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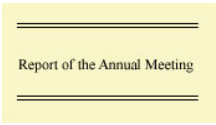

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THOUGHTS ON THE GERMAN CONFEDERATION 1815-1866

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The Confederation or *Bund*[1] of 1815 was a characteristic product of the Restoration era. It was also one of the longest enduring aspects of the Vienna settlement. Yet in the history of Germany it occupies a twilight position. Though representing an important stage in German constitutional development, both on a local and on a national level, it has been overshadowed by its predecessor, the Holy Roman Empire, and by its successor, the Prussian-German Empire of Bismarck and William II. An object of distaste for many Germans, it has also been a neglected area for historical examination. Not until the years after the Second World War, with revived interest in German and European federalism, and reconsideration of the role of conservative forces and institutions in the Restoration era, has there been any real effort towards re-examining the *Bund* and its place in German and European history.

The general history of the *Bund* is familiar enough. But relatively unknown, and all too often misunderstood, are important aspects of its machinery, functions and achievements. In part this can be explained by the complexity of the subject and by the elusive nature of the *Bund's* history. But in addition the obscurity surrounding the *Bund* derives from the fact that the Revolutions of 1848 and Bismarck's creation of the Second Reich are more stirring stories. And while *Vormärz* has been a fruitful quarry for intellectual history, most general works have labelled the period 'the Quiet Years', and have moved quickly from the decisions of the Congress of Vienna, with a brief nod at the Karlsbad Decrees and perhaps a slightly longer pause over the *Zollverein*, to the liberal and national frustrations of 1848. The end of the *Bund* is barely noticed in the celebrations of the victory at Königgrätz. Subordinated to the policies of Metternich and Bismarck, the tale is summed up in Heine's famous doggerel:

O Bund!
Du Hund!
Du bist nicht gesund!

From its earliest years German historians and especially jurists took the *Bund* sufficiently seriously to attempt to produce adequate histories

[1] I use the word *Bund* in view of the difficulty of translating the term, and to avoid the confusion of the *Cambridge Modern History* which lists A. F. Pollard's chapter in the table of contents as 'The Germanic Federation' and heads the chapter itself 'The Germanic Confederation.'

of it. Five years before its demise Heinrich von Treitschke proposed to tackle the subject. In 1879 in the preface to his *History of Germany in the Nineteenth Century* he wrote that "It was my original plan to write only the history of the Germanic Federation." [2] Seventeen years and five thick volumes [3] later death overtook him, when his projected 'short, incisive' account of the Confederation, [4] now grown into a large scale *History*, had reached only the eve of 1848. His inability to confine his study to the *Bund* as he had originally intended ought to be sufficient warning to any historian proposing to venture on a subject so difficult to disentangle from the general history of Germany. Perhaps this explains, too, why the historiography of the *Bund* is so meagre. For the English reader with both leisure and determination Treitschke's brilliant pages still provide the most detailed, if hostile, treatment of the *Bund's* first three decades. Apart from A. F. Pollard's brief chapter in the *Cambridge Modern History* [5] there is little beyond the first two volumes of Sir Adolphus Ward's *Germany,* [6] knowledgeable but utterly unreadable.

Thanks to the attractions of other fields and to the generally bad press which the Prussian school and its successors have given the *Bund*, the German reader is little better off. Such contemporary works as those of Ilse, Klüber, Kaltenborn, or Aegidi [7] are enough to deter all but the hardiest. Fischer's *Die Nation und der Bundestag* [8] is now eighty years old, and has been succinctly labelled by a leading constitutional authority as 'inadequate'. [9] By far the best analysis of the *Bund* is found in E. R. Huber's encyclopaedic *Deutsche Verfassungsgeschichte seit 1789.* [10] Though naturally written from a constitutional-legal standpoint, Huber interprets his theme very broadly and includes much political and social analysis. But his first two volumes carry the story only to 1850, and have to deal with a myriad of state constitutions as well as general German developments. And his thousand-page tomes are in a sense self-defeating, for German students understandably by-pass them in favour of older and briefer works which relegate the *Bund* to its accustomed obscurity.

[2] *Treitschke's History of Germany in the Nineteenth Century.* Translated by Eden and Cedar Paul. (New York, 1915). I, xiii.

[3] *Deutsche Geschichteim neunzehnten Jahrhundert.* (Leipzig, 1879-94).

[4] William Harbutt Dawson, Introduction to *Treitschke's History of Germany,* I,xi.

[5] Vol X, *The Restoration,* (New York, 1911), 340-82.

[6] Sir Adolphus William Ward, *Germany, 1815-1890,* 3 vols., (Cambridge, 1916).

[7] L. F. Ilse, *Geschichte der deutschen Bundesversammlung,* 3 vols. (Marburg, 1861-62); J. L. Klüber, *Öffentliches Recht des Teutschen Bundes und der Bundesstaaten.* 4th ed. (Frankfurt am Main, 1840); L. K. Aegidi, *Die Schlussakte der Wiener Ministerial Konferenzen,* 2 vols. (Berlin, 1860-1869); Karl von Kaltenborn, *Geschichte der deutschen Bundnisverhaltnisse ... 1806-1856.* 2 vols. (Berlin, 1857).

[8] Karl Fischer, *Die Nation und der Bundestag,* (Leipzig, 1880).

[9] Fritz Hartung, *Deutsche Verfassungsgeschichte vom 15 Jahrhundert bis zur Gegenwart,* (Stuttgart, 1950), 175.

[10] Band I: *Reform und Restauration, 1789-1830,* (Stuttgart, 1957); Band II: *Der Kampf um Einheit und Freiheit 1830-1850,* (Stuttgart, 1960).

One of Huber's unique merits is his extensive use of what is the essential source for any study of the *Bund* — the great series of protocols of its central organ, the *Bundesversammlung.*[11] Amounting to upwards of sixty folio volumes, their richness is increased by their even more voluminous appendices. Yet a recent bibliographical article could still endorse A. O. Meyer's description of them as 'a published but still unused historical source.'[12] They provide an admirable record not only of the decisions recorded by the *Bundesversammlung*, but of the arguments which preceded the recording of a decision. Though equipped with good contemporary indexes and with an analytical table of contents in each volume, they constitute a difficult source in view of their size and the often technical nature of their language. Moreover, like all protocols, they conceal as much as they reveal. And one is soon driven to the discouraging conclusion that they have to be supplemented by an examination of relevant material in the archives of the constituent states.

Behind the first protocols lay two years of preparation for the new federal structure. The Congress of Vienna, besides being a European congress, was also a German constituent assembly, obligated by Article VI of the First Treaty of Paris to provide for the organization of Germany on a federal basis. Austrian and Prussian joint proposals for a tolerable federal system with a three tiered organization were opposed by Bavaria and Württemberg. But it was Austro-Prussian dissension over the Polish-Saxony question which brought the labours of the five-power German Committee to a halt, and it was Napoleon's alarming return from Elba which turned desultory drafting and redrafting of possible constitutions into swift resolution. By June 8, in remarkably speedy fashion, and with only two formal sessions, the twenty articles of the *Bundesakte* were approved and the first eleven included in the composite Treaty of Vienna — a striking illustration of the degree to which the German question was a European one.[13] By September, with the delayed and reluctant adhesion of Baden and Württemberg, all but one of the forty-one states marked out by the Congress for reconstitution had joined the new *Bund.* In the rush the tiny possessions of the Landgrave of Hessen-Homburg were overlooked. He did not enter until 1817, and even then survived for the next twenty years without a vote in the *Bundesver-*

[11] *Protokolle der deutschen Bundesversammlung mit den loco dictaturæ gedruckten Beilagen.* Useful extracts from the protocols showing the decisions recorded by the *Bundesversammlung* are found in P. A. Guido von Meyer, *Corpus Confœderationis Germaniæ, oder Staatsakten für Geschichte der öffentliches Recht der deutschen Bundes.* (3rd ed., Frankfurt, 1858-69).

[12] A. O. Meyer, *Bismarcks Kampf mit Oesterreich am Bundestag zu Frankfurt, 1851-1859,* (Berlin, 1927), viii.; H. O. Meisner, 'Die Protokolle der deutschen Bundestages von 1816-1866,' *Archivalische Zeitschrift,* 47, 1951, 1.

[13] Wilhelm Adolf Schmidt, *Geschichte der deutschen Verfassungsfrage während der Befreiungskrieges und des Wiener Kongresses 1812 bis 1815.* (Stuttgart, 1890); F. F. Penny, *The Formation of the German Confederation in 1815,* (Unpublished Thesis, Cornell University, 1931).

sammlung. The Landgrave's brother rulers included the Austrian Emperor, five kings, one elector, seven grand dukes, ten dukes, and a dozen princes. Three foreign sovereigns were members: the Kings of the Netherlands for Luxemburg, of Denmark for Holstein and Lauenberg, and of England for Hannover. This had the odd consequence that until the separation of the crowns in 1837, the English rulers were occasionally obliged to protest against federal resolutions as Kings of England which they had already approved as Kings of Hannover. [14]

The Bund's territories stretched from Aachen to the Oder, from the Adriatic to the Baltic and the North Seas. Its population numbered some thirty million, its member states varying in size from Austria's 9.5 million and Prussia's 7.9, down to Liechtenstein's 5,500. Its centre was Frankfurt am Main, one of the four free republican cities which had survived along with the thirty-seven hereditary monarchies in the more rationalized territorial arrangements. In 1815 Frankfurt was a provincial town with only 48,000 inhabitants, a fifth that of Vienna, scarcely more than a quarter that of Berlin. The representatives of foreign powers, who eagerly claimed the right to diplomatic representation at the *Bundesversammlung*, understandably complained of the scarcity and poorness of accommodation available, and regarded the arrival of a courier en route to Vienna or St. Petersburg as a welcome break in a tranquil atmosphere. [15] Within a few miles of the city were the territories of five different states, and it soon became an asylum for all the vagrants of central Germany. [16]

Protracted negotiations over the territorial arrangements and a series of preliminary conferences delayed the inauguration of the *Bund*. Not until November 5, 1816, did the *Bundesversammlung* hold its first session. [17] Through the device of assigning to it the task of completing its own machinery, the *Bundesakte* was a mercifully short, almost skeletal constitution. [18] The *Bund* was defined as an indissoluble league — it provided for, in fact, a far looser federal bond than Metternich had been prepared to tolerate in 1814. It was provided with no central organ beyond the *Bundesversammlung*, a form of permanent congress of ambassadors of the constituent states. The familiar picture of two councils is misleading, for what actually happened was that the same representatives met in two different roles. Usually they assembled as the *Engere Rat* or inner council, in which the eleven larger states had a vote apiece,

[14] Huber, *Deutsche Verfassungsgeschichte*, I, 587,686.

[15] Lamb to Hamilton, 3 February 1817, *FO 30/10*; Lamb to Hamilton, 4 November 1817, *FO 30/11*.

[16] *Treitschke's History of Germany*, II, 692.

[17] Officially known as the *Bundesversammlung*, it came to be referred to even in official documents as the *Bundestag* so strong were the memories of the Reichstag.

[18] The text is now available in E. R. Huber, *Dokumente zur Deutschen Verfassungsgeschichte*, I, (Stuttgart, 1961), 75-81. The English text is available in E. Hertslet, *Map of Europe by Treaty*, (London, 1875), I, 200-7, 243-48.

the remainder being grouped in a half dozen curial votes. For important matters touching basic laws, or for the admission of new members, they constituted themselves a *Plenum*, in which each state, had a vote and the fourteen largest ones two or more. One representative could and did speak and vote for different states and sometimes on opposite sides of the same question. A resolution in the *Plenum* required a two-thirds majority, but for the most important votes in both forms unanimity was required, so that in constitutional matters each state, and not just Austria, as is so often stated, possessed a veto. This has often been compared with the *liberum veto* in the old Polish Diet; [19] but it is surely relevant to note that the veto in the *Bundesversammlung* was designed to bar the way to alterations in the Treaty under which sovereign states had accepted the federal arrangements. No discussion took place in the *Plenum*, which was merely designed to provide an opportunity for voting on resolutions previously prepared in the *Engere Rat;* but even here there was no real discussion save in confidential sessions where no formal record was kept. The representatives to the *Bundesversammlung* were of course representatives of sovereign states, bound by instructions from their governments. As in the old Empire they made their government's positions clear in a series of formal statements recorded textually in the protocols. Much of the work was done in committees which gave the smaller powers, especially when their representatives were of the calibre of Hannover's von Martens, greater opportunity to express their views. The committees' voluminous reports were usually included as appendices to the protocols.

The *Bundesversammlung* met in the Thurn and Taxis Palace in the Eschenheimer Gasse, where the Austrian representative lodged. It was thus, in Treitschke's scornful phrase, the modest tenant of this princely house. The chancellery staff was provided by the Austrians, and with the permanent presidency provided ample means for Austrian domination of day to day proceedings. The staff maintained two sets of protocols: the official series with appendices for the use of delegates and their governments; and the public series. The decision to publish the protocols as a matter of course distinguished the *Bundesversammlung* from its predecessors. But gradually this unprecedented practice was whittled away. From 1824 'all important and interesting subjects' were buried in Separate Protocols. [20] Finally in 1828 Metternich succeeded in burying the affairs of the *Bund* in protocols labelled *loco dictaturae* which were henceforth kept as 'classified' documents. From the start there were also various degrees of secret protocols. This usually meant that military or diplomatic matters were discussed; sometimes, however, only that the protocol officer was not present. [21] Inevitably there were breaks in

[19] See, e.g., E. Brandelburg, *Die Reichsgründung*, (2nd ed., Leipzig, 1923),I, 74.
[20] Meisner, 'Die Protokolle der deutschen Bundestages,' 1-12.
[21] Fischer, *Die Nation und der Bundestag*, 11.

security, and once it was discovered that *Würst* purchased from a local butcher had been wrapped in secret protocols. The Frankfurt police succeeded in tracing the paper to the residence of the Thuringian representative, whose cook had been selling the protocols for what she presumably judged was a more important function.

At first the *Bundesversammlung* met twice weekly, then weekly. From time to time it appeared as if its vacations were getting longer and longer. But in its first half dozen years and again in the troubled 'thirties it sat for most of the year. No doubt inertia played a part in prolonging the sessions. Often too the Protocols show that the proceedings were perfunctory with representatives endlessly awaiting instructions from their governments. In 1819-20 there were no formal sittings between the acceptance of the Karlsbad Decrees and the conclusion of the Vienna Conferences. But it is of some significance that from start to finish the *Bundesversammlung* at least met on an average of thirty-five times a year, and that its representatives talked enough to fill some 900 folio pages of protocols annually.

At the start the protocols reveal immense activity. The *Bundesversammlung* had to round out its machinery and define its competence — a task of extraordinary complexity in view of the disputes over the extent to which the *Bund* was to be allowed to impinge on state sovereignty. It had to evolve a military organization which would meet the requirements of security, yet satisfy the pretensions of the individual states and avoid interference with the European position of Austria and Prussia. It had to establish a position in the European community and work out satisfactory procedures for diplomatic representation in Frankfurt and abroad. It had to deal with countless claims and petitions arising out of the Empire or the new position of the mediatized princes — petty matters, perhaps, but essential to ensure legal continuity. And it was from the start concerned to preserve the internal tranquility of the federal territory.

After Karlsbad and Vienna, and still more after the 'épuration' of the *Bundesversammlung* in 1823-24, during which obstinate representatives were recalled by their governments, the Diet was reduced to a more obedient instrument of Metternich's policy. But the revolutionary disturbances of the 1830's stirred the *Bund* into new life, and suggest that the term 'the Quiet Years' can only be used ironically or as a device to avoid detailed analysis of the complicated events which took place. The *Bund* was, for example, actively engaged in the constitutional conflicts in Braunschweig, Electoral Hessen, and Hannover. In Braunschweig the *Bundesversammlung* encouraged the conflict by its dilatory stand, but then endorsed and assisted the transfer of the throne to Duke William. It thus rather surprisingly contributed to Braunschweig's earning the reputation as one of the best governed German states. The new Hessen

constitution, proclaimed after the revolution of 1830, aroused no overt opposition when presented in Frankfurt for a federal guarantee, and, though recognized as the most radical in Germany, remained in force. The result was a prolonged series of constitutional conflicts in which the *Bundesversammlung* was closely involved. In the Hannoverian crisis the *Bundesversammlung* regrettably stultified itself by declining to repeat the tactics which had been so successful in Braunschweig, and undoubtedly helped here to pave the way for 1848.

But the sharpest impact of 1830 on German territory was the Belgian revolution which spread into Luxemburg up to the fortress walls. A federal corps of intervention was prepared, interestingly enough composed of small and middlesized states to avoid international complications, and excluding Hannover for the same reason. Before the question was finally resolved in 1839, with the partition of the Duchy and the inclusion of part of Limburg in the *Bund* by way of compensation, it occupied a prominent place on the *Bundesversammlung's* agenda, as the assembly attempted to protect the western frontier, to secure the cooperation of the Netherlands, and to maintain close liaison with the London conference where Austria and Prussia acted as plenipotentiaries for the *Bund*.

Moreover, throughout the 'thirties the *Bund* was preoccupied with fresh measures for preserving internal order against the threat of revolution. A series of newspapers was banned even before the Hambacher Fest of 1832 led to the notorious Six Articles of the same year. In 1833 the comic opera attempt to overthrow the *Bundesversammlung* itself, known as the *Frankfürter Wachsturm or Attentat*, led to a prolonged occupation of the city by federal troops. A new Central Investigation Authority was established by the *Bundesversammlung* the same year, and in 1834, following fresh conferences in Vienna, a long series of Secret Articles sought to strengthen the censorship, check constitutionalism, and bar the way to revolution.

The early 1840's were less active. And in 1848 the *Bundesversammlung* attempted to crest the revolution, just as sixty-nine years later did the conservative Third Duma in St. Petersburg, and with hardly more conspicuous success. Now 'épurated' in the reverse sense of 1823-24, the representatives took their instructions from the victorious bourgeois governments in the individual states. In one of its rare *Plenum* sessions, on July 12, the *Bundesversammlung* formally handed over power to the new Provisional Authority, and was elbowed out of the way by the Parliament meeting in the Paulskirche. [22]

The failure of the revolution saw the *Bund* reconstituted on pretty much the original basis. This was neither the intention nor the first choice

[22] *Protokolle, Plenar-Versammlung*, 12 July, 1848, 755-57.

of Prince Felix zu Schwarzenberg, the new eighteen year-old Emperor's leading minister. Schwarzenberg rather looked for incorporating all of a reconstructed Austrian state into a great 'Empire of seventy millions'; but after the humiliation of Prussia at Olmütz in 1850 and the failure of the Dresden conferences, he realized that there was nothing to do but to return to the old, 'torn, threadbare coat.' 'In my opinion,' he wrote at the time, 'the old Diet is a cumbersome, outworn instrument, totally unadapted to present circumtances. I think that, at the first shock, from within or without, the shaky structure will collapse altogether.' [23] But he was unduly pessimistic. It took repeated blows over the next decade and a half — his own sudden death two years later, the shattering of the conservative position in eastern Europe through the conflicts of 1854, 1859, 1864, and the undermining of the Habsburgs through the economic power of the Zollverein and the political power of Prussia's leadership of the national movement — to set the stage for the decisive vote on mobilization against Prussia on June 14, 1866, and the subsequent destruction of the *Bund* on the Bohemian battlefields.

W. H. Dawson once wrote of 'the dreary, uninspiring, unheroic annals of the Deutscher Bund.' [24] Undeniably its history is one of failure. Success seems to have come, and temporary and transitory at that, against the threat, real or imagined, of revolution or subversion. This defence was in accordance with one of the *Bund's* essential aims. [25] Paradoxically, the time and attention devoted to it served to strengthen the central power of the *Bund*. As Metternich had predicted to Gentz before the Karlsbad conferences, 'Now every German prince, even if . . . he dislikes the *Bund*, will find in the Bund the strength which he lacked in himself.' [26] Moreover, his *tour de force* in securing unanimous (if unconstitutional) approval of the Karlsbad Decrees shocked particularist opinion in many states into an unwitting defence of constitutionalism. In consequence the Vienna Ministerial Conferences the following year saw Metternich overflowing with declarations of loyalty to the *Bund*. [27] And it proved impossible to water down even the 'vague prophecy' of constitutional development implied in Article XIII by an 'authoritative interpretation' in the ultra-conservative sense advocated by Gentz. As a result the constitutions already granted, some of which had been taken under an unprecedented federal guarantee, survived without federal interference. After 1830 the trend towards constitutional government persisted, despite the reaction. [28]

[23] Cited in H. Friedjung, *The Struggle for Supremacy in Germany, 1859-1866*. Tr. A. J. P. Taylor and W. L. McElwee. (London 1935), 4.

[24] *Treitschke's History of Germany*, I, Introduction, vi.

[25] Huber, *Deutsche Verfassungsgeschichte*, I, 596.

[26] *Memoirs of Prince Metternich 1815-1829*, (London, 1881), III, 278.

[27] *Ibid.*, 347-56; L. K. Aegidi, *Die Schlussakte der Wiener Ministerial Konferenzen*, II, 6; *Treitschke's History of Germany*, III, 303-11.

[28] See the summary table in Huber, *Deutsche Verfassungsgeschichte*, I, 656-57.

To meet its limited aim of ensuring 'the external and internal security of Germany and the independence and inviolability of the individual states,' the *Bund* wrangled long over the details of the military organization required to discharge these twin tasks. Eventually, five strong points — Mainz, Luxemburg, Landau, Ulm, and Rastatt were garrisoned, provisioned and maintained as federal fortresses, and in 1821-22 the *Bundesversammlung* succeeded in reaching agreement on a military constitution. This provided for a *Kontingentheer* of 300,000 men, with each state contributing men and money in proportion to its population. Austria, Prussia and Bavaria provided a total of seven army corps. The remaining three were mixed, made up of contingents which ranged upwards from Liechtenstein's legion of 55 men. In case of war the commander-in-chief was to be elected by the *Bundesversammlung.*[29] From start to finish military affairs were an important item on the *Bund's* agenda, often as routine housekeeping chores. Real rights existed, and in view of the individual states' determination to preserve them, they had to be respected and taken into account in the formulation and execution of general policies. The military organization of the *Bund,* despite its idiosyncracies and inadequacies, was a real attempt to face up to this situation. In an age of controversy over NATO infrastructure and with our experience of 'alliance armies', we may be disposed to extend a certain sympathy and understanding to the *Bund's* military planners.

If the military discussions led only to this complicated and, mercifully, untried, arrangement, the development of a permanent federal jurisdiction which was defeated at Vienna was watered down subsequently to what Treitschke says bore 'the stamp of the loosest federalism.'[30] Neverthless, even he regarded it as a distinct advance that by the *Austrägal-Ordnung* approved by the *Bundesversammlung* in 1817, conflicts between states were first to be mediated by the *Bundesversammlung* itself, and then referred to the supreme court of one of the states.[31] Seventeen years later a true federal court was established, consisting of a panel of 34 arbitrators available to arbitrate constitutional disputes within individual states. But the very complicated procedure involved was in fact never used.[32] Of greater practical significance were the measures worked out in 1820 and subsequently for the intervention of federal forces, i.e., those of a state or states acting in the name of the *Bund* either to restore order in a state threatened by unconstitutional powers (Federal Intervention) as in Luxemburg in 1830-39 or in

[29] The texts of the *Grundzüge* and the *Nähere Bestimmungen der Kriegsverfassungen* of 9 April 1821 and 12 April and 11 July 1822 are now conveniently found in Huber, *Dokumente zur deutschen Verfassungsgeschichte,* I, 108-16.

[30] *Treitschke's History of Germany,* II, 441.

[31] Text in Huber, *Dokumente zur deutschen Verfassungegeschichte,* I, 103-5.

[32] Text in von Meyer, *Corpus Juris Confœderationis Germaniæ,* II, 3, 6-20; Huber, *Deutsche Verfassungeschichte,* I, 616-18.

Frankfurt in 1833; or to compel a recalcitrant state to fulfil its federal obligations (Federal Execution) as in the case of Braunschweig in 1829-30 or Frankfurt in 1834.

Perhaps the most striking failure of the *Bund*, and what, according to Treitschke, made manifest 'the hopeless futility of the Bundestag', was its inability to abolish or at least minimize the multiplicity of customs barriers which, as early as the fourteenth century, were referred to by an Englishman as *miram Germanorum insaniam.*[33] When the effects of the great famine of 1816 were prolonged, Württemberg appealed for the removal of restrictions on exports of foodstuffs; but this was shipwrecked on the shoals of individual sovereignty, and the country was rescued only by the bountful harvest of 1817. Subsequent discussions on economic arrangements as foreseen in Article XIX of the *Bundesakte* were barren of result, and the way was left open for Prussia to solve the problem outside the *Bund* and inevitably against it.

In the spring of 1861, ten years after the *Bund* had been revived on Austrian initiative and the year before Bismarck was summoned to Berlin to head the Prussian government, Treitschke went to Munich, intending to write a history of the *Bund* which should be 'completely unrestrained, to show those lazy fools that we lack the very foundation of all political existence — law, power, and freedom — and that there is no salvation but through the destruction of the small German states.'[34] When he returned to Leipzig in December, hating Munich and disappointed in his progress (the first volume of what became his *History of Germany* did not appear until sixteen years later), he aimed to make his teaching as well as his writing reveal the shameful weakness of the Confederation. Throughout the early volumes he poured out his scorn on the *Bund* as 'a legalization of particularism.' 'Never,' he wrote of the Congress of Vienna, 'had the destinty of a great nation been played with in a more frivolous manner.' The *Bundesakte* was 'the most unworthy constitution which was ever imposed upon a great nation by workers of its own blood,' 'a gigantic fraud'. The *Bundesversammlung* was 'nothing more than an Austrian provincial board.'[35]

These criticisms, pungently expressed in a work of great literary merit which was subsequently translated into English, have done much to shape the view of the *Bund* in German and English historical writing. The core of Treitschke's theme lay in the fact that all questions were treated and resolved in the light of their impact on the course of the unification of Germany under Prussian leadership. Yet, as his most recent

[33] W. O. Henderson, *The Zollverein*, (2nd. ed., London, 1959), 21.
[34] Andreas Dorpalen, *Heinrich von Treitschke*, (New Haven, 1957), 66.
[35] *Treitschke's History of Germany*, II, 122, 132, 418, 401.

biographer has shrewdly pointed out, his analysis of the Confederation suffered from 'a basic misconception.'

> It had not been set up [Andreas Dorpalen writes] to pursue a positive 'German' national policy, as Treitschke himself repeatedly conceded; the interests of all its member states militated against the creation of a German nation state and so did the Austri-Prussian dualism. Rather, Metternich and his co-founders envisaged a loose organization of sovereign states whose primary task it would be to reconcile or balance conflicting interests... Yet Treitschke's examination of the Confederation sought to show how miserably that body had failed in pursuing a German policy.[36]

The Austrian President of the *Bundesversammlung*, Count Buol, made this clear in his statement at the first working session on November 11, 1816. The *Bund*, he declared, was not a *Bundesstaat* (federal state) but a *Staatenbund* (a federation of states).[37] Wilhelm von Humboldt, who with Hardenberg represented Prussia at Vienna and was briefly Prussian representative at Frankfurt, also recognized that German unity could only be federal in basis. Moreover, as Austrian policy inclined to a looser federalism, Prussian towards a stronger central organization, only some combination of the two was possible. In a famous memorandum of September 30, 1816, he regretted that it had not been possible to do more at Vienna, but saw in the *Bund* a *Staatenbund* with *Bundesstaat* elements. Prussia, he thought, could use the *Staatenbund* as a means towards achieving a tighter federalism, a stronger central authority. In the situation of 1814-15, he wrote realistically, 'it was impossible to do nothing, and impossible to do what was right. What could be achieved between these two extreme positions — this was the true definition of the German Confederation.'[38]

Nor was Humboldt alone in his belief that the way was still open to strengthen the federalism envisaged in the *Bundesakte*. Despite the absurd complications which kept the representatives of the *Bundesversammlung* idle in Frankfurt for more than a year before it met, hopes ran high and survived the opening sessions in the autumn of 1816. Early in March, 1817, the British representative reported home

> The Confederation promises to arrive at a freedom of action, and a consistency, which I, at least, did not expect, and in that case it will develop such a force as to be by far the most powerful political body in Europe, and so situated as to interpose between all the great Powers and to become the chief guarantee of the Peace of the Continent. You will be surprised at the amount of its force when it comes to be stated...[39]

[36] Dorpalen, *Treitschke*, 257-58.

[37] *Protokolle*, 11 November 1816, 36f.

[38] *Gesammelte Schriften*, XII, (Berlin, 1904), 53-114, and especially 80. Partly quoted in Huber, *Deutsche Verfassungegeschichte*, I, 562-63.

[39] Lamb to Hamilton, Private, 5 March 1817, *FO 30/10*.

Perhaps Lamb was gifted with less prescience than Sir Charles Webster has suggested.[40] But it seems clear that the possibility of constructive development was not foreclosed at Vienna.

The *Bund*, as Humboldt had seen, was the consequence of the interaction of political forces which could neither be completely swept aside nor completely satisfied. By the *Bundesakte* it had been assigned a strictly limited aim: the preservation of the internal and external security and inviolability of the *Bund* and its constituent states. This aim it may in fairness be said to have discharged for half a century. Its competence was early shown to be adequate to this task and beyond.[41] Without altering the basic federal structure it could have done more towards securing freer trade, freedom of movement, more efficient judicial organization and so on. But on all of these the causes of failure were political, not constitutional. The attempt to secure the elemental right of freedom of movement, as foreseen in Article XVIII, provides an illuminating example. When the question was raised in an early sitting of the *Bundesversammlung* it quickly emerged that freedom to change one's domicile was linked with the discharging of the obligation to military service. A proposal for a uniform 'portable' service to twenty-seven years, on the grounds that service anywhere involved 'no weakening of the defences of the Fatherland,' failed in view of the more rigid implementation of military obligations in some states than in others. 'What a demand,' commented Treitschke, 'to make of Prussia!'[42]

In view of its basic aim the military organization of the *Bund* was critical and Treitschke was correct in referring to it as "the nearest and most important of its duties.'[43] It was not surprising that the small committee established to consider the order of business of the *Bundesversammlung* should set the regulation of military affairs '*vor Allem*.' But there was no suggestion that the *Bund* should attempt to rival other European powers. Indeed, much to the disgust of writers such as Ilse and Treitschke, the report assumed an almost apologetic tone.

> It was the essential nature of the *Bund* [it declared] not to seek a leading position in the European states system, but rather to take up a defensive position with dignity and force, so that Germany could never again become a general battleground for Europe.[44]

The *Bund* was thus seen as a '*Shutz und Trutz Bundnis*', a league that would 'inflict no injuries, yet tolerate none.' Moreover, by Article XXXV

[40] C. K. Webster, *The Foreign Policy of Castlereagh, 1815-1822* (London, 1925), 41.

[41] Huber, *Deutsche Verfassungegeschichte*, I, 597-98.

[42] Ilse, *Geschichte der deutschen Bundesversammlung*, I, 163-82; *Treitschke's History of Germany*, II, 442-43.

[43] *Treitschke's History of Germany*, II, 425.

[44] *Protokolle*, 17 February 1817, 59-60, 67-87. Treitschke mistakenly refers to this as the first report of the Military Committee which was not appointed until later. Ilse describes the report as a '*Hauptfehler*'. *Geschichte der deutsche Bundesversammlung*, I, 225.

of the Final Act of Vienna (1820) it was forbidden any but a defensive war, and by Article XXXVII the individual states were forbidden a war in which *'das Recht nicht zur Seite steht.'* Since 1820, then, as Huber concludes, 'there was a binding prohibition on an offensive war alike for the *Bund* and for its member states.'[45] The only federal war in the entire period of its existence was the war against Denmark in 1848. Despite their explosive nature, neither the revalutions of 1830 nor those of 1848 resulted in a general conflict. The *Bund* stood aside from the Crimean clash. The Franco-Austrian war of 1859 saw a corps of observation mounted on the Rhine, but the conflict did not spread north of the Alps. It is indeed difficult to escape the conclusion that an independent war policy was for the *Bund* an impossibility. So long as the two European powers which it comprised were in agreement the *Bund was* the guardian of European peace which Frederick Lamb had predicted, though hardly in the manner which he had anticipated.

It is this tranquilizing role of the *Bund,* in large measure deriving from its very powerlessness, which provides a final justification for a re-examination of its role in nineteenth century Europe. In a famous essay written in 1816 the Göttingen historian A. H. L. Heeren wrote that the preservation of the loose federative character of Germany was in the highest interests of both Germany and Europe. With astonishing perception he foresaw that a centralized Germany, owing to its situation and resources, would not long resist the temptation to strive for European hegemony.[46] Heeren's analysis was not entirely original. Over a century earlier, in his *Paix Perpetuelle,* the Abbé de Saint Pierre had noted that

> One of the best props of the European system ... was the block of German nations lying almost in the centre of Europe, which holds the other parts in check and serves perhaps to safeguard its neighbours still more than its members; a body formidable to foreigners from its size and from the numbers and valour of its people, but useful to all by its constitution which, depriving it of both the means and the will to conquer, makes it a rock on which all conquest splits. In spite of its defects it is certain that so long as the Empire preserves this constitution, the balance of power in Europe will never be broken ... Thus the legal system which the Germans study with such care is even more important than they think. It is not only the common law of Germany, but in certain respects it is that of all Europe.[47]

After the destruction of the *Bund* in 1866 there were few who stood aside from the prevailing nationalist hysteria and recalled that the system which the Abbé had praised was now in ruins, and that the dangers to which Heeren had pointed were now very real. In a sober *Memorandum on Peace* which he submitted to the Hohenzollerns in the hour of

[45] Huber, *Deutsche Verfassungegeschichte,* I, 606-7.

[46] A. H. L. Heeren, 'Die Deutschen Bund in seine Verhältnis zu den Europaïsche Staatensystem bei Eröffnung des Bundestages,' in *Historische Werke,* II, (Göttingen, 1821), 423, cited in Wilhelm Röpke, *The German Question,* (London, 1946) 152.

[47] *A Project of Perpetual Peace*: *Rousseau's Edition of the Essay,* (London, 1927), 33-35.

Prussian's triumph, and which his widow published posthumously, the historian Georg Gottfried Gervinus wrote that

> Since the seventeenth century it has been a principle of European policy that the organization of the Germanies must be federal; the German Confederation has been created for the very purpose of forming in the center of Europe a neutral state which would by its federal organization guarantee peace. By the disruption of the Confederation in 1866, two-thirds of German territory has been transformed into a warrior state ever ready for aggression, in which one can see, without being an enemy of Prussia and Germany, a permanent threat to the peace of the continent and to the security of the neighbouring states. [48]

To speak favourably of German federalism before 1919 is to advocate the cause of the often absurd small dynastic states. The system may have lacked the nature of a creed which led James Madison to describe the American variety as 'the best guardian... of liberty, safety and happiness of man.' [49] But the evidence seems to suggest that it fulfilled a severely practical, and somewhat analogous, function.

Whether it would have been impossible to establish a great supra-national coalition, as Konstantin Frantz and a handful of other opponents of Bismarck wished, is a separate question. Yet is is worth noting in passing that no less an authority than Franz Schnabel has argued that there was a good basis for it in the conditions existing in mid-nineteenth century Europe. In the mid-twentieth century we are more apt to be impressed with the possibility than were liberal national historians of a generation or two ago. But at least it is open to us to question whether German political and intellectual leadership of the second half of the nineteenth century was not so obsessed with the virtues of the national state as largely to ignore the dangers inherent in transferring its dynamics from the periphery to the crowded centre of Europe. And consequently there is perhaps some justification for a fresh look at the German *Bund* to see if it is not in fact something more than Dawson's 'organized disunion,' Arnold Brecht's 'a makeshift, a stopgap,' Flenley's 'the sterilized child of particularism,' or Treitschke's 'the interment of the corpse of German unity.' In short, to see it less from the standpoint of unity *manqué*, and more as a constitutional framework, far from perfect as the Abbé de Saint Pierre had noted of the Empire, kept in check by Metternich, yet still capable of constructive development even after 1848 when, as Franz Schnabel has suggested, it was still too soon to assume that the reorganization of central Europe on a national basis had been decided. In any event, to see that it represented an attempt to prolong into the nineteenth century lessons learned in a previous age, until it was overwhelmed by dynamic forces which it sought, and failed, to contain.

[48] Cited in Hans Kohn, *The Mind of Germany*, (New York, 1960), 170.

[49] *The Writings of James Madison*, (New York, 1910). X, 68. Cited in Arnold Brecht, *Federalism and Regionalism in Germany, The Division of Prussia*, (New York, 1945), 3.