

GRUNDGEDANKEN DER  
AMERIKANISCHEN VERFASSUNG UND  
IHRE VERWIRKLICHUNG, by Karl Carstens.  
Duncker & Humblot, Berlin, 1954. Pp. 266.

Otto Kirchheimer

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The *Deskbook on Land Titles and Land Law* is recommended as a brief statement of the law on the problem with sufficient references to enable the lawyer to transfer to one of the standard treatises on property.

Arthur B. Custy\*

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There has been a flood of German translations of American constitutional and political literature since the war; but dissertations on selected aspects apart, there has been no original German presentation of our constitutional scene. For this reason Carstens' slender but substantial book fills an important gap. It presents to the interested German public both a short outline of the underlying political principles and a more detailed guide through the maze of constitutional doctrines and interpretations. The barriers to such an attempt are formidable. There are first the linguistic difficulties: concepts often lose their concise meaning in the process of translation; yet, the author has in most cases overcome this barrier successfully; if his attempt at maximally close correspondence of concepts may at times offend aesthetic feelings, his German reader will at least know what the author is talking about. The other difficulty derives from the need for selectiveness in presentation. Which of the myriad of constitutional interpretations are relevant enough to be treated in more detail and which may be summarized? The author has selected the problems connected with the civil liberties complex with all the nuances of the fourteenth amendment interpretations for more detailed treatment. His German reader is likely to appreciate especially his discussion of the Jehovah's Witnesses cases, the Communist, and Negro problems. The book was published before the decision in *Brown v. Board of Education* and related cases, and the author's discussion of judicial tendencies in the field foreshadowed these recent developments.

Given the magnitude of his task, mistakes and omissions are surprisingly few. The author unaccountably perseveres in thinking of Justice Roberts as having died in office. While relations between emergency situations and the metamorphosis of the

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clear and present danger test are discussed in detail, the German reader will find no material leading him, hopefully or dejectedly, as the case may be, from *Ex parte Milligan* to *Duncan v. Kahana-moku*. Concentrating on the contemporary features of interstate commerce the author has done wonders in compressing its discussion into a few pages; yet, his reader wondering about actual practices and how they fared in the courts has to miss the string of cases leading from *Leisy v. Hardin* to *Prudential Insurance Co. v. Benjamin*. Does the fourteenth amendment really fail to apply to private power situations? In the light of his own discussion of the southern primary cases and in the light of *Marsh v. Alabama*, which he omits, not to speak of the possibility that the Court in its 1955 composition might still change its mind and take a new look at *Rice v. Sioux City*—I would not be willing to answer this question with the same degree of assertiveness. And, finally, with many of our compatriots the author seems to share the misconception that our double-jeopardy concept in its present interpretation provides adequate protection against continued harassment. The author thinks it to be even more far reaching than *ne bis in idem*, as it protects not only against a second conviction but against a second indictment. Unfortunately, this is not the case. *Ne bis in idem* often provides a more effective protection, as it prevents a second conviction arising out of the same factual situation, whereas the current interpretation of double jeopardy allows a second indictment for the same set of historical facts. The prosecution needs only to be careful enough to vary the legal theory under which to bring the identical facts.

But these are only minor points. The author should be congratulated for having performed a most difficult job and for having given his German public a satisfactory insight into the operation of our constitutional law and thinking, including all its imperfections and problems. The appended bibliography is adequate but far from complete. Future efforts in this field might guide their readers toward more comprehensive bibliographical listings in American publications.

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