

*LAUDATIO:*  
PROF. EBERHARD SCHMIDT-ASSMANN

HANS-HEINRICH TRUTE\*

THANK YOU very much, Prof. Flogaitis and Prof. Timsit, for inviting me to give a laudatory speech in honour of my academic teacher: Eberhard Schmidt-Aßmann. Of course it is a great honour to be invited to do so. Nevertheless, it is not an easy task. Eberhard Schmidt-Aßmann is, to say it cautiously, not really a friend of extensive celebration of his person. Bearing this in mind, let us start and hope for the best.

I. SOME BIOGRAPHICAL REMARKS

Let me first introduce Eberhard Schmidt-Aßmann by making some biographical remarks: he was born in Celle, a middle-sized town north-east of Hannover in Lower Saxony with a long history and a rich cultural heritage. He studied law and classical philology at the famous Georg-August-University of Göttingen and in Geneva. Göttingen became his first *alma mater*, where he attained his PhD (in 1967), and where he completed his habilitation in 1971 under the supervision of his academic teacher, Werner Weber, a scholar of Carl Schmitt (without ever becoming a member of the Carl Schmitt School). In 1972 he accepted an offer from the Ruhr-University Bochum in North Rhine-Westphalia; in 1976 he gave his famous presentation at the Annual Conference of the Association of Teachers of Public Law, and in 1979 he moved to the Ruprecht-Karls-University in Heidelberg, which has been the centre of his academic career to this day. Notwithstanding other opportunities

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and invitations, he obviously found the research environment and personal situation so attractive that he never left Heidelberg, except for countless stays at centres for advanced studies and universities abroad. In Heidelberg he attracted numerous colleagues and young researchers to stay in this fascinating research environment and work with him. He became a member of various influential advisory groups in the scientific system, and he was one of the founding members of the European Group of Public Law. He holds an honorary doctorate from the University of Athens.

## II. HIS ŒUVRE

His PhD thesis was titled: *Der Verfassungsbegriff der Aufklärung und des Historismus* (*The Notion of Constitution in the Era of Enlightenment and Historism*, 1967), a work on constitutional history. Although Eberhard Schmidt-Aßmann is an interested and eminent scholar in history and legal history, I am not really sure that this first academic work, which was well received, marked a cornerstone of his academic work to come. This is not to say that historical education and formation is not part of his academic and intellectual interest - to the contrary. But - as far as I can see - it never became a driving force, no *idée directrice*, of his œuvre.

At first glance, his habilitation *Grundfragen des Städtebaurechts* (*Foundations of Urban Construction Law*) in 1972 sounds as if it might be a study of a special field of reference. But this book displays *in nuce* the later approach: an in-depth analysis of an important field of administration and administrative law, and also comprising the constitutional framework, in particular the right to property. And with a clear vision of the relevant administrative practices, this work also reveals an important aspect of Eberhard Schmidt-Aßmann's work. This field of reference for his first big academic book was a hot topic at the time. It was one of the fields of modernisation of administration, administrative law and its instruments, with the aim of planning the future of cities by means of urban planning. Seen from an academic perspective, this field represents a change of administrative law from a more static to a dynamic approach, one represented by planning instruments. Obvi-

ously this kind of modernisation posed a lot of challenges to traditional legal doctrine at that time. Therefore, it comes as no surprise that at the centre of this approach is the coherence of constitutional law, general administrative law, its principles and special fields of law (*Besonderes Verwaltungsrecht*), as well as the function of each of its elements within an overarching regulatory structure. The famous presentation at the Annual Conference of the Association of Teachers of Public Law in 1976, with the title “Verwaltungsverantwortung und Verwaltungsgerichtsbarkeit” (Responsibility of Administration and Judicial Control), followed this approach of now including complex administrative decisions within the framework of general administrative law and its judicial control.

The centrepiece of his work is, of course, general administrative law. He was obviously not interested in writing classical textbooks on this subject, but he was and to this day remains interested in the function of general administrative law within an environment of ever more fragmented corpora of law. Can general administrative law be read as a set of principles which might represent a kind of underlying basic structure of fragmented administrative law? When considered from this perspective, general administrative law mediates between the constitutional principles of relevance to administration, in particular democracy, rule of law and fundamental rights, and the special fields of reference of administrative law, which carry the burden of the legal conceptualisation for the modern administrative state and its tasks. General administrative law holds solutions to problems, provides for norms and standards to be generalised, and allows for a comparison of solutions in the wide area of specialised and fragmented administrative law. One might call this approach a kind of reduction of complexity by designing general principles of administrative law. We know from the history of science as well as from scientific practice that the reduction of complexity is often the basis of great innovations in science. From this perspective, it comes as no surprise that the *opus magnum* of Eberhard Schmidt-Aßmann is the book *Das Allgemeine Verwaltungsrecht als Ordnungsidee (General Administrative Law as an Ordering Idea)*, published in 1998 and as a second edition in 2004. It has a progenitor, a small book going back to a presentation held at the Juristische

Studiengesellschaft Karlsruhe, published with the title *General Administrative Law as an Ordering Idea and System* in 1982. The comparison of both reveals an interesting difference, namely the abandonment of the word "system" in the *opus magnum*. Although undoubtedly committed to systematic thinking as the *via regia* to deal with the challenges of modern administration, the complexities of modern administrative law, and the plurality of legal sources in a Europeanised and globalised world, this abandonment is no chance occurrence. My assumption is - we never discussed this aspect - that the notion of "system" would be too static for the dynamical approach he had in mind. Of course, "system" is a notion deeply rooted in the German legal and philosophical tradition. In the legal realm, it may have connotations of a rigidity which is inadequate for a concept of modern and dynamic administrative law. Inscribed in his conception is an internal dynamic. General administrative law is the medium and factor of different modes of observation from a scientific point of view. In a way, it is a distorting mirror, allowing for very different observations. And there is no hierarchy between general and special administrative law. As special administrative law bears the burden of the development of the modern administrative state, it is possible (and it is often the case!) that general administrative law does not reflect changes in the modes of governance, and thus is itself in need of modernising. This approach has turned out to be an enormously influential way of thinking about administrative law in Germany, and has been adopted by numerous scholars abroad.

From a scientific point of view, this approach has a lot of implications I cannot tackle here. But let me mention some aspects.

Firstly: concentrating also on the practice of administration - which was for a long time the field of administrative science (or a bit old-fashioned in the German tradition: *Verwaltungslehre*) - demands the integration of an interdisciplinary approach. Although not at the heart of his systematic approach from the very beginning, he has increasingly adopted an interdisciplinary approach. I assume this is not least a result of his various memberships with scientific advisory bodies for the scientific systems, and it has a host of consequences for the architecture of his work.

Secondly: The dynamic of this approach turns out to be enormously fruitful, as various aspects and fields could be treated within this approach. This is not only true of his scholars, but also of himself. Numerous books and articles are the result, and I am pretty sure that he is one of the most reputed and often-cited scholars of public law in the previous decades, and remains so today. The internal dynamic of this approach fits pretty well with his scientific curiosity, which leads him to continuously explore new fields of reference, as well as fundamental questions of administrative law and its theory.

Thirdly: One of the great challenges was, of course, the Europeanisation of administrative law, which he started tackling as a central research topic in the late Eighties. Not that Europe was not present at that time in German administrative law, but the state of the art at this point was predominantly characterised by the perception of a hierarchy on one side, and the request for autonomy of the administrative law of the member states on the other side. The more constructive perspective of a Europeanised administrative law became a central challenge and topic, and later resulted in a concept which became a standard: the European network of administration (*Verwaltungsverbund*) and its adequate conception in conformity with the basic constitutional standards.

Fourthly: Internationalisation was, of course, a logical next step in this programme, formulated in the lecture he gave on the occasion of his retirement as an active professor.

So we paint here a picture of a scientist who never hesitated to start new things, to ask new questions and explore new fields, which then became prospering subjects for PhD theses and habilitations. A lot of the approaches became standard in contemporary administrative law in Germany and in a lot of other jurisdictions, due to the international orientation of his work and his numerous scholars from abroad.

One more thing should be mentioned. As mentioned earlier, over the years he became a member of various scientific policy institutions and interdisciplinary projects: the German Research Association, the Science Council, the Institute of Advanced Studies in Berlin, the Berlin-Brandenburg Academy of Science, to mention just

a few of them. As a result, the reflexive dimension of his work came to the fore. Moreover, the reflection on legal science in the framework of the sciences became an important strand of discussion.

### III. SOME CONCLUDING REMARKS

A lot of aspects are worth mentioning when honouring this eminent scientist: his influence on young scholars, his initiative to reform administrative law, three volumes of "Foundations of Administrative Law", his interest in theology and his time as the director of the research institute of the Protestant Church after his retirement, the legendary walking tours of the research institute round Heidelberg and in the Odenwald, the working sessions of the institute and the first steps taken by new research students within this circle, wonderful evenings in the Höhenstraße in Heidelberg-Ziegelhausen with Ulrike Schmidt-Aßmann and some glasses of wine, the planning of model railways, etc. I am sure the list of aspects would be long, but I am pretty sure he won't like me lingering on all that - although it would also reveal a most enjoyable side of the environment in which all his scholars came of age as young scientists, and in which we took our first academic steps. All of us who had the privilege to be scholars of him owe him much more than could be presented here. One of the important aspects from the perspective of young scholars was and remains: scientific autonomy for young researchers, no scientific "schools" but new ideas, was the credo!

I will stop there, - the last thing Eberhard Schmidt-Aßmann would want is a kind of hagiography, which he dislikes no less than any "veterans' service", as he told me once. To honour this great scientist and character, we should wait for a new book, discuss it with him and develop new ideas.

*All the best, dear Eberhard Schmidt-Aßmann!*