



"Simply a material political impossibility". Gerhard Leibholz's Protest Against the Appointment of Carl Bilfinger as Founding Director of the MPIL

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President of the MPG Otto Hahn (left) presents Carl Bilfinger (right) on the occasion of his 75th birthday with a plate of honour by the MPG Senate, in the presence of President of the German Supreme Court Hermann Weinkauff (middle).¹

On 27 June 1949, just a few weeks after the promulgation of the *Grundgesetz* (Basic Law) on 23 May of the same year, the legal scholar and former professor in Göttingen Gerhard Leibholz (1901-1982) wrote to the President of the Max Planck Society (*Max-Planck-Gesellschaft*, MPG), Otto Hahn.² The MPG had been founded in the previous year as successor organisation

¹ Photo: MPIL.

² The following literature was consulted primarily for the writing of this blog post: *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; *Felix Lange*, Praxisorientierung und





to the Kaiser Wilhelm Society, of which Leibholz had been a member from 1926 to 1929 as an employee of the Kaiser Wilhelm Institute (KWI) for Comparative Public Law and International Law in Berlin. At his young age, Leibholz already had a successful academic career – from 1929 he had been a professor at the University of Greifswald and from 1931 at the University of Göttingen. However, the son of a Berlin entrepreneur family, who was baptised as a protestant, was persecuted due to his Jewish origins under the National Socialist dictatorship, which put an end to his career in Germany. Leibholz was forced to retire in 1935 at the age of 34 and had to emigrate with his young family in 1938.

The Founding Director Carl Bilfinger (1879-1958)



Carl Bilfinger, mid 1950s (Photo: MPG Archive)

Legal scholar [Carl Bilfinger \(1879-1958\)](#), on the other hand, had a completely different biography: The now seventy-year-old professor of Public Law and International Law, first in Halle, later in Heidelberg and finally, from 1943 to 1945, in Berlin, who had become director of the KWI for Comparative Public Law and International Law as successor to his cousin Viktor Bruns, made a surprising new start in 1949. In the Soviet occupied zone, Bilfinger, as a National Socialist, had lost his offices and functions in Berlin soon after the German defeat in 1945. However, he had continued to live in Heidelberg during his employment in Berlin. As a result, Bilfinger had been living in the US occupation zone since 1945 and was successfully denazified as a “follower” (“*Mitläufer*”) in 1948. In 1949, as a reappointed professor at Heidelberg University and director of the newly founded Max Planck Institute for Comparative Public Law and International Law (MPIL) in Heidelberg, the successor to the KWI in Berlin,

Bilfinger was thus at the beginning of a second career at his (south)west German place of residence.

Due to his political past, his appointment as founding director of the Heidelberg Institute was by no means predetermined. The lawyer and historian Felix Lange has traced the denazification

Gemeinschaftskonzeption. Hermann Mosler als Wegbereiter der westdeutschen Völkerrechtswissenschaft nach 1945, [Contributions on Comparative Public Law and International Law, vol. 262](#), Berlin: Springer 2017; Werner Heun, Leben und Werk verfolgter Juristen – Gerhard Leibholz (1901-1982), in: Eva Schumann (ed.), Kontinuitäten und Zäsuren. Rechtswissenschaft und Justiz im ‘Dritten Reich’ und in der Nachkriegszeit, Göttingen: Wallstein 2008, 301-326. Sabine [Leibholz-Bonhoeffer](#), Vergangenheit, erlebt, überwunden: Schicksale der Familie Bonhoeffer, 2. ed., Gütersloh: Gütersloher Verlagshaus Gerd Mohn 1977.



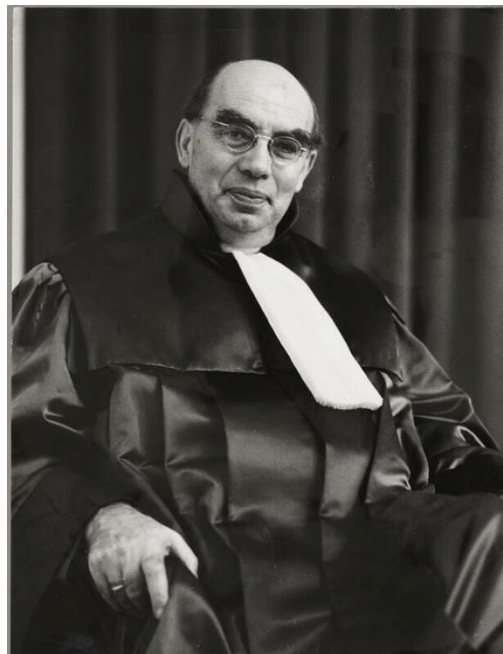


of the former NSDAP member in detail in an essay and his book “*Praxisorientierung und Gemeinschaftskonzeption*“.³

After the National Socialist dictatorship ended, Bilfinger himself had by no means endeavoured to continue his career under the new circumstances. The fundamentally changed conditions seemed to rule this out anyway. However, when he was chosen as the founding director of the Heidelberg Institute of International Law, Bilfinger stubbornly defended his newly won position, free of any critical self-reflection on his role during the previous Nazi dictatorship, of which he had been a supporter.

Gerhard Leibholz’s Protest Note of 1949

When the President of the MPG, Otto Hahn, received Gerhard Leibholz’s brief protest note against Bilfinger’s appointment of 27 June 1949, the decision for Bilfinger was already irreversible. Nevertheless, the letter was controversial. Leibholz and Hahn appear to have exchanged views on the matter beforehand. Hahn replied to Leibholz just three days later. The Executive Board of the MPG was obviously trying to be loyal to its own institution and the newly appointed director Bilfinger on the one hand, and on the other to justify the already binding decision as convincingly as possible to the renowned and, in Germany as well as Great Britain, very well-connected legal scholar Leibholz. The latter not least against the background of the persecution of Leibholz and his family by the Nazi dictatorship. One of Gerhard Leibholz’s brothers-in-law was theologian and member of the resistance Dietrich Bonhoeffer.



Supreme Court Justice Gerhard Leibholz, 1966
(Photo: BArch, B 145 Bild-F023765-0002/Engelbert Reinecke)

For Leibholz, the appointment of Bilfinger as the new director was simply the scandal that this appointment did in fact represent, and which had taken not only Leibholz by surprise. He himself was about to resume his academic career in Germany and looked at the developments from his own particular perspective. In his letters, he openly expressed his lack of

³ [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; Felix Lange, Praxisorientierung und Gemeinschaftskonzeption. Hermann Mosler als Wegbereiter der westdeutschen Völkerrechtswissenschaft nach 1945, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, vol. 262, Berlin: Springer 2017.](#)





understanding, his dismay and consternation, but above all his concern for the future. On 27 June 1949, he summarized his cause by saying he felt obliged to voice his concern,

“that within my department of the Max Planck Society in particular, there have been recent appointments that have – frankly – affected me very much [...]. I am thinking in particular of Mr Bilfinger, who was entrusted with the management of the Institute for Comparative Public Law by the Brown House [The headquarters of the National Socialist German Workers’ Party (NSDAP) in Munich] at a time when National Socialism was celebrating its orgies and who, as far as I know, was not even reactivated by the German universities. Judging by the composition of the Senate, whose political and professional qualifications are not in doubt according to your statements, it must not have been in possession of sufficient information. In my opinion, an institute such as that of Comparative Public Law and International Law, at which I myself once worked for several years before 1933 and which today would be in a position to in the course of rebuilding [Germany] form an important bridge to other countries, should have been given as a director a colleague who is not as politically charged and who furthermore has certain reputation – also abroad.”⁴

In his timely reply of 30 June 1949, Otto Hahn pointed out “that Professor [Viktor] Bruns himself had requested Professor Bilfinger as his successor. The Scientific Council of the Kaiser Wilhelm Society later duly appointed Professor Bilfinger as director without any influence from political authorities.” Thus, in the opinion of the time, “the best scientist in the field” was appointed. Regarding the most recent development, Hahn, attempting to justify the decision, wrote: “In the same way, the reappointment of Mr Bilfinger was made by a committee that did not include any former National Socialists or persons associated with the party. This election was expressly approved by our Senate, which includes numerous opponents of the National Socialist regime.” In a politically placating fashion, he continued: “I am aware that Professor Bilfinger was a party member, and he has never denied it. However, I believe that one cannot conclude from this that his academic qualifications are impaired.”⁵

Leibholz replied on 3 July 1949 that he did not blame Bilfinger for his party membership,

“but the fact that for many years he placed himself with inner verve and conviction at the disposal of National Socialism (as a friend of the notorious State Councillor C[arl] Schmitt) and worked to achieve its goals, is in my opinion, however, sufficient to conclude that, in a time that is supposed to usher

⁴ Letter from Gerhard Leibholz to Otto Hahn, dated 27 June 1949, AMPG II. Abt., Rep. 66, No. 4473, 586, 1. This and all following quotations have been translated by the editor.

⁵ Letter from Otto Hahn to Gerhard Leibholz, dated 30 June 1949, AMPG II. Abt., Rep. 66, Nr. 4473, 587, 2.



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in a new era, he should not be entrusted with the management of such an important institute – apart from the fact that [...] the best scientist in the field in 1943 is, for obvious reasons, not identical with the actual best scientist in 1946 seq.”⁶

According to Leibholz, there obviously had to be a “serious misunderstanding”, insofar as Bruns’ personal (succession-)wish had actually contributed significantly to Bilfinger’s earlier appointment. According to Leibholz, Bruns’ proposal could “after all, only be explained by the circumstances of the time, which only allowed a choice between a relatively moderate and a radical National Socialist”. Leibholz concluded: “Accordingly, there is not the slightest doubt in my mind that Mr Bruns, if he had been called upon after 1945 to suggest names for the institute, would have mentioned completely different names, even though he was connected to Mr Bilfinger through family ties.”⁷

⁶ Letter from Gerhard Leibholz to Otto Hahn, dated 3 July 1949, AMPG II. Abt., Rep. 66, No. 4473, 588, 3.

⁷ Letter from Gerhard Leibholz to Otto Hahn, dated 3 July 1949, AMPG II. Abt., Rep. 66, No. 4473, 588, 3.





The Reaction of Founding Director Carl Bilfinger



Carl Bilfinger on 24 July 1953 at the cornerstone ceremony of the new institute building. His ceremonial dictum translates to: “To the continuation of culture, of which law is only a part.” The same day, he had been awarded with the Federal Cross of Merit (Bundesverdienstkreuz).⁸

In this situation, Otto Hahn sought a dialogue with Bilfinger himself, who then wrote to him on 10 July 1949. To his letter, Bilfinger enclosed copies of various materials in his defence, some of which came from his denazification proceedings, including positive comments about him from renowned colleagues such as Eduard Wahl, Heinrich Triepel and Gerhard Anschutz. According to Bilfinger, Triepel in particular had been instrumental in ensuring that he had succeeded Bruns in 1943. Furthermore, Bilfinger described Leibholz’s statements on academic “reactivations” in post-war Germany as “misleading” and, in a longer section, detailed his

⁸ Photo: MPIL.





contacts and reputation in the international community of legal colleagues. On his relationship with Carl Schmitt, he wrote⁹:

“I also note that I was in close contact academically and personally with the State Councillor Carl Schmitt mentioned in the second letter by Mr L for several years, but that since 1934 these relations have been reduced to a minimum because of his political statements against me then and subsequently, as anyone familiar with the circumstances knows.”¹⁰

In a parallel “personal letter”, dated 11 July 1949, to the Director General of the MPG, Ernst Telschow, whom Bilfinger obviously regarded as like-minded, he showed less restraint. Angrily, he wrote: “In and of itself, the criticism of my person by L, which is in part somewhat childish, overall superficial and ill-informed, perhaps deserves no further response.” Nevertheless, he felt compelled to make a personal statement. After his successful denazification, Bilfinger felt unjustly politically attacked and vilified vis-à-vis the Executive Board, by Gerhard Leibholz of all people, as whose secret benefactor – in a reversal of the victim narrative – he saw himself. In his letter to Telschow, Bilfinger claimed, without providing any evidence, that he had helped Leibholz after the National Socialists’ rise to power in 1933 to not be ousted from his professorship immediately. Bilfinger referred – again, without providing evidence – to the “numerous cases in which I helped Jews, in some cases at a considerable risk “. According to Bilfinger, this did not provide “any special scientific proof of qualification for a man who was also close to the ‘notorious State Councillor C[arl] Schmitt’ for several years during the Weimar period and into the first half of the National Socialist regime. But it seems strange to me that Leibholz of all people should now want to crusade against me.”¹¹

⁹ On the relationship of Bilfinger and Schmitt, see [Reinhard Mehring, Vom Berliner Schloss zur Heidelberger „Zweigstelle“. Carl Bilfingers politische Biographie und seine strategischen Entscheidungen von 1944, MPIL100, 9 Februar 2024.](#)

¹⁰ Letter from Carl Bilfinger to Otto Hahn, dated 10 July 1949, AMPG II. Abt., Rep. 66, No. 4473, 589, 4.

¹¹ Letter from Carl Bilfinger to Ernst Telschow, dated 11 July 1949, AMPG II. Abt., Rep. 66, No. 4473, 596, 11.





The protest Remains Unsuccessful and the Documents are Shelved



Gerhard Leibholz, a member of the curatorium from 1962, became a part of institute life again only after Carl Bilfinger had died in 1958. Leibholz (left) with Jochen Frowein at the institute, 1970 (Photo: MPIL)

A considerable time later, on 18 August 1949, Leibholz finally replied with his last letter that has survived from this correspondence. Clearly, in the meantime, his brother-in-law Karl-Friedrich Bonhoeffer, director of the Max Planck Institute for Physical Chemistry in Göttingen, had been involved in this matter by the Executive Board. Karl-Friedrich Bonhoeffer had made one of Bilfinger's letters available to Leibholz. Presumably, it was the letter to Hahn dated 11 July 1949, including attachments.

Leibholz however maintained his previous position. In a letter to Otto Hahn he pointed out:

“I may emphasise once again that our discussion was not about the question of who should most appropriately have been entrusted with the management of the Institute in 1943, but the question under discussion is whether someone who was entrusted with the management of the Institute as a National Socialist in 1943 and who believed in National Socialism until 1945, should have again been entrusted with the management of the Institute in 1949. Everything I have heard since my first letter on this matter only confirms that this decision by the Planck Society was a material-political mistake. Incidentally, this is not just my personal opinion, but that of most of my professional colleagues.”¹²

Even though Leibholz must have realised by August 1949 that the decision in favour of Bilfinger could not be reversed, at the end of the dispute on 18 August 1949, he, in a gloomy undertone, hinted to Hahn with regard to the newly founded Heidelberg Institute about “conclusions of a more serious, more general nature”¹³ if the personnel decision regarding Bilfinger were to be upheld.

This last letter from Leibholz was made available to Bilfinger, as can be reconstructed from the sources. In a conversation shortly before Bilfinger wrote another letter to Telschow on 19 September 1949, Telschow had asked him, according to Bilfinger, “whether it would seem

¹² Letter from Gerhard Leibholz to Otto Hahn, dated 18 August 1949, AMPG II. Abt., Rep. 66, No. 4473, 597, 12.

¹³ Letter from Gerhard Leibholz to Otto Hahn, dated 18 August 1949, AMPG II. Abt., Rep. 66, No. 4473, 597, 12.





expedient to invite Mr Leibholz to a verbal consultation with the President [Otto Hahn]”¹⁴. Bilfinger, who clearly did not have anything to fear in this matter anymore and acted in a correspondingly confident and condescending manner, now replied to Telschow regarding such a conversation that it did not seem certain to him personally whether Leibholz, who, in his view was hardly perceptive and only capable of a very limited apprehension of this matter, “could be amicably instructed that his point of view is misguided and that it was not possible to accept his suggestion”. However, Bilfinger thought it not entirely inconceivable that Leibniz in the course of such a conversation “might after all become pensive and thoroughly reconsider whether his démarche is sufficiently well-founded and realistically conceived. It is possible that Mr L could be somewhat calmed down by the fact that of his reception and hearing by the President.” It was therefore worth considering to invite Leibholz to a meeting with the President, according to Bilfinger, “so that everything has been done to show him that his ideas have been listened to in an effort to understand him and his feelings and to briefly inform him, also in a verbal manner, about this side’s position”.¹⁵

A few years later, when a possible appointment of Gerhard Leibholz to the Heidelberg Institute came up, Bilfinger reacted even more aggressively. Referring to the earlier correspondence, he made a strong point in a letter of 12 January 1952, stating that he could not “muster up the confidence in being able to work together with Leibholz successfully under the current circumstances or in the future. I must therefore, already at this point, declare to you that I decisively object to the possible appointment of Mr Leibholz and also warn against such an appointment at any point in the future.”¹⁶

¹⁴ Letter from Carl Bilfinger to Ernst Telschow, dated 19 September 1949, AMPG II. Abt., Rep. 66, No. 4473, 598, 13.

¹⁵ Letter from Carl Bilfinger to Ernst Telschow, dated 19 September 1949, AMPG II. Abt., Rep. 66, No. 4473, 598, 13.

¹⁶ Letter from Carl Bilfinger to [Boris] Rajewsk[y], dated 12 January 1952, AMPG II. Abt., Rep. 66, No. 4473, 603.





Conclusion



Gerhard Leibholz (right) at the curatorium meeting on 24 April 1970, with Helmut Strebelt, Günter Jaenicke, Clemens von Velsen and Fritz Münch (from left to right)¹⁷

It is not possible to determine with absolute certainty whether Leibholz, failing to judge the situation correctly, perhaps overestimating his personal reputation and his ability to exert influence in this matter, actually thought it possible to revise the decision in favour of the appointment of Carl Bilfinger. Or whether, as Leibholz himself probably recognised, this was an act of his personal, essentially powerless, protest against this misguided personnel decision. However, it was Leibholz's endeavour to have his objection to this appointment, even if not made publicly and in direct confrontation, at least set down clearly in writing and preserved in the files of the MPG for the future.

Bilfinger, despite his irritation with Leibholz, could be sure from the outset that this unpleasant matter would soon fizzle out – if handled with the appropriate discretion. He shared an interest in that outcome, albeit for partly different reasons, with the MPG's Executive Board. The letters from Bilfinger to Telschow are particularly illuminating in this context, as they reveal how Bilfinger and Telschow really thought. Shining through are antisemitic clichés of the 'Jewish

¹⁷ Photo: MPIL.





emigrant' in the 'enemy state' of Great Britain, who in his (revenge) 'zeal' against Germany – charged with resentment towards the former National Socialist war opponent – is void of any ability to have a realistic view on the situation. It is telling and, against the background of their own involvement in the National Socialist dictatorship, hardly surprising that no words of sympathy for the suffering of the victims of the Third Reich or of critical self-reflection, let alone remorse, are found. In essence, Bilfinger and Telschow continue to cling to their old views from the Third Reich, which they do not dare to articulate openly, however. Towards the Executive Board, Bilfinger even painted himself – almost cynically – in a reversal of the actual situation, as the innocent victim of a vile attack on his person from the outside by the much younger Jewish emigrant from Great Britain, who was supposedly obliged to show him gratitude. At least in Telschow, his narrative apparently found a sympathetic ear. The delicate matter was to be cleared up as quickly and quietly as possible, from this point of view. Under these circumstances and the prevailing conditions at the time, Leibholz was well advised to not further scandalise the matter publicly. Very likely, any other approach would have been unsuccessful or would possibly even provoked the opposite effect.

On 18 August 1949, Leibholz summarised his position on the matter in his last known letter in this context:

“I feel free of all resentment, although we [Leibholz’s wife Sabine Leibholz-Bonhoeffer and Gerhard Leibholz himself] lost 5 siblings under the Nazis in the cruellest way – including, I would like to expressly emphasise, to Mr Bilfinger. But there are certain things that are simply a material political impossibility. Even if most well-meaning people today accept such things silent and shrugging, I, for my part, make a point of putting it on record that I protested against the Planck Society’s decision.”¹⁸

With that, the matter was thus officially considered closed and the ‘Leibholz affair’, which was in reality a ‘Bilfinger affair’, was, literally, shelved at the MPG.

Translation from the German original: Sarah Gebel

¹⁸ Letter from Gerhard Leibholz to Otto Hahn, dated 18 August 1949, AMPG II. Abt., Rep. 66, No. 4473, 597, 12.

