterepublik*).

May   *Räterepublik* overthrown by rightwing paramilitary forces from Prussia, Wuerttemberg, and Bavaria.

June   Treaty of Versailles; substantial German territorial cessions in Europe and loss of all German overseas colonies, along with strict limits on German military forces and large reparation payments, and strongly implying Germany to blame for the war. Universal vilification of treaty in Germany.

July   Formation of Weimar Republic. Weimar Republic gains control of many formerly state run agencies. Bavarian Army loses peacetime autonomy.

<u>1920</u>   Bavarian Socialist Minister-President Hoffman removed. General Arnold von Mohl ousts Hoffman implied military coup. Bavarian Peoples' Party (BVP) subsequently dominates Bavarian government until Hitler becomes Chancellor in 1933.

<u>1923</u>   Hitler attempts Munich *Putsch* and is jailed in Landsberg Prison. Nazi party begins to steadily gain power in Bavaria.

<u>1933</u>

January   Hitler becomes Chancellor of Germany.

March   Existing Bavarian government forced to resign.

April/May   Bavaria ceases to be independent political unit.

World War II

<u>1943</u>

January	Allies meet at Casablanca; formulation of "unconditional surrender" policy for Germany.

<u>1944</u>

April	Anglo-American Combined Chiefs of Staff (COSSAC) approve CCS 551 calling for an interventionist military government.

<u>1945</u>

February	Yalta Conference. Allies agree their nations shall possess "supreme authority with respect to Germany."
April	Final version of JCS 1067 published.

Postwar Occupation

May

8	V-E Day.
28	Friedrich Schaeffer appointed Minister-President of Bavaria.
31	Third U.S. Army given occupation mission in Bavaria.

June

5	Berlin Declarations: Allied governments "hereby assume supreme authority with respect to Germany, including all the powers possessed by the German government, the High Command and any state, municipal or local government or authority."
9	Areas in Bavaria previously under Seventh U.S. Army control are transferred to Third Army.

July

14	SHAEF dissolved; U.S. forces in Germany fall under United States Forces, European Theater (USFET)
17	Potsdam Conference begins (ending 2 August); establishes political and economic principles to govern occupation of Germany.

August

| 27 | Local level political party organization permitted in Bavaria. |

31   Office of Military Government for Bavaria (OMGB) formed.

September

23   Patton's comments ("The Nazi thing is just like a Democrat and Republican election fight") appear in U.S. newspapers.

26   Military Government Law #8, mandating sweeping denazification, is promulgated.

28   Friedrich Schaeffer is dismissed and replaced by Wilhelm Hoegner.

October

1   Group Control Council is redesignated Office of Military Government for Germany (U.S.) (OMGUS).

9   Walter Muller appointed Director, OMGB.

November

6   First meeting of Council of Minister-Presidents (*Länderrat*).

30   Clay approves establishment of denazification policy board.

<u>1946</u>

January

1   OMGB becomes fully autonomous from Third Army.

27   *Gemeinde* elections in U.S. zone.

March

5   U.S. zone Minister-Presidents and Clay sign the Law for Liberation from National Socialism and Militarism.

April

28   *Landkreis* elections in U.S. zone.

May

26   *Stadtkreis* election in U.S. zone.

June

30   Constitutional Assembly elections in U.S. zone.

July

15   Opening of Bavarian Constitutional Assembly in Munich.

September

6   Secretary of State James Byrnes makes speech in Stuttgart to U.S. zone Minister-Presidents, calling for an autonomous, democratic German state.

20   Bavarian Constitutional Assembly accepts proposed Constitution.

November

5   Clay addresses *Länderrat* disapprovingly about German implementation of denazification in the U.S. zone.

December

1   *Landtag* elections and Constitutional referendum held in U.S. zone.

2   Bavarian Constitution approved.

<u>1947</u>

January

1   Economic fusion of American and British zones is made official (Bizonia).

June

5   Secretary of State George Marshall announces European Recovery Program (Marshall Plan) at Harvard University.

July

11   JCS Directive 1779 supercedes JCS 1067.

<u>1948</u>

March   Soviets walk out of Allied Control Council; beginning of Berlin crisis.

<u>1949</u>

August   Germans in three Western zones vote in free general elections.

September   Official recognition of the Federal Republic of Germany.

MAPS AND ORGANIZATIONAL CHARTS

Map 1. Germany with *Länder* provisional boundaries during the Allied occupation.
Note the map subdivides Bavaria into its five *Regierungsbezirke*: Lower Franconia (Main
Franken), Upper and Middle Franconia (Ober and Mittel Franken), Lower Bavaria and
Upper Palatinate (Nieder Bayern and Oberpfalz), and Upper Bavaria (Oberbayern).
Source: OMGUS, Civil Adminstration Division, *The Civil Administration of U.S. Zone,
Germany* (Headquarters, OMGUS, undated). CARL N-16476.

Map 2. Zonal boundaries during the Allied occupation. Source: OMGUS, *Monthly Report of the Military Governor, U.S. Zone*. Numbers 1 (Headquarters, OMGUS, 20 August 1945). CARL, N-11566.

LEGEND:
———— COMMAND
- - - - STAFF

COMMANDING GENERAL

DEPUTY THEATER COMMANDER

CHIEF OF STAFF

U.S. GROUP CONTROL COUNCIL

DEPUTY CHIEF OF STAFF

SECRETARY OF GENERAL STAFF

GENERAL STAFF

| G—1 | G—2 | G—3 | G—4 | G—5 |

LIAISON DIVISION

SPECIAL STAFF

ADMINISTRATIVE AND SUPPLY SERVICES

COMMANDS

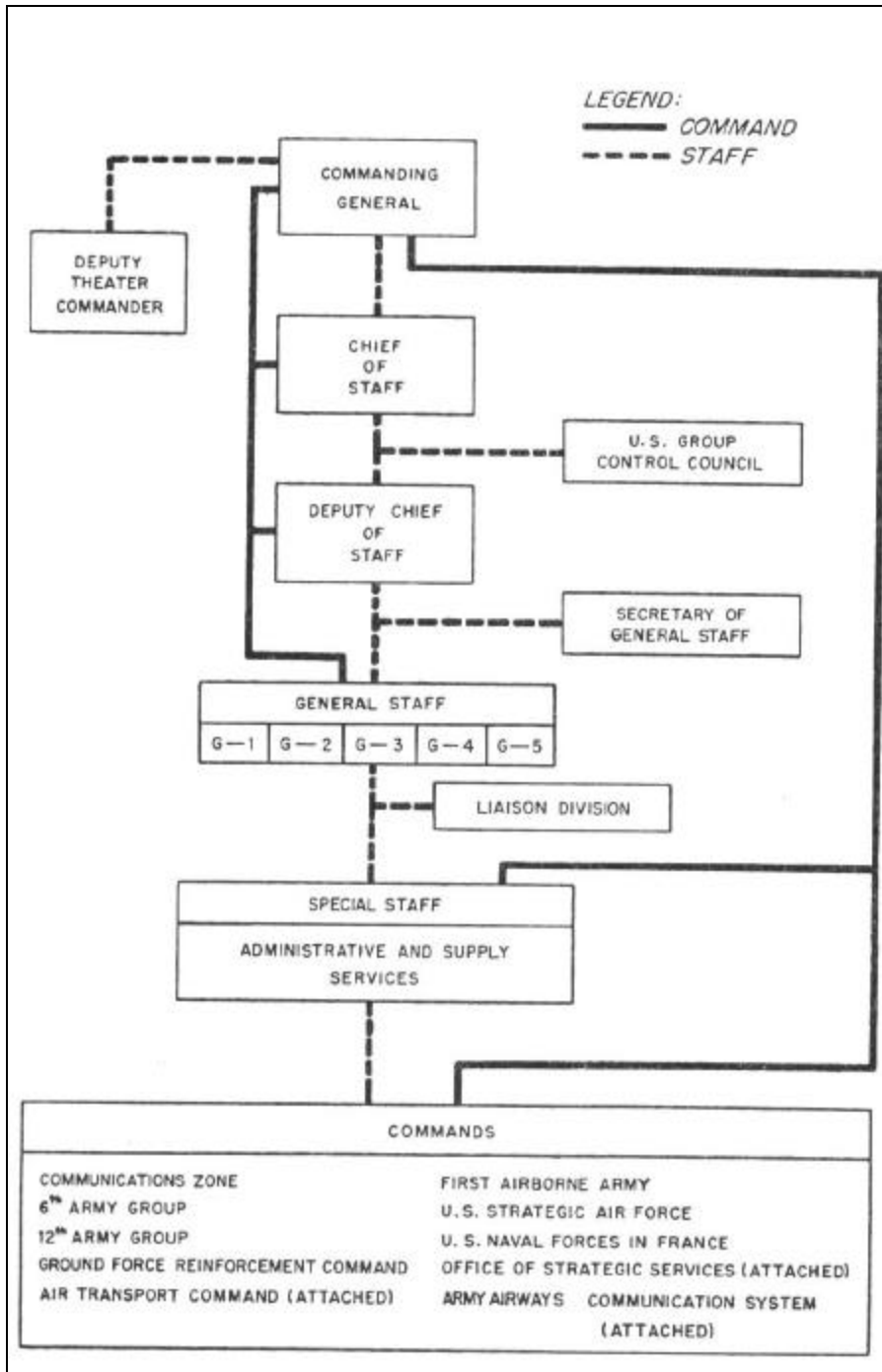|	
COMMUNICATIONS ZONE	FIRST AIRBORNE ARMY
6ᵗʰ ARMY GROUP	U.S. STRATEGIC AIR FORCE
12ᵗʰ ARMY GROUP	U. S. NAVAL FORCES IN FRANCE
GROUND FORCE REINFORCEMENT COMMAND	OFFICE OF STRATEGIC SERVICES (ATTACHED)
AIR TRANSPORT COMMAND (ATTACHED)	ARMY AIRWAYS COMMUNICATION SYSTEM (ATTACHED)

Chart 1. Chain of command of U.S. forces in Germany around V-E Day (8 May 1945). Note that the Group Control Council (GCC), which is responsible for military government, had no direct command over any units. It merely had a technical

relationship with such units. During this time, all military government units fell under tactical command of armies. In Bavaria, military government units fell under Third U.S. Army (at that time under the Twelfth U.S. Army Group). Source: Oliver Fredricksen, *The American Military Occupation of Germany, 1945-1953* (Historical Division, U.S. Army European Command, 1953), 19. CARL 943.087F852a.

MILITARY GOVERNMENT RELATIONSHIPS

EFFECTIVE I APRIL 1946

MILITARY GOVERNOR
IS ALSO THEATER COMMANDER

DEPUTY
MILITARY GOVERNOR

HEADQUARTERS
OFFICE OF MILITARY GOVERNMENT
FOR GERMANY (U.S.)

REAR ECHELONS

SPECIAL AGENCIES
AND FIELD UNITS

OFFICE OF MILITARY
GOVERNMENT FOR
BAVARIA

OFFICE OF MILITARY
GOVERNMENT FOR
WUERTTEMBERG-BADEN

OFFICE OF MILITARY
GOVERNMENT FOR
GREATER HESSE

OFFICE OF MILITARY
GOVERNMENT FOR
BREMEN

OFFICE OF MILITARY
GOVERNMENT FOR
BERLIN DISTRICT

LIAISON AND SECURITY OFFICES AT KREIS LEVEL
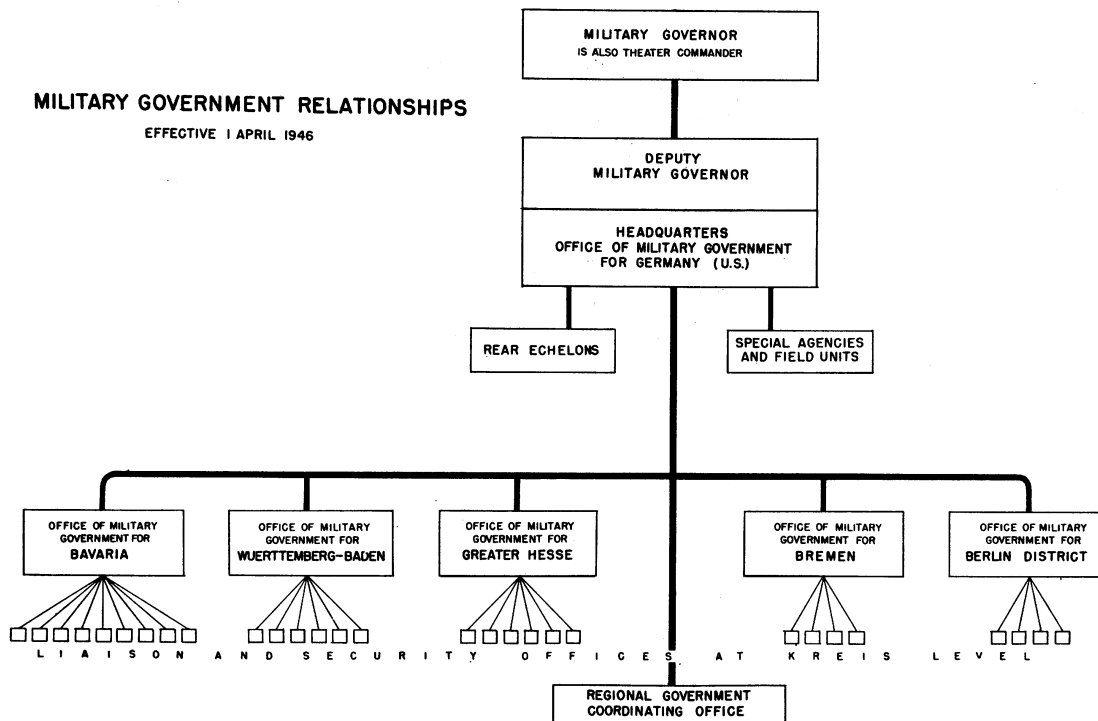
REGIONAL GOVERNMENT
COORDINATING OFFICE

Chart 2. Military government relationships after the GCC became the Office of Military Government for Germany (United States) (OMGUS) in late 1945 and military government units fell under its direct control. Source: OMGUS, *Status Report on Military Government in Germany, U.S. Zone* (Headquarters, OMGUS, 15 March 1946), 15. CARL 943.087G373.
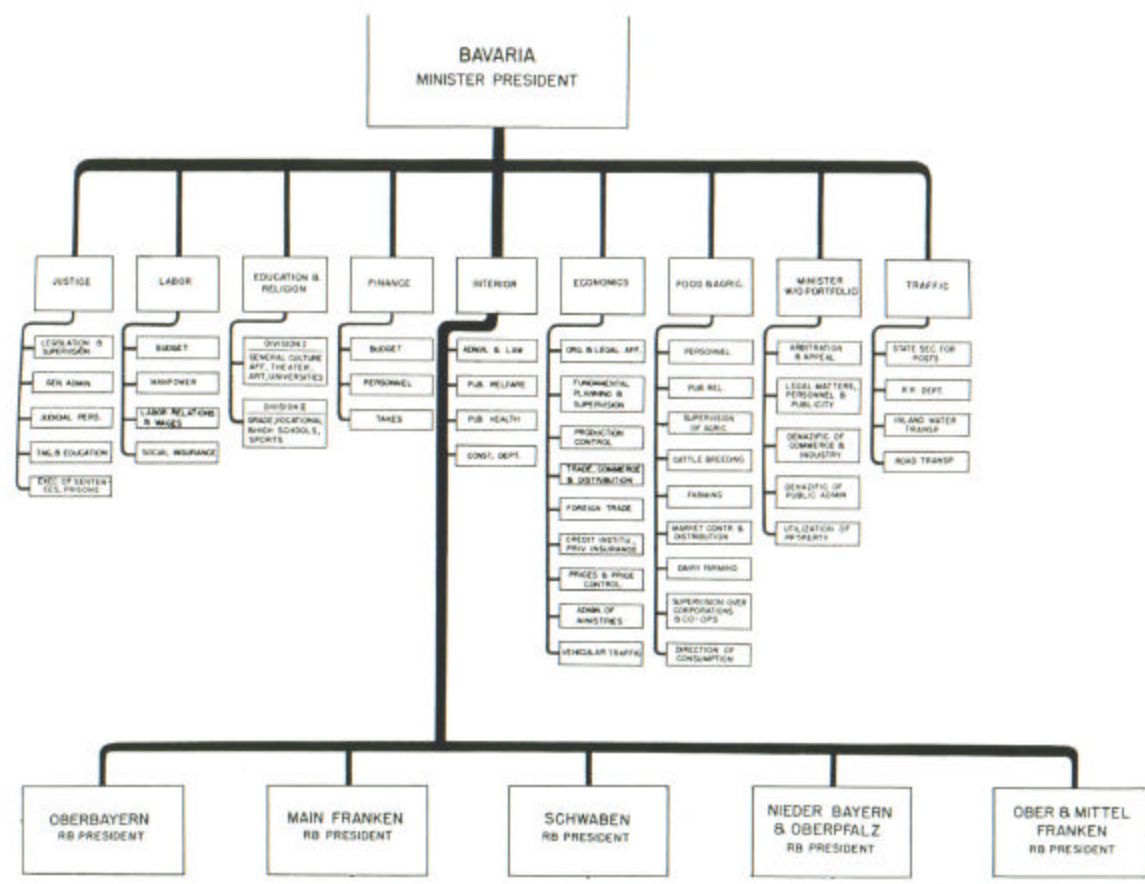
Chart 3. Organization of Bavarian *Land* government during U.S. occupation prior to election of Bavarian parliament (*Landtag*) on 1 December 1946. Note the Minister without Portfolio's major responsibilities involved denazification. Following passage of the Law for Liberation from National Socialism and Militarism, that position became known as Minister for Political Liberation. Source: OMGUS, *Status Report on Military Government in Germany, U.S. Zone* (Headquarters, OMGUS, 15 March 1946), insert. CARL 943.087G373.

GLOSSARY

Bizonia. Term used for the economically united U.S. and U.K. zones.

Bundesrat. Upper House in German government that represents the *Länder*.

Debellatio. Legal concept that permits a conquering nation to subjugate, and thus reform at will, a nation's laws and infrastructure.

Fragebogen. Questionnaire used to identify a person's past Nazi activities.

Gemeinde. Lowest self-governing administrative unit in Germany, usually villages or small towns. (pl. *Gemeinden*).

Gemeinderat. *Gemeinden* governing councils.

JCS 1067. U.S. document that served as principle source of American military government policy.

Kreis. Self-governing administrative unit in Germany, roughly equivalent to an American county (pl. *Kreise*).

Kreistag. *Kreis* governing councils.

Land. Major German political subdivision, roughly equivalent to an American state (pl. *Länder*).

Länderrat. Council of *Land* Minister-Presidents in U.S. zone.

Landkreis. Rural *Kreis* (pl. *Landkreise*).

Landtag. *Land* Parliament.

Morgenthau Plan. Plan developed primarily by Secretary of Treasury Henry Morgenthau with an aim of "pastoralizing" Germany. Some of its provisions appeared in JCS 1067.

Regierungsbezirk. German territorial administrative district, occupying a position between the *Land* and the *Kreis.* (pl. *Regierungsbezirke*).

Spruchkammern. German-run denazification tribunals.

Stadtkreis. Muncipal *Kreis* with population of at least 20,000 (pl. *Stadtkreise*).

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