NEW YORK, June 27...."Forty years ago, German constitutional law lay in broken shards, drained of all support for human rights and the Rule of Law. The scrupulous reconstitution of these rights in both law and practice in the Federal Republic is a hopeful safeguard of the future. National Socialism swept aside the Rule of Law. It is more important to live within constitutional proscriptions, than to draft them."

Theodore Ellenoff, national president of the American Jewish Committee, made these remarks recently at the Alois Mertes Memorial Lecture held in Bonn, West Germany, as part of a series of lectures co-sponsored by the AJC and the Konrad Adenauer Foundation.

The late Alois Mertes, noted West German Minister of State for Foreign Affairs, devoted much of his attention to the task of reconciliation and dialogue with Judaism. Speaking at an American Jewish Committee annual meeting several years ago, he outlined a future for Germany "marked by justice and freedom."

Mr. Ellenoff compared the 200-year-old American Constitution and the nearly 40-year-old West German Constitution (the Basic Law) in the way each seeks to achieve the goals of self-government and individual fulfillment.

There are two major issues where the constitutions diverge, Mr. Ellenoff noted.

"First, the German Basic Law responds in an affirmative manner to insure a domestic peace between its citizens individually and in social groups. It asserts that immense social changes have occurred in the process of industrialization, sharply diminishing the individual's personal ability to function and, thus, giving rise to a dependence on the state. Many people see the state and the constitution...as the supporters of economic and social progress.

"The American Constitution talks about promotion of the general welfare, but is essentially silent on active participation by the state in social and economic matters."

Mr. Ellenoff added: "Another distinguishing feature of the American Constitution when compared to the Basic Law is separation of church from state...Under the German Basic Law, explicit provision is made for the support of religious institutions or religious instruction in state schools."

This discrepancy, Mr. Ellenoff said, is a clear manifestation of the early history of both countries. In the U.S., religious denominations fled from England to escape the pressure and uniformity of a state religion while German history reflects an intimate collaboration between church in temporal and secular matters.

Commenting on the inherent similarities between both constitutions, despite the different historical experiences from which each was drawn and the fact that they were written almost 150 years apart, Mr. Ellenoff stressed that each proclaims "that liberty of the individual is best secured under a free democracy where the will of the majority of the people must be freely expressed, with a minority having the unencumbered right to political opposition and the opportunity to itself become a majority."
He went on to note that the procedural difficulties of amending both constitutions prevent modification from being at the disposal of single political parties, with the U.S. Constitution requiring an amendment to be ratified by two-thirds of the states and the Basic Law providing for constitutional amendments by legislation through the Bundestag and the Bundesrat.

"As the Basic Law reaches its 40th year, commentators can prudentially note that it also, with the American Constitution, shares the prospects of continuous vitality, auguring well for the Federal Republic and individual human rights," Mr. Ellenoff concluded.

The American Jewish Committee is this country's pioneer human relations organization. Founded in 1906, it combats bigotry, protects the civil and religious of Jews here and abroad, and advances the cause of improved human relations for all people everywhere.