



## One Year in Berlin. Carlo Schmid as research fellow at the Institute for Comparative Public Law and International Law 1927/28

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In the end, the intermezzo barely lasted a year. In September 1927, the young district judge Karl Schmid (1898-1979) had moved from placid Tübingen to Berlin, the restless capital of the German Empire, to become a research fellow at the Institute for Comparative Public Law and International Law; he returned in the late summer of 1928 and took up a university career. This episode was certainly not decisive for the later fame of the politician, who, after the Second World War, went exclusively by Carlo Schmid. Schmid was to make a name not as a legal scholar in the Weimar Republic, but as a statesman, a founding father of the Federal Republic and provocative thought leader of the *SPD* (Social Democratic Party of Germany), which he joined after 1945.<sup>1</sup> Even within the Max Planck Society, which Schmid joined as a senator in 1951, this backstory had long been forgotten by 1970.<sup>2</sup> Therefore, the question arises: can any traces of his work at the be discovered at today's Max Planck Institute? And what significance do the experiences at the Berlin Institute, on which Schmid reports in his autobiography *Erinnerungen* ("Memories")<sup>3</sup>, published in 1979, in a reserved and strangely smoothed-out manner, have for his future career?

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<sup>1</sup> For a comprehensive overview, cf: *Petra Weber*, Carlo Schmid 1896-1979. Eine Biographie, Frankfurt am Main: Suhrkamp 1998.

<sup>2</sup> Cf: Letter from Ulrike Ringmann to Erika Bollmann, dated 29 May 1970, APMG, II. Abt., Rep. 67, No. 1272.

<sup>3</sup> Cf: *Carlo Schmid*, *Erinnerungen*, Bern: Scherz 1979; also: *Petra Weber*, *Erziehungsroman statt Memoiren: Carlo Schmid's "Erinnerungen"*, in: Magnus Brechtken (ed.), *Life Writing and Political Memoir. Lebenszeugnisse und Politische Memoiren*, Göttingen: V&R unipress 2012, 259-278; with regard to such previous experiences after 1945, see also: *Sabine Kurtenacker*, *Der Einfluss politischer Erfahrungen auf den Verfassungskonvent von Herrenchiemsee. Entwicklung und Bedeutung der Staats- und Verfassungsvorstellungen von Carlo Schmid*, Hermann Brill, Anton Pfeiffer und Adolf Süsterhenn, Munich: Herbert Utz 2017.





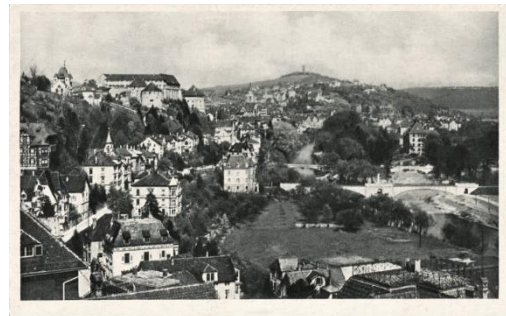
## A "French Swabian". Early Life and Education



*Carlo Schmid after his doctorate in 1923 (AdsD, 6/FOTA003426)*

Regarding his early life, a few biographical keywords must suffice: Carlo Schmid was born into a German-French family on 3 December 1898. Shortly after his birth, the family moved from the South of France back to his father's home in Württemberg, where Schmid received secondary education, and graduated high school in Stuttgart in June 1914. Influenced by the German Youth Movement (*Jugendbewegung*) and the *Wandervogel* (two popular groups at the time, emphasizing the experience of nature and a spirit of community) and rather patriotic, he immediately enlisted for military service at the beginning of the First World War. As a soldier, Schmid served the German Empire, his – literal – fatherland, for four years, partly in the East, but mainly on the Western Front, much to the chagrin of his French mother.<sup>4</sup> It was only after the armistice in November 1918, that he left the military, having been decorated several times in the meantime, and began studying law and constitutional theory (*Staatswissenschaften*) in Tübingen. After graduating (1921/1924), obtaining his doctorate (1923) and a brief stint as a lawyer, Schmid joined the judicial service of Württemberg and was appointed as a judge at the Tübingen district court in early 1927.

According to his autobiography, Schmid found no intellectual satisfaction either in his position as a judge or in Tübingen's distinguished social circles. While his dissertation on the "Legal Nature of Workers' Councils under the Workers' Councils Act", supervised by Hugo Sinzheimer, was still devoted to the flourishing Weimar labour law, from the mid-1920s onwards, he turned to the self-study of classics of international law such as Hugo Grotius and Immanuel Kant.<sup>5</sup> Almost simultaneously to Schmid taking up his position as a district judge, in January 1927, Heinrich Pohl, the director of the international law seminar at the University of Tübingen, offered him a position as an assistant, so that Schmid was able to pursue his academic interests in a formalised setting alongside his work in the judicial service. Pohl, a student of Philipp Zorn, was not only one of the most renowned constitutional and international law scholars in Germany in the interwar period, but had also repeatedly come forward as a



*Placid. Schmid's place of work, Tübingen in the 1920s (Verlag Heinrich Sting, [Public Domain](#))*

<sup>4</sup> Cf: *Weber*, Carlo Schmid (fn. 1), 36.

<sup>5</sup> Cf.: *Schmid* (fn. 3), 119-120.





staunch critic of the Treaty of Versailles.<sup>6</sup> He had also been in dialogue with the Foreign Office for some time, even though his legal expert opinions commissioned by the government, on American claims for damages from the submarine war for example, often disappeared in the drawers of the office, unused, due to methodological shortcomings and a "rather spirited tone"<sup>7</sup>. Similarly, a research project by Pohl, intended to investigate the legal situation in the territories of the Reich occupied under the Treaty of Versailles and generously funded by the Foreign Office for several years, remained unfinished.<sup>8</sup>

## Fighting Versailles. Schmid Joins the Institute

Nevertheless, it was this combination of international law and foreign policy that was to determine Carlo Schmid's future career. Heinrich Pohl not only paved the way for him to pursue an academic career in Tübingen, but apparently also put him in touch with the Institute for Comparative Public Law and International Law in Berlin. This research institution under management of the *Kaiser-Wilhelm-Gesellschaft* (Kaiser Wilhelm Society) was established in 1924/25 with funds from the German government and was primarily dedicated to strengthen international law in Germany, to make it internationally competitive and to systematically provide strategic support for German diplomacy, especially in the conflicts surrounding the interpretation and implementation of the Treaty of Versailles.<sup>9</sup> In his memoir, Schmid avoids any mention of the national-conservative Pohl and only vaguely explains his move to Berlin by saying that Viktor Bruns, the founding director of the institute, preferably recruited young employees among the top law school graduates in Württemberg.<sup>10</sup> However, it is hard to imagine that Bruns would have approached the young judge from Tübingen without a recommendation or pointer by Pohl. In any case, Bruns and Pohl undoubtedly shared the idea

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<sup>6</sup> Cf: *Heinrich Pohl*, Die belgischen Annexionen im Versailler Verträge, Stuttgart: Kohlhammer 1927; *Heinrich Pohl*, Neues Völkerrecht auf Grund des Versailler Vertrages, Berlin: Ferdinand Dümmler 1927.

<sup>7</sup> [Georg] Martius, memorandum dated 30 May 1923, PA AA, R 54330, translated by the editor.

<sup>8</sup> Collection of correspondence and documents on this project, PA AA, R 54330.

<sup>9</sup> Cf: *Ingo Hueck*, Die deutsche Völkerrechtswissenschaft im Nationalsozialismus. Das Berliner Kaiser-Wilhelm-Institut für ausländisches öffentliches Recht und Völkerrecht, das Hamburger Institut für Auswärtige Politik und das Kieler Institut für Internationales Recht, in: Doris Kaufmann (ed.), Geschichte der Kaiser-Wilhelm-Gesellschaft im Nationalsozialismus, vol. 2, Göttingen: Wallstein 2000, 490-527 (490-491; 499-504); *Michael Stolleis*, Geschichte des öffentlichen Rechts in Deutschland, vol. 3: Staats- und Verwaltungsrechtswissenschaft in Republik und Diktatur, 1914-1945, Munich: C.H. Beck 1999, 89.

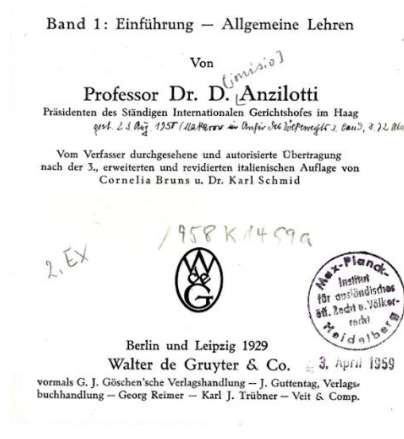
<sup>10</sup> Cf.: *Schmid* (fn. 3), 121.





that the "fight against Versailles" should not least be fought with the means of international law, and Schmid also embraced this cause with great passion.<sup>11</sup>

There are only scant sources on Carlo Schmid's activities at the Institute, which was housed in the premises of the old Berlin Palace in the city centre. No documents or correspondence of his have survived in the archives of the Max Planck Society.<sup>12</sup> As far as can be reconstructed, after his arrival in September 1927, Schmid was primarily concerned with issues of reparations and restitution arising from the Treaty of Versailles, as this dry field of work is reflected in two scientific publications.<sup>13</sup> Together with [Cornelia Bruns](#), the Institute's librarian, he also translated the well-known textbook by Dionisio Anzilotti from Italian to German.<sup>14</sup> More relevant is his involvement in the German-Polish and German-Czechoslovak arbitration negotiations, in which he took part as an assistant to Erich Kaufmann and Viktor Bruns respectively.<sup>15</sup> These mixed arbitration tribunals, established in accordance with the principles of the Treaty of Versailles, primarily negotiated property disputes which arose between nations as a result of the implementation of the peace treaty of 1919 and which were generally considered apolitical.<sup>16</sup>



Schmid must have felt disillusioned by this field of activity, for which he was predestined due to his French language skills. He considered the trips to the venues of the arbitration tribunals in Paris, Geneva and Venice or to the Permanent Court of International Justice in The Hague inspiring, and, because of his visits to numerous museums, culturally enriching.<sup>17</sup> However, he disliked the actual negotiations with their tug-of-war between the parties, in which the "legal arguments that were attached to one's political statements

<sup>11</sup> Cf: *Weber*, Carlo Schmid (fn. 1), 59-67.

<sup>12</sup> Similarly: *Kurtenacker* (fn. 3), 43, fn. 234.

<sup>13</sup> Cf.: *Karl [Carlo] Schmid/Ernst Schmitz*, Der Paragraph 4 der Anlage zu Sektion IV des Teils X des Versailler Vertrags, *HJIL* 1 (1929), 251-320; *Karl [Carlo] Schmid/Ernst Schmitz*, Zur Dogmatik der Sektion V des Teiles X des Versailler Vertrags, *HJIL* 2 (1931), 17-85.

<sup>14</sup> Cf.: *Dionisio Anzilotti*, *Lehrbuch des Völkerrechts. Band 1: Einführung – Allgemeine Lehren*, Authorised Transl. Cornelia Bruns / Dr. Karl [Carlo] Schmid, Berlin: De Gruyter 1929.

<sup>15</sup> On Kaufmann's activities in this context, cf: *Frank Degenhardt*, *Zwischen Machtstaat und Völkerbund*. Erich Kaufmann (1880-1972), Baden-Baden: Nomos 2008, 107-109.

<sup>16</sup> Cf: *Jakob Zollmann*, Nationality, Property, and the Mixed Arbitral Tribunals, 1914 to c. 1930, in: Hélène Ruiz Fabri/Michel Erpelding (eds.), *Mixed Arbitral Tribunals, 1919-1939*. An Experiment in the International Adjudication of Private Rights, Baden-Baden: Nomos 2023, 113-157 [details of the arbitral tribunals mentioned, but no mention of Schmid in the appendix: 556-557, 574]; *Jakob Zollmann*, Reparations, Claims for Damages, and the Delivery of Justice. Germany and the Mixed Arbitral Tribunals (1919-1933), in: David Deroussin (ed.), *La Grande Guerre et son droit*, Issy-les-Moulineaux: LGDJ 2018, 379-394.

<sup>17</sup> Cf.: *Schmid* (fn. 3), 125-131.





were little more than the drapery with which tangible interests embellished themselves (...)."<sup>18</sup> Admittedly: this criticism of the political instrumentalization of law was not too different from the scepticism with which many German constitutional and international law experts in the 1920s viewed the, allegedly quixotic, dogmatism of formal, purely positivist treaties and legal rules.<sup>19</sup> "Anti-positivist" thinkers were strongly represented among the co-founders and leaders of the institute: Heinrich Triepel and Rudolf Smend as well as [Hermann Heller](#) and Erich Kaufmann, albeit for different reasons, all criticized, sometimes staunchly, formalistic legal thinking, devoid of political contextualisation. Of course, there was also Carl Schmitt, who did not enter into a closer relationship with the Institute until after 1933, but had already covered the issue of the alleged conceal of political power struggles through legalism extensively in his Weimar writings. Carlo Schmid was probably more fascinated by him at the time than he would later bring himself to admit.<sup>20</sup>

## Return to Tübingen, Habilitation and Nationalist Polemics

Carlo Schmid seems to have wavered during this time as to whether he should give up his painstaking work at the institute in favour of a commitment to politics or an academic career; the decisive factor for the latter was probably the strain of commuting between Berlin and Tübingen as well as his family's unwillingness – and perhaps also his own discomfort – to permanently settle in the capital.<sup>21</sup> In August 1928, Schmid reported back to the district court in Tübingen, and in autumn he resumed his teaching activities at the university under Heinrich Pohl, who shortly afterwards recommended one of his doctoral students, Berthold Schenk von Stauffenberg, as a new research fellow at the institute.<sup>22</sup> Nevertheless, Carlo Schmid had not cut all ties with the Institute. Not only did he continue to support Erich Kaufmann as a part-time secretary at the German-Polish Court of Arbitration, but he also aimed for his habilitation thesis in the field of international jurisdiction to be useful for diplomacy

### TÜBINGER ABHANDLUNGEN ZUM ÖFFENTLICHEN RECHT

HERAUSGEGEBEN  
VON  
H. GERBER, A. HEGLER, L. v. KOEHLER, C. SARTORIUS,  
A. SCHOETENSACK  
O. O. PROFESSOREN DER RECHTE AN DER UNIVERSITÄT TÜBINGEN

29./30. HEFT

DIE  
RECHTSPRECHUNG DES STÄNDIGEN  
INTERNATIONALEN RICHTSHOFS  
IN RECHTSSATZEN DARGESTELLT

VON

Dr. KARL SCHMID  
LANDRICHTSRAT  
PRIVATDOZENT AN DER UNIVERSITÄT TÜBINGEN



1-9-3-2  
FERDINAND ENKE VERLAG STUTTGART

*Carlo Schmid, Die Rechtsprechung  
des Ständigen Internationalen  
Gerichtshofs*

<sup>18</sup> Schmid (Fn. 3), 129, translated by the editor.

<sup>19</sup> Cf.: Manfred Gangl (Hrsg.), Die Weimarer Staatsrechtsdebatte. Diskurs- und Rezeptionsstrategien, Baden-Baden: Nomos 2011; Stolleis (Fn. 9), 158-186.

<sup>20</sup> Cf.: Schmid (fn. 3), 139-141; even after 1945, a noticeable reverence had persisted, cf: Letter from Carlo Schmid to Carl Schmitt, dated 16 May 1947, AdsD, NL Carlo Schmid, 609.

<sup>21</sup> Cf: Weber, Carlo Schmid (fn. 1), 75.

<sup>22</sup> Cf: Alexander Meyer, Berthold Schenk Graf von Stauffenberg (1905-1944). Völkerrecht im Widerstand, Tübinger Schriften zum internationalen und europäischen Recht, vol. 57, Berlin: Duncker & Humblot 2001, 42-53; At the KWI, Stauffenberg seems to have essentially taken over Schmid's areas of responsibility.







and foreign policy. As the quintessence of his practical experience at the International Law Institute, so to speak, he systematically analysed the previous case law of the Permanent Court of International Justice in The Hague and attempted to abstract general legal principles from its decisions to serve as an argumentation aid in international negotiations.<sup>23</sup> The result of this detailed and precise work, a manuscript of almost 300 pages, was submitted in spring 1929, accepted by the Faculty of Law and Economics at the University of Tübingen, and received a favourable review. The process was concluded in November with Schmid's inaugural lecture on questions of liability under international law towards foreign nationals.<sup>24</sup>

Why Carlo Schmid omitted any reference to Heinrich Pohl – who had, after all, written an exuberant initial evaluation of the work<sup>25</sup> – in the foreword to the printed version of the habilitation, dated autumn 1931, but expressly thanked Viktor Bruns, can hardly be clarified for the time being. While the relationship with Pohl, who had in the meantime accepted a chair at the university of Breslau, had presumably been difficult from the outset, Schmid had an interest in a conciliation with Bruns, as there had been an éclat between the two in the previous year. The cause had been an anonymous article by Schmid in a Christian-nationalistic trade union newspaper, which commented on the reorganisation of Germany's reparation obligations in the wake of the Young Plan from a legal perspective. In particular, the article sharply

criticised the compromise negotiated at an intergovernmental conference in The Hague in January 1930 on what sanctions should be possible in the event of a breach of the envisaged payment obligations. While under current international law sanctions had to be “adequate to the violations of law”, Schmid said, the Hague Compromise would give the creditor states the right to “do as they please” in Germany<sup>26</sup>. Although this was a polemical exaggeration, it was in line



The bone of contention: Schmid's article on the “risk of sanctions”

<sup>23</sup> Cf.: Karl [Carlo] Schmid, Die Rechtsprechung des Ständigen Internationalen Gerichtshofs in Rechtssätzen dargestellt, Stuttgart: Ferdinand Enke 1932.

<sup>24</sup> Cf: Weber, Carlo Schmid (fn. 1), 70.

<sup>25</sup> Cf: Weber, Carlo Schmid (fn. 1), 70.

<sup>26</sup> Die Sanktionsgefahr. Ein juristisches Gutachten über die Klauseln des Haager Abkommens, in: Der Deutsche. Tageszeitung für deutsche Volksgemeinschaft und ein unabhängiges Deutschland, 25 February 1930, 2, translated by the editor; On the context of the sanctions debate, see for example: Franz Knipping, Deutschland, Frankreich und das Ende der Locarno-Ära 1928-1931. Studien zur internationalen Politik in der Anfangsphase der Weltwirtschaftskrise, München: De Gruyter 1987, 112-119; for further background see: Philipp Heyde, Das Ende der Reparationen. Germany, France and the Young Plan 1929-1932, Paderborn: Schöningh 1998.





with the tenor of the nationalist campaigns that had been directed against the Young Plan since the previous autumn and at the same time reflected the suspicion of constitutional law and international law scholarship against a positivist overreach in treaty interpretation and a depoliticization of German sovereignty.

As a result of this newspaper article, which caused a stir even within the *Reich* government, Viktor Bruns thought it necessary to exclude Schmid from any further involvement in the German-Polish court of arbitration. Although it is hardly possible to clarify how public Schmid's authorship was within government circles, it was acknowledged within the institute. In view of the fact that the German authorities expected loyal support and apolitical legal advice from the Institute, Bruns felt that a demonstrative separation was inevitable, even in the case of a marginal employee like Schmid.<sup>27</sup> However, this did not result in a lasting fall-out. Neither Bruns, who may well have held similar views on the matter, nor Schmid parted with lasting resentment, as evidenced by the friendly acknowledgement in Schmid's habilitation thesis and several letters up to 1941.<sup>28</sup>

## After 1945: From Academia to Politics

What is the outcome of Carlo Schmid's time at the Institute? Schmid's work in Berlin is not very fruitful from a history-of-science perspective. Working in a subordinate position, he was always more of a follower and observer of the way the theory and practice of international law came together at the Institute. However, if one takes a step back and adopts a biographical perspective, two aspects become apparent: firstly, Schmid's time as a research fellow at the Institute was a phase of politicisation. This only seems to be a paradoxical finding: the experience that the arbitration proceedings, implementing the Treaty of Versailles and governed by international law, would not even begin to smother the embers of power politics of the Versailles order meant a training in *Realpolitik*, the essence of which Schmid summarised in his memoirs in the succinct formula: "Jurisprudence is no substitute for politics (...) "<sup>29</sup>. He returned to Tübingen



*Carlo Schmid speaks before the Federal Council, 1969 (BArch, B 145 Bild-F029089-0006 / Schaack, Lothar / CC-BY-SA 3.0)*

<sup>27</sup> With a still slightly offended undertone, see: *Schmid* (fn. 3), 142.

<sup>28</sup> Cf: *Weber*, Carlo Schmid (fn. 1), 72, 133.

<sup>29</sup> *Schmid* (Fn. 3), 130, translated by the author.





as a nationalist, who fought the "Versailles Dictate" perhaps more bitterly than ever before and cultivated contacts well into the right-wing intellectual milieu.<sup>30</sup>

Secondly, new perspectives emerged after 1945. Despite his nationalist stance, Carlo Schmid had been able to avoid any deeper involvement in National Socialism, so that after the end of the war, he was seen as an unencumbered newcomer. Although he was even briefly considered as a possible director of the Institute for Comparative Public Law and International Law, which was relocated to the western zones in 1946,<sup>31</sup> he now opted for a political career that took a breathtakingly steep upward trajectory, first in Württemberg and the French occupation zone, then in the early Federal Republic.<sup>32</sup> A closer look shows that he built on the experiences of his intermezzo in Berlin and took the endeavour to define the German legal situation under international law and to establish legal obligations for the Allied Powers to a new level. Since his fulminant appearance at the Munich Conference of the Minister Presidents of the German states in June 1947, Schmid campaigned for a formalisation and legalisation of the relations with the Allied Powers within the framework of an occupation statute (which he had been discussing with Erich Kaufmann since the spring of 1947).<sup>33</sup> During the deliberations on the new German constitution (*Grundgesetz*) at Herrenchiemsee castle and in the Parliamentary Council in 1948/49, he also strongly advocated for an explicit commitment to international law, the peaceful settlement of disputes by arbitration tribunals and the voluntary limitation of sovereignty. It is obvious that this echoed the founding ideas and guiding principles of the International Law Institute. As Schmid put it in the Parliamentary Council in September 1948, invoking the law is "the only weapon available to the weak and disempowered (...)."<sup>34</sup> The Institute for Comparative Public Law and International Law had been founded for no other purpose.

*Translation from the German original: Sarah Gebel*

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<sup>30</sup> Cf: *Weber*, Erziehungsroman (fn. 3), 266; *Weber*, Carlo Schmid (fn. 1), 75-76.

<sup>31</sup> Cf: *Felix Lange*, Carl Bilfingers Entnazifizierung und die Entscheidung für Heidelberg: Die Gründungsgeschichte des völkerrechtlichen Max-Planck-Instituts nach dem Zweiten Weltkrieg, HJIL 74 (2014), 697-731 (710-712, 715-716).

<sup>32</sup> Cf: *Hellmuth Auerbach*, Die politischen Anfänge Carlo Schmid's. Kooperation und Konfrontation mit der französischen Besatzungsmacht 1945-1948, VfZ 36 (1988), 595-648.

<sup>33</sup> Cf. *Karl [Carlo] Schmid*, Die Neuregelung des Besatzungsrechtes, Jahrbuch für internationales und ausländisches öffentliches Recht 1(1947), 123-128; see also: Letter from Carlo Schmid to Erich Kaufmann, dated 5 March 1947, AdsD, NL Carlo Schmid, 601.

<sup>34</sup> Zweite Sitzung des Ausschusses für Grundsatzfragen 16 September 1948, Z 5/29, Bl. 203-224, in: Deutscher Bundestag/Bundesarchiv (eds.), Der Parlamentarische Rat, 1948-1949. Akten und Protokolle, vol. 5: Ausschluß für Grundsatzfragen, Boppard am Rhein: Oldenbourg Wissenschaftsverlag 1993, 8.

