

MEMORIAL: DONALD P. KOMMERS – A MEMORIAL COLLECTION

Donald Kommers – A Tribute

By Dieter Grimm*

I don't remember how I got notice of a book on the German Constitutional Court by an American author named Donald P. Kommers.¹ When the book appeared in 1976, I was working on constitutional adjudication because I thought that the German literature did not pay enough attention to the political function of constitutional courts and their role in a democratic system. I published one article on the subject in 1976 in the *Juristenzeitung*.² I published another contribution a year later in a volume on the use of the social sciences in public law. The contributors had been asked to give a short account of the existing literature in the field. I complained that a *Standardwerk* on the Federal Constitutional Court was missing.³ A book by the political scientist Heinz Laufer, which by its size and ambition could have filled the gap, treated the main democratic problems of judicial review superficially or missed them completely.⁴ The legal literature, on the other hand, was mostly doctrinal and avoided the political implications of the subject. I mentioned Kommers' 1976 book at the end of my survey of the deficiencies in the literature, noting that his work published after my manuscript was completed. But I remember very well that in this book, published by a foreigner, I found everything that I felt was missing in the German literature on the subject. For me it was a pathbreaking work.

Even more important was Donald Kommers' seminal work *The Constitutional Jurisprudence of the Federal Republic of Germany*, which appeared for the first time in 1989 when I was already a justice of the Constitutional Court.⁵ He had consulted me (and other members of the Court) about which judgments to include in the volume. This book provided a sensitive introduction to German constitutional law and the role and methodology of the Constitutional Court. These original contributions were illustrated with translated excerpts from the Court's most important judgments. Kommers' book became the single most important source on Germany for foreign scholars and students of comparative constitutional law – at that time not yet the booming field that it has become in the last twenty years. When I started to teach comparative constitutional law in the United States or other countries after my term on the bench had reached its end in 1999, I heavily relied on Donald Kommers' work.

I particularly admired Kommers' translation of the Court's judgments, which is a real challenge given the specific character of German legal reasoning (*Dogmatik*). Donald Kommers, whose spoken German was always a bit rusty, proved to be in full command of the written German language as it unfolded the Court's reasoning. After the changes of 1989/90 in the world, when the German Constitutional Court became a role model for many former authoritarian systems

*Former Justice of the Federal Constitutional Court of Germany (1987-1999); Professor of Law at Humboldt University Berlin.

¹See DONALD P. KOMMERS, *JUDICIAL POLITICS IN WEST GERMANY: A STUDY OF THE FEDERAL CONSTITUTIONAL COURT* (1976).

²Dieter Grimm, *Verfassungsgerichtsbarkeit im demokratischen System*, 22 JURISTENZEITUNG 697 (1976).

³See Dieter Grimm, *Verfassungsgerichtsbarkeit – Funktion und Funktionsgrenzen im demokratischen Staat*, in II SOZIALWISSENSCHAFTEN IM STUDIUM DES RECHTS – VERFASSUNGS- UND VERWALTUNGSRECHT 83 (Wolfgang Hoffmann-Riem ed., 1977).

⁴HEINZ LAUFER, *VERFASSUNGSGERICHTSBARKEIT UND POLITISCHER PROZESS* (1968).

⁵DONALD P. KOMMERS, *THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY* (1989).

with newly established constitutional courts, the Court began to translate important decisions into English. But the translators, anxious to avoid legal inaccuracies, clung to the German flow and phraseology, and produced translations hard to digest for English speaking readers. I often noticed that readers who were told that this Court was an influential institution, had difficulties to see why from reading the official translations. But Donald Kommers' translations the judgments read like original English texts. He combined complete faithfulness to the German reasoning with readability in an admirable way. How serious he was about it can be seen from his introductory note on translation.

I was privileged to meet Donald Kommers many times, in Karlsruhe, in other German settings, in the United States, including his home institution, the University of Notre Dame. I know of no one who excels more than Don as a bridge builder between the United States and Germany, two countries that hold their constitution in high esteem. I keep a fond memory of him. And I am glad that his service to the two legal communities and to the field of comparative constitutional law will be continued by Russell Miller.