

Between *Reformstau* and *Modernisierung*:
The Reform of German Federalism since Unification

Gunther M. Hega
Department of Political Science
Western Michigan University
1903 W. Michigan Avenue
Kalamazoo, MI 49008-5346
E-mail: gunther.hega@wmich.edu

1. Draft -- October 22, 2003
Please do not quote without the author's permission

Paper to be presented at the
Conference on "Europeanization and Integration"
EU Center of the University of Oklahoma, Norman, OK,
October 24 – 25, 2003

Abstract:

Between *Reformstau* and *Modernisierung*:

The Reform of German Federalism since Unification

This paper examines the changes of the German federal system and the role of the 16 states (*Länder*) in national politics and policy-making in the Federal Republic of Germany since 1990. In particular, the study focuses on the response of the German Federal Council (*Bundesrat*), the chamber of the national parliament which represents the *Länder*, to the processes of German unification and European integration in the last decade.

The paper starts from the assumption that the Federal Council has been the chief beneficiary among the Federal Republic's political institutions of the trends toward "unitary federalism" at the domestic level and a "federal Europe" at the international level. Due to the evolution of cooperative federalism with its interlocking policies, the changes in the party system and coalition politics, and, in particular, the twin processes of German unification and European integration, the *Bundesrat* has gained additional, special powers by assuring the inclusion of the "subsidiarity principle" in both the German Constitution (the Basic Law) and the Maastricht Treaty on European Union. The amended Article 23 of the Basic Law and the Maastricht Treaty's Article 3b strengthen the participation of the Federal Council and the 16 German states in national and European policymaking.

The study is based on the analysis of Federal Council data from 1949 to 2002 and the examination of recent national legislation concerning German unification and European integration. The paper takes both a "top-down" approach, i.e. it examines the effects of supra-national and national level variables on federalism, and a "bottom-up" perspective, i.e. it looks at the impact of sub-national actors on the German federal system.

Introduction	1
Characteristics of German Federalism.....	8
The Federal Council.....	14
The <i>Bundesrat</i> and Party Politics.....	18
The German States and Unification.....	22
Fiscal Equalization between the German States (<i>Länderfinanzausgleich</i>):.....	25
Party Government and Politics in the German <i>Länder</i>	28
German Federalism between Unification and Europeanization	33
German Federalism between <i>Reformstau</i> or <i>Modernisierung</i>	35
Tables and Figures	37
References	50

Introduction

Germany's federal system is under severe stress. Two of the main causes for the pressure to transform German federalism are the unification of West and East Germany in 1990 and the deepening integration of the Federal Republic of Germany (FRG) into the European Union. Unification and Europeanization have a major impact on federal-state and inter-state relations in the Federal Republic of Germany. German unification and European integration are simultaneously reinforcing or challenging earlier trends affecting the German federal system. The Federal Council, or *Bundesrat*, as the most important federal institution at the national level, is "sandwiched" between the forces that undermine the system from both above and below and thus increase the pressure for reform of co-operative federalism, such as globalization, growing differentiation of *Länder* capacities and interests (Jeffery), and party system changes (Sturm), and those variables that reinforce the co-operative federal system and prove resistant to reform, such as historical path dependence (Lehmbruch), national political culture (Umbach), and European integration (Börzel).

The paper applies both a "top-down" approach, i.e. the effects of variables on the supra-national and national level on federalism, and a "bottom-up" perspective, i.e. the impact of local and regional forces on the German federal system. This paper will look at these competing influences on the evolution of the German federal system since 1990.

In yet another sign that the calls for reform of the federal system are mounting, the *Bundestag* and the *Bundesrat* inaugurated a "federalism commission" under the joint chairmanship of Franz Müntefering and Edmund Stoiber on October 16 and 17, 2003. The commission is charged with developing reform proposals to "modernize" the German federal system, with the objectives to improve the capacity to act and make decisions of both the federal and state governments, to assign more clearly political responsibilities, and to increase the functional effectiveness and efficiency of the federal system. The commission will examine in particular the division of legislative competences between the federal and

state governments, the responsibilities and rights of the *Länder* in the policy-making process at the federal level, and the financial relations between the federation and the states. The commission consists of 16 members each from the Federal Council and the Federal Diet, in addition to four representatives of the federal government and six representatives of all the state parliaments who will serve as non-voting members with the right to be heard and make proposals only. In addition, there will be three permanent guest members representing the national peak organizations of local governments, plus 12 experts to be unanimously appointed by the other commission members, all of them non-voting, advisory members only. All commission decisions require a two-thirds majority of voting members (*Bundesrat* Pressemitteilung 183/2003, Oct. 17, 2003).

Scholars of German federalism have described the development of the German federal system since 1949 by referring to concepts like unitary federalism (Hesse 1962) or co-operative federalism (Heinze 1972). The interlocking policies linking the Federation (*Bund*) and the States (*Länder*), the centralization of the party system and the alignment of coalition politics at the federal and state government level were said to reinforce the evolution toward “unitary federalism” in Germany. Most analysts agree that these trends clearly strengthened the power of the federal government at the expense of the states (Klatt in Gunlicks and Voigt 1991).

Gerhard Lehbruch recently argued that “[t]he characteristic traits of German federalism are best explored in a historical analysis of the federal institutions. These exhibit a high degree of path-dependence that is due to the co-evolution of cultural orientations (‘unitarism’) and of the institutional arrangements. The institutional arrangements were shaped in successive sequences of development (1849, 1867/71, 1919, 1945-49) which generated, due to complementary “critical junctures” a system of increasing complexity that was more and more resistant to change. The longitudinal analysis shows that the institutional core of German ‘unitary federalism’ (as it has often been called) with its complex architecture withstands attempts at institutional engineering. However, the ‘unitary’ cultural orientation whose frame of reference was the nation state and which have contributed to the self-reproduction of this

development path are now increasingly becoming obsolete. This might open windows of opportunity for greater decentralization.” (Lehmbruch 2002).

Reformers in all political systems are confronted with resistance and what Paul Pierson (2000) calls the “stickiness” of policy arrangements. Stickiness refers to both “formal and informal institutional ‘veto points,’ and ‘path dependent’ processes, which in many cases tend to lock existing policy arrangements into place.” Nor is it unusual that public policymaking is characterized by “punctuated equilibrium,” which has been used to describe the dynamics of stability and change in the United States (True, Jones, and Baumgartner in Sabatier 1999). In a similar vein, Carter A. Wilson (2000) characterizes the evolution of public policies in the United States as the interplay of “long periods of stability followed by abrupt episodes of substantial change.” The concomitant disintegration of the old policy regime, he asserts, “occurs with changes in the policy paradigm, alterations in patterns of power and shifts in organizational arrangements.” Thus Wilson points to the important link between paradigm change and institutional change. Policy reforms do not occur overnight but require lengthy contextual modifications in values and institutional arrangements. (Welsh 2002).

“But values, no matter how persistent, are not immune to adaptations. (Welsh 2002) Using Jacob Torfing’s concept of path-shaping behavior, Robert Henry Cox argues that “issues can successfully be reformed when they build upon existing social values, sometimes recasting values to make them relevant to the proposed reform.” (Cox 2001).

Welsh (2002) argues that “[i]n sum, reforms in German higher education are the result of discursive change that was promoted by a progressive coalition.” (p. 2)

In April 1989, at a conference on the fortieth anniversary of the Federal Council sponsored by the *Bundesrat*, one of the contributors opened his presentation by stating that “it is a generally accepted proposition that the German states have experienced a significant weakening of their position since 1949

due to the loss of competences to the federal government and the European community” (Frowein, in *Vierzig Jahre Bundesrat*, p. 285).¹

Almost ten years later, in November 1998, even the then president of the Federal Council, state prime minister Hans Eichel of Hessen, acknowledged in his inaugural speech that perhaps critics were right who asserted that the *Bundesrat* has neglected its constitutional function of protecting the states’ competences; he admitted that in the past the Federal Council, in order to gain more influence on federal policy, has assented a gradual weakening of the power of *Länder* governments. (*Bundesrat* 1998).

Similarly, Klaus von Beyme (1993) asked whether European integration and German unification would lead to an “erosion of federalism” (Beyme 1993, p. 350, p. 364). According to Beyme, not all the changes in the balance of power of the German federal system were caused by the unification process. But the rapid unification has strengthened several trends that had existed prior to 1990. Most importantly, it seemed to foster the trend toward centralization in Germany’s unitary federalism by allocating most fiscal and economic responsibility with the federal government and agencies and thus giving the central government a new self-consciousness concerning its steering capacity (Beyme 1993, p. 362).

At first sight German unification seemed to be a boon to the tradition of federalism. Article one of the Unification Treaty called for the re-establishment of the East German *Länder* that had been abolished in the GDR in 1952. The five new Eastern German states were facing similar obstacles as the West German *Länder* had in 1949: only Saxony had a tradition and documented it proudly by adopting the designation “Free State,” similar to Bavarian practice. Brandenburg had been the nucleus of the state of Prussia, which had been abolished by the allies in 1945, and its own history was mainly that of a Prussian province. Saxony-Anhalt was a pure artificial creation, based on some degree of cartographic arbitrariness. Thuringia had only been created as a *Land* during the Weimar Republic, and, up to then, had been a prime example of classic German particularism. Although most of the states of Thuringia, from Saxony-Eisenach to Saxony-Altenburg, carried the dynastic destination of “Saxony” in their names, the

¹ My translation

Thuringians insisted on their separate history and opposed a fusion with neighboring Saxony successfully. A state of Saxony-Thuringia could have been the third largest federal state, if it would also have included parts of Saxony-Anhalt. But a “Two-*Länder* option” was politically unfeasible. Even the alternatives of three or four eastern states, although being discussed in the last GDR cabinet of Lothar de Maziere, found broad enough support at the time. The government of the FRG, on the other hand, was focusing its energies in the bargaining over unity with the last GDR government on more important issues than the question of a territorial reorganization (Beyme 1993, p. 350-1).

According to one argument, German reunification and membership in the European Union have fundamental implications for German federalism, both of them producing centralist tendencies. Reunification has added five new *Länder* from the former East Germany, all much poorer than those of the former West. The policy of bringing public services and living standards in these new *Länder* toward the level enjoyed by Germans in the west generates a need for huge cash transfers, from western *Länder* through the federal government to the eastern *Länder*. This clearly increases the role of the federal government (Burgess and Gress 1993).

Following this thesis, European Union undermines the role of the German *Länder* in different ways. For almost four decades, Germany remained the only federal state in the EU, and the EU institutions were more clearly tailored to the workings of unitary states. As Europe took over powers from its member states, some of these were transferred from the *Länder* to the EU by virtue of German membership without the formal consent of the *Länder*. (Gallagher, Laver, and Mair 1995, p. 140). In compensation for these transfers of sovereignty, national governments of the member states have dominated the EU-decision-making system, especially the EU Council of Ministers. But in the case of Germany this power over EU decisions is wielded by the federal government. The net effect is to weaken the power of the *Länder* and to strengthen the power of the federal government (Burgess and Gress, pp. 169-76).

However, comparing the effects of European integration on the relationships between national and regional government in Spain and Germany, Tanja Börzel (2002) has recently argued that Europeanization has strengthened the co-operation between the German *Länder* and the federal government. In Germany's case, she puts forth, European integration reinforces the co-operative relationship between *Bund* und *Länder*.

On the other hand, trends toward centralization were countered by new developments in the party system. With the consolidation of the Greens and the emergence of a four-party system organized into two blocks, new constellations of coalitions at the state level became possible. A majority of votes for CDU/CSU-led governments in the *Bundesrat* had severely constrained the Social Democrats in the early 1970s. The issue of opposition-party control of the second chamber had reemerged right before German unification. Unification and the CDU victories in four of the new Eastern states and, as well, in united Berlin in December 1990 made the CDU's position less precarious for a short while. After the decisive christian democratic-liberal victory in the first all-German election came a series of backlashes in state elections, caused by disillusionment with the rising costs of unity. The electoral victory of the SPD in Rhineland-Palatinate in the spring of 1991 was a turn-around point. A new SPD majority emerged in the Federal Council in the spring of 1991. It was only slightly tempered by the influence of the Free Democrats, who were now partners of the SPD in two coalition governments, in Brandenburg and Rhineland-Palatinate. The new variety of coalitions in the *Länder* has made it much more unlikely that state coalition governments will be aligned as closely with the federal government as had been the case in the 1970s (Beyme 1993, p. 362).

One indication of the increasing political and public pressure for a reform of the German federal system was that Hans Eichel, Prime Minister of the state of Hesse and president of the Federal Council before his succession to the post of federal finance minister, titled his inaugural address before the *Bundesrat* on 6. November 1998 "Diversity in the Federal State: About the Necessity of a Reform of Federalism." In his speech, Eichel admitted that Germany had evolved to what he called "participatory

federalism,” i.e. the loss of much original legislative competences of the states in favor of mere participation of the *Länder* in federal policymaking by way of the Federal Council (Eichel 1998, p. 7f.).

The research in this paper addresses three related questions:

- What has been the impact of German unification and European integration on the relationship between the 16 federal states and the national government in the Federal Republic of Germany?
- What role does the institution that represents the interests of the German states at the federal level, the *Bundesrat*, play in national and European policy making? And finally:
- What is the interaction between party politics at the state and national level in the Federal Republic of Germany within the context of German unification and European integration?

Of great importance for answering these question is our interpretation of the Constitutional Reform of October 1994 that became necessary after German unification. In the course of the negotiations about this reform, the German states attempted to at least partially reverse the unitary tendencies, particularly concerning legislative competencies (Laufer and Münch 1998, p. 91 f.)

This paper argues that the *Bundesrat* has been the chief beneficiary of the twin processes of German unification and European integration. In particular, two different developments have strengthened the position of the German states in the national policy-making process of the Federal Republic of Germany:

- the incorporation of the subsidiarity principle in Article 3 of the Maastricht Treaty on European Union and in Article 23 of the German Basic Law strengthens the power of the German states;
- the addition of five new Eastern states has led to more variation of government coalitions at state level and increased incongruity of Federal governing coalition with *Land* governing coalitions. This “disappearing *Land*-federal coalition nexus” (Sturm 1992, p. 124) will lead to increasing attempts by the *Bundestag* opposition party to use its *Bundesrat* majority to influence federal policies and will force the national government to bargain with the state governments concerning an increasing amount of national legislation.

However, the effects of German unification and European integration might be to push the German Federal Council to assume the role that the founders of (West) Germany originally had intended it to play. Rather than functioning as a second chamber aligned along partisan lines that serves as an additional veto point for the opposition in the Federal Diet, the *Bundesrat* represents the interests of the *Länder* and state governments at the national level.

Characteristics of German Federalism

In a series of recent articles, Gerhard Lehmbruch argued that “the main institutional features of Germany federalism own very little to deliberate constitutional design.” Rather, “its basic structures may best be described as the accumulated sediment of path-dependent institutional growth over centuries (Lehmbruch in *Comparing Public Sector Reform*, 2003, p. 1-2).

In contrast, Roland Sturm writes that “German federalism started as a democratic safety valve against centralised dictatorship. It soon developed into a system of negotiated policy-making which was refined in the late 1960s into a system of uinterlocking federalism.” (Sturm in Helms (Ed.), 2000, p. 121). Similarly, Gordon Smith stresses the debt that the German federal system owes to deliberate constitutional engineering. He calls Germany’s federal system “possibly the most significant of all the balancing mechanisms in the Basic Law” and summarizes its central features under the five headings of subsidiarity, division of legislative competences, division of administrative responsibility, interdependence of Federation and *Länder*, and apportionment of revenues (Smith 1992, p. 40-2).

The German federation differs from other federal systems in how power is divided among different levels of government. The division of responsibilities between the federation and the states in the Federal Republic differs significantly from that in other federal systems: responsibilities are not just divided by policy areas, but rather by functions in the policy-making process. Each level of government is primarily responsible for either legislative or administrative and financial functions in the policy process, and it performs these functions within almost all policy areas. (Reissert and Schaefer 1989, p. 105-6).

Overall, the separation of powers in the FRG assigns greater legislative responsibility to the federation and greater administrative responsibility to the state governments. German federalism is thus based on a functional division of legislative and administrative responsibility as well as exclusive policy domains (Dalton 1993, p. 49).

According to the Basic Law, the legislative mandate of the federal government is divided into three categories (see Table 1):

1. Exclusive powers (Articles 71, 73)
2. Concurrent powers (Articles 72, 74, 74a)
3. Framework powers (Article 75).

The federal government possesses exclusive legislative responsibilities in matters that concern the national security or require policy coordination on a national level. Defense, foreign trade, immigration, transportation, communications, and currency standards are policies that are workable only on a national scale and therefore are exclusive powers of the *Bund*. In several other policy areas the states and the federal government share concurrent powers, although in a case of conflict federal law takes priority. About two dozen areas of concurrent powers are now specified by the Basic Law, including civil law, refugee and expellee matters, public welfare, land management, consumer protection, public health, nuclear energy, and the collection of vital statistics (births, deaths, and marriages).

Framework legislation limits the federal government to providing broad policy guidelines, which are subsequently implemented by detailed legislation at the *Land* level. These federal legislative directives are limited to the areas of the mass media, nature conservation, regional planning, and public-service regulations. Another category of joint tasks was added to the Basic Law in 1969 (Article 91a and 91b); it provides for joint federal-state action in areas of broad social concern, such as improving higher education, developing regional economic structures, and improving rural conditions (Dalton 1993, p. 49-50).

After these federal “exceptions” are taken into account, the remaining policy areas are the legislative authority of the states. The states exercise jurisdiction in education (especially at the primary and secondary levels), law enforcement, regulation of radio and television, and cultural issues. Furthermore, the states retain residual powers to legislate in any area of concurrent responsibility where the federal government has not acted (Dalton 1993, p. 50).

Despite the Basic Law’s efforts to clearly specify the relationship between federation and states, conflict between the two levels of government exists. On the one hand, the federal government often finds itself confronted with important issues of national scope that it feels are not being adequately met by the states. On the other hand, the state governments jealously protect the principles of states’ rights elaborated in the *Grundgesetz*. Education policy is one example of this controversy. The Basic Law explicitly saw education as a state responsibility and decentralized educational policy-making in order to prevent any repeat of the Nazis’ forcing into line or *Gleichschaltung* of the education system. When severe inadequacies in the educational system became apparent in the mid-1960s, however, this structure of fragmented, state-level policy-making thwarted systematic reform. In 1969 a constitutional amendment authorized the federal government to set a legislative framework for educational reform through joint projects with the states. Subsequent federal legislation, such as the Higher Education Law of 1976, expanded the role of the federal government in this area previously reserved for the states. Signifying the importance of these federal standards, the unification treaty of 1990 cites agreements reached under the 1976 law as providing the model for educational reform in the East (Dalton 1993, p. 50).

Although the federal government is the major force in the legislation of policy, the states hold [primary responsibility for the implementation and administration of policy. The states enforce their own regulation and most of the domestic legislation enacted by the federal government. The state governments also oversee the operation of the local governments. As one indicator of the states’ central administrative role, more civil servants are employed by the state governments than by the federal and local

governments combined. The administrative strength of the states thus partially counterbalances their legislative limitations (Dalton 1993, p. 50).

In addition to formal constitutional arrangements, extensive informal or semiformal channels of policy consultation exist between state and federal officials. Intergovernmental committees and planning groups coordinate the different interests of federal and state governments. The growth of these coordinating committees is sometimes described as a third level of the federal system, bridging the gap between the *Bund* and the *Länder*. These organizations practice a style of cooperative federalism whereby state governments can coordinate their activities at a regional level or work together with federal officials (Dalton 1993, p. 51).

The principle of subsidiarity within the German model of federalism derives from Article 30 of the Basic Law, which states that:

The exercise of governmental powers and the discharge of governmental functions shall be incumbent on the *Länder* insofar as this Basic Law does not otherwise prescribe or permit.

Although federalism has a long tradition in German history, the states of the Federal Republic themselves, with the exception of Bavaria, Saxony, and the two city-states of Hamburg and Bremen, had little historical precedent when their borders were drawn up by the allied military governments. States like Rhineland-Palatinate and North Rhine-Westphalia were artifacts established within the boundaries of the zones of occupation (Beyme 1993, p. 332). Baden-Württemberg is the only federal state created by a popular referendum in 1952; thus, it is the only one of the “hyphenated” *Länder* that does not owe its existence to the occupation powers, but the will of the majority of its population (Schneider in Hartmann, p. 64). Thus, “German federalism is a political and constitutional, rather than cultural, phenomenon” (Gallagher et al. 1995, p. 140).

Like the 25 states of the Wilhelmine Empire or the 17 states of the Weimar Republic, the 16 *Länder* of the Federal Republic of Germany differ significantly in terms of their territorial and population size and their economic and fiscal capacity (see Table 2).

Despite their significant differences in size and population, for example between North Rhine-Westphalia and Bremen, none of the 16 *Länder* dominates the Federal Republic of Germany like Prussia dominated both the Empire and the Weimar Republic (Gunlicks and Voigt 1991, p. 14).

The Bundesrat's voting procedures give disproportionate weight to the smaller states. States that represent only a third of the population control half the votes in the *Bundesrat*. The *Bundesrat* cannot claim the same popular legitimacy as the proportionally composed and directly elected *Bundestag*. The *Bundesrat* voting system may encourage parochialism by the states. The states vote as a bloc; therefore, they view policy from the perspective of the state, rather than national interest or party positions. The different electoral bases of the *Bundestag* and *Bundesrat* make such tensions over policy an inevitable part of the legislative process. (Dalton 1997).

The Germans were the last of the large European nations to achieve political unity. All the predecessors of a unified German state, such as the first German Empire until 1806, the Confederation of the Rhine under Napoleon, and the German Confederation after 1815 all were characterized by confederal constitutions and weak central powers. The attempt of the 1848/49 parliament of the *Paulskirche* to create a democratic federal state with universal suffrage for men twenty-five years and older, a bicameral system of a people's chamber and a states' chamber and an imperial court as a type of constitutional court were early models for a democratic, federal Germany. However, the attempt failed mainly because of the particular interests of the two German great powers, Prussia and Austria.

After the brief interlude of the Northern German Confederation under Prussian hegemony, the Second Empire was created in 1871 as a monarchic federal state, often referred to as "pseudofederalism" dominated by Prussia which controlled 65 percent of the territory and 62 percent of the population (Beyme 1993, p. 331). Similarly, the Weimar Republic was not a true federal system, but rather a

decentralized unitary state. As a reaction to the centralized unitary state, into which the Nazis had transformed the Weimar Republic, the demand for a federal system was particularly strong in the occupation zones of the Western allies. But even in the Soviet Union's zone of influence, the remnants of federalism were only abolished in 1952 with the replacement of the East German states by 14 administrative districts.

During the Basic Law's period of creation, there existed no central power in Germany. The federal character of the new republic therefore originated from two main sources, albeit in accordance with a long-standing federal tradition in Germany. One predominant source were the military governors of the allied powers. Other strong influences came from the heads of the state governments, often called *Ministerpräsidenten* or "minister presidents", of the new states that had already come into existence prior to 1949.

When the allied military governors authorized the prime ministers of the German states in 1948 to convoke a constitutional convention for the new West German Republic, they instructed them to develop a "federal constitution." The Parliamentary Council under Konrad Adenauer's leadership agreed that West Germany should be a federal republic; disagreement existed only over what kind of representation the federal states should have in national affairs. The alternatives were either to follow the "senatorial principle" of the American or Swiss model, in which the populations or the parliaments would directly elect the representatives to be sent to the second legislative chamber, or to adopt the traditional German "council principle" according to which the members of the second legislative chamber would be deputies of the state governments with an imperative mandate. Tradition won out, and the new Federal Council would be composed of members not directly elected by state legislatures or voters, but rather nominated by the state executive branches of government, to represent the interests of the states at the national level. Thus, the Federal Council is not really a second legislative body in the process of democratic decision-making, but rather an instrument of executive and bureaucratic influence (Sontheimer 1993, p. 284-5).

However, the traditional council principle was moderated by compromise, first by giving the Federal Council fewer powers than the Federal Diet, and second, by apportioning the number of representatives (or votes) each state would have according to their population size. By limiting the veto power of the second chamber to laws that had a direct influence on state interests and by differentiating the number of representatives or votes each federal state would have in the *Bundesrat* from three to five, this weakened federal council (Thaysen 1994, p. 12-3) would represent a compromise solution between the republican principle of equality practiced in the United States and Switzerland and the principle of weighing states' power according to (population) size, which would have been more in accordance with the German tradition of monarchic federalism (Beyme 1993, p. 332-3).

Clearly, the *Bundesrat* is not a co-equal, second legislative chamber of parliament. Rather, it is sometimes referred to as a "conclave of states" (Gallagher et al. 1995, p. 139) or a "permanent conference of minister presidents" (Dalton 1993, p. 58).

The control exercised by the Federal Council is primarily a control of the federal executive and legislative branches by the executive branches of the states. The state parliaments do not partake at all in the decision-making process of the *Bundesrat*. Thus, this is not a form of parliamentary control (Sontheimer 1993, p. 291).

The Federal Council

Nowhere else in German politics is there as much institutional continuity as with the Federal Council. This continuity started 1666 with the convening of the "Permanent Imperial Diet" in Regensburg. Its successor became (after the interruption of 1806 to 1815) the Federal Diet (*Bundestag*) of the German Confederation (*Deutscher Bund*), which essentially operated under the same procedural rules as the old Imperial Diet. When Bismarck introduced the Federal Council (*Bundesrat*) in the constitution of the North-German Confederation of 1867, he very consciously followed in the tradition of the Frankfurt Federal Diet (since he himself had been the Prussian Delegate at the Federal Diet of the German

Confederation in Frankfurt from 1851 to 1859). Even the number of votes corresponded to those of the Federal Diet of 1815, except that Prussia now added to its own votes also those of the territories annexed in 1866 (Hanover, Hesse-Kassel, Nassau and Frankfurt) and thus had the largest bloc of votes. But the procedural rules basically remained the same, extending to the Imperial Council of the German Empire in 1871 and even to that of the Weimar Republic, which like their predecessors essentially remained Congresses of Deputies of state governments. To be sure, this is a continuity of institutional structures and procedures, not of functions. The functions of the successive chambers have changed fundamentally since 1666 (Lehmbruch 1999).

In the Federal Republic of Germany, the Federal Council (*Bundesrat*) represents the interests of the states or *Länder* in the national policy-making process of the Federal Republic of Germany. It is composed of sixty-nine members drawn from the sixteen state governments. Each state, depending on its population, is entitled to three to six members with an equivalent number of votes. Most *Bundesrat* sessions are attended by delegates from the state governments and not the actual formal members, the state-level prime ministers or cabinet ministers (Hancock et al. 1993, p. 218).

Throughout most of its earlier history, the *Bundesrat* concentrated on the administrative aspects of policy making and rarely initiated legislative proposals. Since the states implement most national legislation, the *Bundesrat* tended to examine proposed programs from the standpoint of how they can be best administered at the state level. The *Bundesrat* thus was not seen as an institution in the partisan political spotlight.

In recent years, this perspective has changed, due in part to Germany's experience with a particular form of divided government. While the Christian Democrats were in opposition in the *Bundestag* from 1969 to 1982, the Christian Democratic-led governments formed the majority in the *Bundesrat*. Between 1972 and 1982, the frequency of *Bundesrat* objections to government legislation increased to the point where the leaders of the SPD-FDP government accused it of becoming the "extended arm" of the parliamentary opposition. It was suggested that the CDU/CSU was seeking to obstruct the

government's electoral majority by turning its own majority in the *Bundesrat* into a politicized countergovernment. Thus the *Bundesrat* blocked or forced compromises on the government on such issues as divorce law reform, speed limits on the *Autobahnen*, higher education reform, tax policy, the controversial law on "radicals in public employment, and the 1976 treaty with Poland.

In 1991 the Social Democrats, after a series of victories in state elections, gained control of the *Bundesrat*. The party promptly used its majority to force the government to change some provisions of a new tax law designed to finance the costs of unification (Hancock et al. 1993, p. 218). The Social Democratic party's majority also insured that it would have major input into any programs proposed by the government or could block major legislative initiatives, as happened with increasing frequency in the last years of the Kohl government.

According to the Basic Law, the *Bundesrat* can initiate legislation, and it must approve all laws directly related to the states' responsibilities, such as education, police matters, state and local finance questions, land use, and most transportation issues. In addition, any legislation affecting state boundaries, national emergencies, and proposed constitutional amendments requires *Bundesrat* approval.

In practice, however, the *Bundesrat*, at least until the 1969, has rarely initiated legislation or exercised its veto powers.

"It is important to note that the *Bundesrat* is not solely a legislative organ. Thus the Basic Law stipulates that the *Länder* shall participate **through** the *Bundesrat* in the legislation **and** the administration of the federation (Article 50). The idea that the *Bundesrat* is a 'meeting place of governments' is reinforced through the participation of the federal government in the work of the *Bundesrat*, both in consultation and by its representation on *Bundesrat* committees." (Smith 1992, p. 44)²

The Federal Council with its 69 members is substantially smaller than the Federal Diet with its now 598 regular members and therefore lacks much of the formal organizational structure of larger legislative bodies. The *Bundesrat* normally schedules only about a dozen plenary sessions in a year,

² Original emphasis.

usually Fridays, in comparison to roughly 50 plenary sessions for the average Federal Diet. Most of the *Bundesrat's* legislative activity takes place in committees, an even higher proportion than in the *Bundestag* (Dalton 1993, p. 336).

According to Article 77 of the Basic Law, *Bundesrat* and *Bundestag* form a joint mediation committee (*Vermittlungsausschuss*). Each chamber sends sixteen of its members. In the 13th legislative term (1994-1998), eight of the *Bundestag's* delegates came from the CDU/CSU, six from the SPD, and one each from the Greens and the Liberal Party. Of the sixteen members from the *Bundesrat* each state government is represented by one delegate. The chair of the mediation committee rotates every three months between a *Bundestag* and a *Bundesrat* member.

“More than any other institution, the *Bundesrat* exemplifies the ‘cooperative’ character of the German constitutional system. The checks and balances, the admixture of federal and *Land* competences, and the blurring of the administrative and legislative spheres -- these all show the complex relationships involved in fashioning a consensus.” (Smith 1992, p. 45).

Cooperative federalism refers both to vertically interlocking policies (*vertikale Politikverflechtung*) between the federation and the states in Germany or between the European Union and its member states, as well as the horizontally interlocking policies (*horizontale Politikverflechtung*) (Scharpf, in Benz, Scharpf and Zintl 1992).

Even in the education policy sector, long seen as the ultimate domain of state authority, *Politikverflechtung* has undermined state control and led to sharp criticism, both by advocates of a strong, competitive federalism and proponents of education policy reform.

The one institution which for a long time has been the most visible representation of cooperative federalism is the *Kultusministerkonferenz (KMK)*, or the Conference of Ministers of Culture of the individual states. The *KMK*, which had been founded in 1948, i.e. before the FRG itself, during the 1950s and 60s coordinated and harmonized the school systems of the different states. Although the *KMK* was largely incapacitated by partisan strife between *A-* and *B-Länder* over educational reforms such as the

introduction of comprehensive schools in the 1970s, it continued to play a central role in maintaining fairly uniform educational systems and standards across the states in a time of mass expansion of secondary and higher education. In the 1990s, the decade of the *Bildungsmisere*, or educational crisis, however, the KMK is increasingly criticized by many as an impediment to reform and competition, both seen as necessary to overcome the reform jam of German education. The KMK's efforts to maintain the delicate balance between conservative and socialdemocratic *Länder* are attacked as an attempt to maintain the status quo by stifling individual states' initiatives. Some journalists have gone as far as demanding the abolition of the KMK and the introduction of the competition of state education systems.

Although the German states have lost much autonomy in policy making and many of their functions have been transferred to the national level, this has not weakened the power of the *Bundesrat*. Quite to the contrary, the increasing "centralization" of policy making at the federal level has increased the importance and influence of the *Bundesrat* as the representative institution of the German states at the national level.

As the locus of policymaking has shifted from the *Land* level to the national level, so has the impact of the *Länder* shifted from individual influence to their institution of collective representation at the national level, the *Bundesrat*.

According to David Conradt, "this somewhat paradoxical development is largely due to changes in (1) the actual composition of the chamber's membership, (2) the determination of those areas in which the *Bundesrat* has an absolute veto, and (3) party control of the two chambers of parliament, the divided government of Germany between 1972 and 1982 and since 1991." (Conradt, p. 192).

The *Bundesrat* and Party Politics

The composition of the Federal Council reflects the fortunes of the political parties in the individual states. The party majority in the Federal Council need not correspond to that in the Federal Diet, and government coalitions in the *Länder* need not be the same as the federal government coalition (Smith 1992). The various delegations, consisting of minister presidents, cabinet ministers, or high-level

bureaucrats, are sent by *Länder* governments and act on instructions of the *Land* government. They are in Bonn to serve their *Länder* interests, and the federal government has no direct way of ensuring that its legislation will meet approval even by those *Länder* governments consisting of the same party or parties as the federal government. According to Gordon Smith, “one consequence of unification has been greatly to magnify the disparity between the political composition of government at federal and *Land* levels.” (Smith 1992, p.).

The political composition of the *Bundesrat* at any given time is determined by which parties are governing the *Länder*. Each of the sixteen states cast their votes in a bloc, depending on the views of the party or coalition in control of the *Land* government at the time. Consequently, the party controlling the majority of the *Länder* governments can have a significant effect on legislation passed in the *Bundestag*. And because *Land* elections usually take place between *Bundestag* electoral periods, the *Bundesrat* majority can shift during the course of a *Bundestag* legislative period. In the years immediately prior to unification, the states governed by the SPD has a majority in the *Bundesrat*, but after the addition of the five new *Länder*, four of which were ruled by CDU-led coalitions, the balance in the *Bundesrat* swung back to the conservative parties. The *Bundesrat* majority changed again in favor of the SPD after the CDU lost the April *Land* election in Kohl’s home state of Rhineland Palatinate (Allen 1992, p. 284).

The *Bundesrat* “is the institutional intersection of the national and state governments.” (Allen 1992, p. 285) “More than any other institution, the *Bundesrat* exemplifies the ‘cooperative’ character of the German constitutional system. The checks and balances, the admixture of federal and *Land* competences, and the blurring of the administrative and legislative spheres -- these all show the complex relationships involved in fashioning a consensus.” (Smith 1992, p. 45).

On the basis of Art. 50 of the Basic Law, the German states participate through the Federal Council or *Bundesrat* in the legislative and administrative process of the Federal Government and, since the revision of the article in 1992, in matters concerning the European Union.

The *Bundesrat* is directly involved in the passage of federal legislation, though its legislative authority is secondary to the *Bundestag*. The federal government is required to submit all legislative proposals to the *Bundesrat* before forwarding them to the *Bundestag*. *Bundesrat* approval of legislation is required in policy areas where the Basic Law grants the states concurrent powers or where the states will have to administer federal regulations.

For the first twenty years of its existence, the *Bundesrat* introduced comparatively little legislation. Most legislation at the national level is introduced by the Federal cabinet, followed by the Federal diet (see Table 3).

From 1949 to 1989, there were some 35 amendments to the Basic Law. More than 20 of these had some effect on German federalism, above all in the expansion of powers for the federal government. In no case were the *Länder* given expanded powers (Gunlicks in Merkl 1995, p. 226).

“Paradoxically, as the federal states have ... lost many powers to the federation, the national legislative body representing their interests, the *Bundesrat*, has substantially enhanced its power.” (Thaysen 1994, p. 1).

This is evident in the increasingly important use of the *Bundesrat*’s two-fold veto power: a suspensive veto, which the *Bundesrat* can use against any law passed by the *Bundestag* and which the latter can in the end override by a simple majority and an absolute veto against certain bills passed by the *Bundestag*, which the latter can not override. If the *Bundesrat* should put in its suspensive veto with a two-thirds majority, then the *Bundestag* needs a two-thirds majority to override the *Bundesrat* veto as well.

In the overwhelming number of cases, the two houses concur on pending legislation (Hancock 1989, p. 58). From 1949 through 1972, the number of applications to the Mediation Committee declined from 75 to 33. It then jumped to 104 (1972-76) and 77 (1976-80) before declining again to 13 in the eleventh term (1987-90). After 1990, the number almost went up almost sevenfold to 85; about half-way through the current 13th term, the mediation has already been convened 44 times. Similarly, the number

of bills denied *Bundesrat* approval declined from eight to one from 1949 to 1969. Thereafter, the number jumped to eight in the seventh (1972-76) and nine in the eighth legislative period (1976-80). Correspondingly, the *Bundesrat* was most active in introducing legislation during periods when its own majority was at odds with the *Bundestags*-majority, such as in the seventh legislative term (75 bills in 1972-76) and once again since 1990 (96 bills).

The proportion of bills over which the *Bundesrat* has an absolute veto rose from 41 percent in the first *Bundestag* (1949-1953) to a high of 60.6 percent in the tenth *Bundestag* (1983-1987). Although the number declined slightly to 55 percent for the eleventh legislative term, in the twelfth *Bundesrat* period the ratio once again climbed to about two thirds of all legislation (see Table 3). Even more indicative of the politicization of the second chamber is the increase in the number of bills that were submitted to the mediation committee, from 13 in the 1987-90 term to 85 in the 1990-94 term, most of them (71) by the *Bundesrat*. The heightened role given to the *Bundesrat* by the Social Democrats as a forum to present alternatives to the CDU/CSU-FDP coalition's policies is also manifested in the fact that after 1990 the number of bills introduced by the *Bundesrat* almost doubled from 47 in the 11th. term to 96 in the 12th. period and has already reached 157 in the unfinished 13th term, whereas the number of bills introduced by the Federal Cabinet and the *Bundestag* each increased by only about 20 percent over the same time (Jahrbuch der Bundesrepublik Deutschland 1997, p. 179).

[Table 3 about here]

Preliminary data for the 13th *Bundestag* indicate that this trend of using the *Bundesrat* as an instrument for opposition continues: Since its inauguration in November 1994, of the total of 651 bills introduced, 157 were submitted by the *Bundesrat*. No fewer than 44 bills had to be taken up by the Mediation Committee, and so far the *Bundesrat* has denied its approval to thirteen bills (*Deutscher Bundestag-DIP*).

The *Bundesrat* , as a legislative body, is thus most important when controlled by the opposition party of the Bundestag, since it can be used to stall, modify or, in some instances, even block the legislative proposals of the federal government.

When the two houses of the German parliament are controlled by different party groupings, this leads to potential confrontation, and the presence of the *Länder* is definitely felt in federal politics. The two chambers can quite easily have different patterns of political control because *Land* elections do not take place at the same time as federal elections and voting patterns at *Land* level may vary significantly from those at federal level (Gallagher et al. 1995, p. 139-40).

Prior to the emergence of the Greens, the Republicans, and the PDS, the concentration of political power in the three moderate parties, CDU-CSU, SPD, and FDP, was essential to the successful operation of the Basic Law and the smooth operation of the system of co-operative federalism (Smith 1992, p. 40).

The German States and Unification

The most pressing constitutional assignment after the date of the currency union was the re-establishment of the East German *Länder*. Unification via article 23 of the Basic Law required that the GDR join the FRG *Land* by *Land*, and not as a whole (Merkel 1993, p. 204). The Federal Republic, according to article 23, was obliged to accept “any other parts of Germany” without any conditions if they chose to accede. This provision of the Basic Law had been used in 1957 to reintegrate the Saarland into the Federal Republic, and this unprecedented step was to serve as a model for German unification in 1990.

Between 1945 and 1952, East Germany had already been composed of *Länder*, which derived their configuration from pre-1933 antecedents that had been adjusted for the imposition of the Oder-Neisse line and the zonal boundaries towards the west and south (Merkel 1993, p. 204). The five *Länder* reconstituted in 1990 were largely identical with the five *Länder* of the 1945 Soviet Zone of Occupation (except for Greater Berlin). In the early years of the GDR, they constituted the states of a federal system and enjoyed representation in a weak *Länderkammer*, comparable with the Weimar Reichsrat and the West German *Bundesrat*. The *Länderkammer* played a minor role in the initiation of legislation and

survived in obscurity until its abolition in 1958. The *Länder* and their governments were abolished in mid-1952 and replaced by fourteen districts (*Bezirke*) which in the interim sent delegates to the *Länderkammer*. When the re-establishment of the five *Länder* first became a likely choice for unification via article 23, there was a flurry of suggestions for redrawing *Länder* boundaries in the GDR and also in the old FRG, where article 29 of the Basic Law had always offered this route for correcting inequities and imbalances in the original, postwar configuration of member states of the West German federation. As in West Germany, however, hardly anything came of these public discussions, and the 1946-1952 East German *Länder* were simply reconstituted in their earlier configuration for the purpose of *Land* elections in October 1990 (Merkl 1993, p. 205-6).

In this form, the East German People's Chamber passed the law for the reintroduction of the *Länder* on July 22, 1990, which was to take effect on German Unity Day, October 3, 1990. On this day, the GDR would disappear as an entity. The five new *Länder* would remain and, on October 14, elections for their respective diets (*Landtage*) would each in turn establish a parliamentary *Land* government headed by a minister president just as in the West German *Länder*. The new *Landtage* and *Land* cabinets would then send instructed *Land* delegations to the enlarged *Bundesrat*, each to take their seats and vote *en bloc* alongside the *Land* delegations of the other German states (Merkl 1993, p. 206-7).

Particularly the GDR, as a "People's Republic of Prussia," directly and indirectly cultivated centralist and authoritarian traditions which left their mark in the political culture of the East German states (Muszynski in Hartmann 1994, p. 57).

"The formation of the five new *Länder* was accompanied by a revival of regional and local sentiment beginning with the original upheaval of 1989, when the old state colors and flags began to appear in demonstrations in Leipzig, Dresden, Halle, Erfurt, Magdeburg, Potsdam, and Schwerin. 'We are the people' and other protest slogans seemed more effective when sported on a local and regional background, asserting traditional identities against the increasingly artificial one of centralized, communist rule, a longtime source of the GDR's 'history of frustrations.'" (Merkl 1993, p. 207). Thus,

the re-establishment of the East German *Länder* met the yearnings of the people in centralized East Germany (Muszynski in Hartmann 1994, p. 55).

The degree to which the reconstituted *Länder* succeeded in providing the people of former East Germany with a sense of identity, particularly at a time of disorientation, was further demonstrated by the rejection of the fusion of the two states of Berlin and Brandenburg in a popular referendum in May 1996. After ten rounds of negotiations and the ratification of the merger treaty by the necessary two-thirds majorities in both the Berlin and Brandenburg state parliaments, a clear majority of the Brandenburg voters rejected the merger plans in the popular referendum of May 5, 1996: 62.7 % voted against the state treaty, only 36.3 voted for it. In Berlin, the result was reversed: 53.4 % of the voters supporter the fusion and 45.7 % rejected it.³ This outcome has raised doubts about the success of any future proposals for a merger of some of the smaller *Länder* and thus a territorial reorganization of German federalism into seven or eight larger states as proposed by the joint constitutional committee in its report of November 5, 1993.

The re-establishment of the East German states that had been abolished in 1952 was the first objective in Article 1 of the Unification Treaty. The effect of the incorporation of the five new *Länder* was then ameliorated in the interest of the larger states like North Rhine Westphalia, Bavaria, Baden-Württemberg, and Lower Saxony. The new provision of the unification treaty was based on a compromise proposal by Oscar Lafontaine, minister president of the Saarland. It changed the number of seats for each *Land* in the *Bundesrat* only slightly by giving the big four *Länder* each one more seat (Sturm 1992, p. 126).

According to the revised Article 51, paragraph 2 of the Basic Law, each *Land* would now have at least three votes in the *Bundesrat*. States with more than two million inhabitants would get four votes,

³ The supporters in Berlin came predominantly from districts in former West Berlin and there particularly from CDU-strongholds, whereas the East Berliners like the Brandenburgers in their majority voted no. According to an analysis by the *Forschungsgruppe Wahlen*, particularly voters below the age of 30 voted negative. Electoral participation, with 57.8 % in Berlin and 66.6 % in Brandenburg, was much higher than in previous referenda.

those with more than six million people would receive five seats, and *Länder* with more than seven million inhabitants were now given six instead of five votes. (Beyme 1993, p. 334).

The bargaining process, which led to the compromise in *Länder* votes in the *Bundesrat* offers interesting insights into the power structure of German federalism, particularly on the delicate balance between party-political and *Länder* interests, a power structure which was already confronted with the cross-pressures stemming from German unification. (Sturm 1992, p. 127).

Fiscal Equalization between the German States (*Länderfinanzausgleich*):

The fiscal capacity of the sixteen German states varies considerably because of their differences in population size and economic structures. The Basic Law commits the Federal Republic to the maintenance of “equivalent living conditions” (*gleichwertige Lebensverhältnisse*) for the various states of the federation.. In order to secure uniform living conditions as laid down in Article 72 (2) and Article 106 (3) of the Basic Law, there exist arrangements for financial equalization between Bund, *Länder* and the municipalities (the so-called vertical equalization) and also between ‘rich’ and ‘poor’ states (the so-called horizontal equalization). Since the fiscal reform of 1969, the financial disparities between the German states have been mitigated by this “state financial equalization regime” that since 1995 encompasses the new federal states as well.

The Unification Treaty of 1990 provided that the new federal states should from the very beginning be incorporated as far as possible in the financial system established by the Basic Law. However, until 1995 the revenue sharing provisions were suspended for the new East German states. The old states, fearing a large drain on their treasuries, insisted that the new states would have to experience a substantial economic recovery before these sections of the constitution could take effect. In exchange, the old states agreed to underwrite partially the “German Unity fund,” a bond issue to finance economic development in the new regions. In 1993 a “solidarity Pact” was passed by the national parliament that

restructured the distribution of tax revenues between local, state, and national governments and in 1995 brought the new states into the revenue-sharing system. (Conradt 1996, p. 265-6)

In the late 1980s, before unification, around DM 3 billion - 4 billion was flowing from rich states to slightly less rich ones. From 1995 on, DM 12 billion - 15 billion will be flowing through the system, all of it from west to east, turning several former recipients into donors.

If revenue equalization had been applied immediately to a unified Germany, there would have been a large revenue transfer from western to eastern *Länder*. It is for this reason that an immediate German-wide application of the rules for determining fiscal equalization was successfully resisted by the *Länder* which had been recipients prior to unification.

As a compensation for the exclusion from the fiscal equalization law, the new states received subsidies from the fund for "German Unity." When the fund expired in 1994, the five new *Länder* had received about DM 160,5 billion.

In 1995, the *Finanzausgleichgesetz* started again. The state governments' share of the value-added tax was raised from 45 % to 52 %; the central government received, by compensation, a 7.5 percent income-tax surcharge, the *Solidaritätsabgabe*, which is only temporary and is scheduled to run out in 1998. In January 1996, the federal cabinet decided, under pressure from its FDP-members, to reduce the solidarity surcharge from 7.5 to 5.5 percent. Encountering the unified resistance of the minister presidents of all the *Länder*, including the CDU-led states, in the *Bundesrat*, the federal government had to back down and proposed a reduction to only 6.5 percent in its fiscal policy proposal.

The 1995 reforms shifted fiscal power even further toward the federal government. Under the new "fiscal consolidation program", twelve of the sixteen states are now receiving so-called "federal supplementary payments" (*Bundesergänzungszuweisungen*), i.e. subsidies for *Länder* whose revenues from taxes and the *Länderfinanzausgleich* are not adequate. Only North Rhine Westphalia, Bavaria, Baden-Württemberg, and Hamburg do not get these supplemental payments.

In 1995, under the revamped system including the eastern states, of the six recipient states prior to unification, four--Bremen, Lower Saxony, Rhineland-Palatinate, and the Saarland--continued to receive transfer moneys, whereas Schleswig-Holstein and Hamburg switched from recipient to donor countries. The net payers were North Rhine Westphalia, Baden-Württemberg, Bavaria and Hesse, in that order (see Table 4).

[Table 4 about here]

In 1996, assuming the average fiscal capacity of all sixteen German states to be 100, Hamburg was first with a fiscal capacity index of 136 and Hesse next with 132, followed by Bremen and North Rhine Westphalia. Baden-Württemberg came in fifth with 116 and Bayern sixth with 112. Of the old states, Schleswig-Holstein, Lower Saxony, Rhineland-Palatinate and the Saarland are below average. All the new East German states (including Berlin) are well below average, with Thuringia and Mecklenburg-West Pomerania coming in last (Economist Nov. 9, 1996).

However, this original picture of tax revenue power of the 16 German states is almost completely reversed after the application of the various fiscal equalization measures. Hamburg declines from first to seventh place, North Rhine Westphalia from rang four to twelfth, Bavaria from 6th place to 14th, and Hesse declines from second rank to last. This result has recently prompted a Bundesrat initiative by Bavaria and Baden-Württemberg to reform the various fiscal equalization measures, which also raises anew the question of a territorial restructuring of German federalism (Die Welt, 2/24/1997).

In 1997, the premiers of Bavaria and Baden-Württemberg, Edmund Stoiber and Erwin Teufel, continued to call for the reform of the fiscal equalization scheme. They argued that Bavaria and Baden-Württemberg, the two states with the highest net payments to the *Länderfinanzausgleich*, had to cover the costs caused by the “fiscal irresponsibility” of (the mainly socialdemocratically-dominated) small city-states and new Eastern states. Teufel threatened to challenge the constitutionality of the fiscal equalization scheme before the Federal Constitutional Court in Karlsruhe. Stoiber went as far as demanding the regionalization of the main federal social insurance fund, the Sozialversicherung, arguing that Bavarians

were financing the lavish welfare spending of socialdemocratic state governments in other regions; regionalization would thus mean lower payments for Bavarians and higher payments by Schleswig-Holsteiners, properly allocating the costs and benefits of successful versus failed economic policies.

Whether the mainly southern German demands for reform will meet with success, the financial dependency of the five new states on the federal government and the western states will continue for the foreseeable future and is likely to reinforce the centralizing tendencies in German federalism. It is also likely to further strengthen the importance of the *Bundesrat* as the representative institution of both old and new states at the national level (Sontheimer 1993, p. 289).

Party Government and Politics in the German *Länder*

The Basic Law created a federal system of government that divides political power between the federal government (*Bund*) and the state governments. The structure of state governments is based on a parliamentary system modeled after the national government. Most states have a unicameral legislature, normally called a *Landtag*, which is directly elected by popular vote. Bavaria is the only *Land* with a bicameral legislature; one house is popularly elected and the second (the *Senat*) is composed of representatives of major social and economic groups. The party or coalition of parties that controls the legislature selects a minister president to head the state government. The minister president appoints a cabinet to administer state agencies and perform the executive functions of state government (Dalton 1993, p. 48).

The minister presidents are important national figures in German politics. The federal system of government enables them to wield influence at both the state and national levels. The position also serves as a stepping stone to national office, either as federal chancellor or as a member of the federal cabinet. Three of the last four chancellors, including the present incumbent and his challenger in the last election, were former heads of state governments (Dalton 1993, p. 48-9).

As on the national level, coalition governments are the rule rather than the exception in the states. Until the mid-1960s, coalition alignments, especially in the larger states, were usually similar to those at the national level. This ensured that the national government would have adequate support for its policies in the *Bundesrat*. The practice was an example of the integrating effects of Germany's political parties in the federal system. This national-state party nexus emerged in the 1950s when Adenauer sought to compel all CDU state parties to leave coalitions with the Socialdemocrats and conform to the Bonn pattern of governing alone, if possible, or with other middle-class parties (Heidenheimer 1958). By the end of the decade, all state governments were controlled by either the CDU and its allies or the Social Democrats (Conradt 1996, p. 258).

This pattern broke down in the early 1960s, due to the waning of Adenauer's influence, CDU/CSU intraparty conflicts, and the greater acceptability of the SPD as a coalition partner to the Free Democrats, and in some cases the Union itself (Conradt 1996, p. 258). After the formation of the Grand Coalition between CDU/CSU and SPD at the national level, almost all combinations of party alignments possible could be found in the *Länder*. There were Grand Coalitions of CDU and SPD in Baden-Württemberg and Lower Saxony; CDU/CSU-FDP alignments in Schleswig-Holstein, the Rhineland-Palatinate, and the Saarland; SPD-FDP coalitions in North Rhine-Westphalia, Hamburg, and Bremen; and single-party governments in Bavaria (CSU) and Hesse (SPD). After the formation of the national SPD-FDP coalition in 1969, coalition governments at the state level again became consistent with the Bonn pattern: either the SPD-FDP governed in coalition (Hesse, Hamburg, Bremen, Lower Saxony, North Rhine-Westphalia), or the Christian Democrats ruled alone (Bavaria, Rhineland-Palatinate, Saarland, Baden-Württemberg, Schleswig-Holstein). After 1976, however, a mixed pattern returned as the Christian Democrats and Free Democrats formed coalition governments in Lower Saxony and the Saarland (Conradt 1996, p. 259).

In such a constellation the *Bundestag*-opposition party is forced to cooperate at least in part with the majority party.

[Table 5 about here]

After the SPD majority in the *Bundesrat* rejected the 1995 federal budget, the mediation committee had to consult over the budget for the first time since 1981. The SPD-governed states demanded higher expenditures in the areas of housing allowances, university construction, shipyards, and child care, which would have amounted to an additional DM 1.4 billion. The *Bundestag* finally overrode the Federal Council with the 341 against 307 votes--a few votes more than the necessary chancellor majority of 337 votes--in June 1995 (*Jahrbuch 1997*, p. 278).

One aspect of the German party system that has been neglected by research is that political parties in Germany frequently were explicit regional parties or emerged from regional parties and that they maintain, despite all unitary tendencies, clear regional strongholds (Lösche 1993, p. 191). Shifts in party alignments at the state level have served as laboratories and indicators for a possible coalition realignment in the national executive.

Because of its important role in the national policy-making process it seems almost inevitable that the *Bundesrat* would become a forum for party conflict. Particularly during times when the majority control of the Federal Council differed from that of the Federal diet, the opposition party has tried to use its *Bundesrat* majority to counter or correct the policies of the federal cabinet in the Federal Council. This tendency was true both during the socialdemocratic-liberal coalition in the 1970s, when the CDU/CSU used its control over the Federal Council to bloc federal legislation like the treaty with Poland in 1976, as well as since the late-1980s, when the Socialdemocrats have been using their control of a majority of state governments to veto important bills of Helmut Kohl's CDU/CSU-FDP coalition government.

One of the more interesting features of the German federal system has been that the strength of political parties and party coalitions at the state level has frequently differed from party control at the national level. For instance, it was crucial for the SPD during its 17-year opposition role at the federal level to be able to demonstrate its ability to govern at the state level and to produce competent politicians like Willy Brandt.

“One notable effect of German unification has been to increase the number of constituent *Länder* from the previous 10 to 16, with the addition of the five East German *Länder* and the formation of the whole of Berlin as a new city-state. An immediate consequence has been to complicate considerably the relationships between the federal government and the *Länder*. Partly this change is due to the greater variation of regional interests which are now given expression, but partly, too, it results from the wide disjunction that has become apparent between the political complexion of the federal government on the one side and the predominant coloring of the individual *Land* governments on the other. Both elements of this complexity and imbalance are reflected in the *Bundesrat*. (Smith, in Smith et al., 1992, p. 90f.).

In 1989, the year before unification, eight of the 11 German *Länder* had single-party governments, and two had a coalition between one of the major parties and the Free Democrats (FDP). A decade later, out of the 16 German *Länder*, only five were governed by a single party, and in two of those, Brandenburg and Saxony, one-party rule was due to the extraordinary popularity of their respective premiers, Manfred Stolpe and Kurt Biedenkopf. The rest was a confusion of coalitions: four “red-green” ones between Social Democrats and Greens (one, in Saxony-Anhalt, made possible by the tacit support of the PDS); four “grand coalitions” between Christian Democrats and Social Democrats; and a handful of other permutations (see table 5).

After the March 1994 state elections in Lower Saxony, in which the Social Democrats had gained an unprecedented majority of seats in the Hanover legislature, allowing then Minister-President Schröder to govern alone without the help of the Greens, the Social Democratic party was a member of eleven out of sixteen *Länder* coalition governments and held the minister-presidency in nine of them. Thus, in 1994 the SPD continued to have a sizable majority in the *Bundesrat*, giving it an opportunity to block government bills (Braunthal 1996, p. 166-7) (see table 6).

[Table 6 about here]

Less than a decade later, in the fall of 2003, with the SPD now the senior partner in the coalition government with the Greens at the national level, there was not a single SPD majority government left.

Only seven of the 16 states were headed by a social-democratic *Ministerpräsident*. Of these seven SPD-led governments, two were coalition governments with the Greens, two with the PDS, one with the FDP, and two grand-coalitions with the CDU. On the other hand, nine German *Länder* were governed by CDU or CSU-led administrations; in five of those the Christian-Democrats governed alone, and in the other four in coalition with the Free Democrats.

Thus, in the *Bundesrat*, the CDU/CSU opposition effectively controlled 41 votes, whereas the governing SPD could count on only 17 “safe” votes, from those states where the SPD governed in coalitions with either the Greens or the PDS. The remaining 11 votes belonged to states where the SPD governed in coalition with one of the *Bundestag* opposition parties, the CDU or FDP. These *Länder* might be labeled the “swing bloc”, since their representatives in the Federal Council, based on the coalition treaties signed before forming the state governments, either abstain from voting on controversial issues or cast their votes based on specific pay-offs negotiated with the federal government before voting (see table 7).

[Table 7 about here]

According to Roland Sturm, the state-federal coalition nexus is disappearing. “There is a growing readiness of the parties at the *Land* level -- enhanced by unification -- to cooperate with other parties irrespective of the line-up at the federal level” (Sturm in Smith 1992, p. 124).

Peter Lösche argues that the German parties are becoming increasingly decentralized, fragmented and flexible and are developing towards an organizational and political condition that he calls “loosely coupled anarchy”, or a federation of federations of local organizations (Lösche 1993, p. 184-5).

Roland Sturm asks: “What political consequences do the varied landscape of *Länder* coalitions have? The most important one is certainly that it has become more difficult than at any earlier point in time of the FRG’s history to divide the *Länder* strictly according to party political criteria, and to judge by these the relative strength of the parties in the *Länder*.” (Sturm in Smith 1992, p. 124)

Because some of the new coalitions in the states were diverging from the governing coalition at the federal level, the question of how such a *Land* coalition government should vote on disputed issues in the *Bundesrat* came up. It became a common practice for such coalition partners to agree on a so-called “Federal Council clause” that ensured that the state would abstain from voting in decision that were in dispute. Since Federal Council decision require an absolute majority, abstentions effectively constitute a no-vote, such clauses tended to hurt the national government.

The extent to which the *Länder* come into open conflict with the federal government and the extent to which each *Land* pursues policies without regard to what goes on in other states are mediated by a very extensive system of ad-hoc committees. These are designed both to resolve potential conflicts before these become explicit and to coordinate the activities of different *Länder*, creating a coherent development of public policy across the *Länder* as a whole (Gallagher et al. 1995, p. 140).

German Federalism between Unification and Europeanization

Governance and administration have become more complex and difficult in Germany’s system of cooperative federalism. The main reasons for the increasing tensions within the federal system have commonly been identified as:

- the precedence of federal law over state law, as specified in Article 31 of the Basic Law, which says that “Federal law shall override *Land* law” and applies even to cases in which state constitutional rules differ from the regulations of the Basic Law;
- the disparity of the federal states and the missed chance of a reordering of the *Länder*;
- the tendency toward interlocking policies, which increasingly presupposes the cooperation of federal, state, and local governments and leads to a growing divergence of parliamentary responsibility from the real decision-making and administrative entities;
- the centralization trends of the German party system and “party state”;

- the changes in the Basic Law that have led to an increase in joint responsibilities and ultimately to a strengthening of federal competences (Schäfers 1995, p. 53).

In addition to these traditional pressures, German unification and European integration are putting a further strain on the German system of federalism. According to Roland Sturm, there are at least five dimensions which after unification affect the process of collective decision-making at the *Land* level:

- differences of interests between the German *Länder* in the West and the *Länder* in the East;
- differences of interests between a coalition of the poorer *Länder* and the federal government on the one hand and the richer *Länder* on the other;
- the reduced relevance of the coalition pattern at the federal level for party political cooperation in the *Länder*;
- an increased importance of the veto power of the four large *Länder* with regard to constitutional changes; and
- an increased awareness of all *Länder* of the dangers to their relative autonomy through intervention both at the national and the EC level (Sturm 1992, p. 121).

“The growing need for overarching (federal) regulations in the course of German and European unification has constrained the power of the *Länder* parliaments but not of the *Bundesrat*. The latter remains the body for asserting the rights of the *Länder* (Thaysen 1994, p. 23).

It is only ostensibly a paradox that the importance of the *Bundesrat* increased because of the development toward a centralized and unitary federal system. The transfer of legislative competences to the federation, combined with the substantive erosion of the legislative activities of the state parliaments, inevitably had to lead to an expansion of the participatory role of the Federal Council. (Badura in *Vierzig Jahre Bundesrat*, p. 335).

According to Sontheimer, the distinctive justification for German federalism is no longer based on the safeguarding or promotion of the interests of the states and of their populations, because these interests are hardly any longer *Länder-specific*, but rather in the objective to realize the principle of a division and

limitation of political power, both through a regional decentralization of power and the intra-executive control of federal and state governments. (Sontheimer 1993, p. 293).

German Federalism between *Reformstau* or *Modernisierung*

In 199x, the head of the German Federation of Employers' Associations asked whether modernization of Germany was at all possible given her federal system, and if not, whether this would necessitate a fundamental reform of German federalism. The federal system became a focal part of the *Standortdebatte*, the discussion about Germany's disadvantages as a location for businesses. The question was raised whether German federalism was reformable at all, especially after the failed attempt to merge the two federal states of Brandenburg and Berlin in 1996.

The debate whether German federalism can be reformed is often based on the assumption that the federal system was the result of deliberate constitutional engineering by the founding fathers of the Basic Law under the watchful eyes of the three western occupying powers in 1949. If, so the argument goes, federalism was the result of constitutional engineering in 1949, the resulting system in principle should be reformable. If the establishment of the 10 federal states of old West Germany in 1949, many of them newly created *hyphenated states* like North Rhine-Westphalia and Baden-Württemberg, lacked historical precedents, then territorial reform in the form of merging some of the economically weaker *Länder* should be possible. If the (re-)created five new *Bundesländer*, plus the merged West and East Berlin in 1990, were mainly artificial constructs without embedded identities in their populations, then obstacles to modernization of the system should be less formidable.

However, as shown by the rejection of the proposed merger of the states of Berlin and Brandenburg in a popular referendum, the states of Germany have been able to attract considerable identification among their population. For instance, Baden-Württemberg, a Land forged of three separate entities in 1952, has now a firmly established identity among its inhabitants, as became evident during its very successful exhibit celebrating the 50th anniversary of its founding in 2002. Even the five new

Bundesländer, which had been recreated in 1990 based on the territorial divisions that existed briefly in the German Democratic Republic from 1949 to 1952, have attracted considerable support and identification from their populations. Thus, “the ‘unitary’ cultural orientations whose frame of reference was the nation state ... are now increasingly becoming obsolete. This might open windows of opportunity for greater decentralization.” (Lehmbruch 2002).

“Cooperative federalism is being undermined by new patterns of pursuit of Länder self-interest and diminishing cross-Länder solidarity.” (Jeffery, in Jeffery (Ed.) 1999, p. 340).

“Multi-level government of almost all policy fields, which now extends to the European level, is firmly established, and provides strong institutionalized resistance against reform.” (Sturm, in Helms (Ed.), 2000, p. 121).

“The negative coalition of anti-reformers will, however, have difficulties in surviving a double challenge: one are the upcoming new negotiations on the financing of German unification and the other is the economic challenge of non-German regional competitors in the Single European Market.” (Sturm, in Helms (Ed.), 2000, p. 122).

Tables and Figures

Table 1: Legislative Competences of the Federation and States

Federation (<i>Bund</i>)	States (<i>Länder</i>)
Exclusive powers	Exclusive powers
Foreign affairs	Cultural affairs (including broadcasting)
Defense	Education
Citizenship	Health service
Passports, immigration, etc.	Police
Currency matters	
Customs and free movement of goods	
Post and telecommunications	
Framework legislation	
Principles of higher education	
Hunting and conservation	
Press and film industry	
Land distribution and regional planning	
Concurrent powers	
	Civil and criminal law and sentencing
	Registration of births, deaths and marriages
	The law of association and assembly
	Residence and establishment of aliens
	Production and use of nuclear energy

Source: Smith, in Smith et al. 1992, p. 41

Table 2a: Federation and States [UPDATE]

The 16 States of the Federal Republic of Germany	Area in square kilometers	Inhabitants 1994 in millions	Capital city	Members of the Federal Diet 1994	Members / Votes in the Federal Council 1996	Members in the state parliament 1994
Baden-Württemberg	35.752	10,3	Stuttgart	79	6	155
Bayern	70.553	11,9	München	92	6	204 Landtag / 60 Senat
Berlin	889	3,4	Berlin	27	4	206
Brandenburg	29.476	2,6	Potsdam	23	4	88
Bremen	404	0,7	Bremen	6	3	100
Hamburg	755	1,7	Hamburg	14	3	121
Hessen	21.114	5,9	Wiesbaden	49	5	110
Mecklenburg-Vorpommern	23.420	1,8	Schwerin	15	3	71
Niedersachsen	47.348	7,7	Hannover	67	6	161
Nordrhein-Westfalen	34.071	17,8	Düsseldorf	148	6	221
Rheinland-Pfalz	19.845	3,9	Mainz	33	4	101
Saarland	2.570	1,1	Saarbrücken	9	3	51
Sachsen	18.408	4,6	Dresden	39	4	120
Sachsen-Anhalt	20.442	2,8	Magdeburg	23	4	99
Schleswig-Holstein	15.732	2,7	Kiel	24	4	75
Thüringen	16.176	2,5	Erfurt	24	4	88
Bundesrepublik Deutschland	356.955	81,4	Berlin (Bonn)	672	69	1.971

Table 2b: Socio-Economic Characteristics of the 16 German States (1996)

	Capital	Member of the FRG since	Area in 1000 km ² (% of total)	Population in million (% of total)	GDP per capita 1995 DM	Unemployment rate (July 1996)
Baden-Württemberg	Stuttgart	1949 (1952) ¹	35.8	10.2	106,116	7.2
Bavaria	Munich	1949	70.5	11.8	106,111	6.3
Berlin	(City State) ²	1990 ³	0.9	3.5	97,740	14.1
Brandenburg	Potsdam	1990	29.5	2.5	52,334	14.9
Bremen	(City State) ²	1949	0.4	0.7	113,552	14.4
Hamburg	(City State) ²	1949	0.8	1.7	147,521	10.3
Hesse	Wiesbaden	1949	21.1	6.0	129,788	8.4
Lower Saxony	Hannover	1949	47.6	7.6	98,379	11.1
Mecklenburg-West Pomerania	Schwerin	1990	23.2	1.9	54,063	16.3
North Rhine-Westphalia	Düsseldorf	1949	34.1	17.7	108,338	10.4
Rhineland-Palatinate	Mainz	1949	19.8	3.9	102,261	8.4
Saarland	Saarbrücken	1957	2.6	1.1	97,195	11.4
Saxony	Dresden	1990	18.4	4.6	56,112	14.6
Saxony-Anhalt	Magdeburg	1990	20.4	2.8	57,723	17.5
Schleswig-Holstein	Kiel	1949	15.7	2.7	100,550	8.7
Thuringia	Erfurt	1990	16.2	2.6	57,138	15.0
Germany	Berlin	1949	357.0	81.8	99,200	10.2

1 Functions as both a Land and local government

2 Amalgamation of the *Länder* Württemberg-Hohenzollern, Baden, and Württemberg-Baden. All three had been members of the FRG since 1949.

3 End of Four-Power status and unification of Berlin

Table 3: Statistical Record of *Bundesrat* Legislation, 1949-1994 [Update]

Legislative term of the <i>Bundestag</i>	1. 1949 - 1953	2. 1953 - 1957	3. 1957 - 1961	4. 1961 - 1965	5. 1965 - 1969	6. 1969 - 1972	7. 1972 - 1976	8. 1976 - 1980	9. 1980 - 1983	10. 1983 - 1987	11. 1987 - 1990	12. 1990 - 1994	13. ¹ 1994 -
Bills introduced	791	856	599	620	649	538	670	485	242	522	595	800	651 ¹
by Cabinet	481	434	391	370	414	350	470	323	155	283	324	413	272 ¹
by <i>Bundesrat</i>	29	16	5	8	14	27	75	53	38	61	51	108	157 ¹
by Bundestag	301	414	207	245	225	171	136	111	58	183	227	297	222 ¹
Bills passed by Bundestag	559	518	428	429	461	334	516	354	139	320	369	507	253 ¹
Applications to Mediation Committee.	75	65	49	39	39	33	104	77	20	6	13	85	44 ¹
... of which by the <i>Bundesrat</i>	70	59	46	34	34	31	96	69	17	6	13	71	39 ¹
Laws promulgated	545	510	424	425	453	333	506	339	136	320	369	507	215 ¹
Laws promulgated requiring <i>Bundesrat</i> approval	42 %	50 %	56 %	53 %	49 %	52 %	53 %	54 %	52 %	60 %	55 %	57%	67% ¹
Bills denied	8	6	-	3	2	1	8	9	2	-	1	21	13 ¹
Objections	1	1	3	-	-	1	5	7	7	-	1	5	2 ²
... of which overridden by Bundestag	-	1	1	-	-	1	4	5	6	-	1	4	2 ²
Ordinances dealt with by the <i>Bundesrat</i>	426	579	471	500	525	471	680	554	298	448	546	639	271 ²
Administrative regulations dealt with by the <i>Bundesrat</i>	110	66	58	72	62	60	81	78	45	71	61	47	36 ²
EU legislative proposals	-	-	24	478	826	759	1017	660	405	634	769	783	292 ²
Plenary meetings	116	69	54	50	56	43	55	51	28	52	53	51	24 ²
Committee meetings	761	604	475	443	545	384	523	503	289	541	593	794	325 ²
Subcommittee meetings	331	283	243	262	258	266	297	293	147	287	395	344	92 ²

1 Data incomplete (3/30/97)

2 Data incomplete (7/19/96)

Sources: *Handbuch des Bundesrates für das Geschäftsjahr 1996/97*, p. 283-90; *Deutscher Bundestag-DIP-Gesetzgebungsstand*; Uwe Thaysen, 1994: *The Bundesrat, the Länder and German Federalism*, p. 37; *Statistisches Jahrbuch 1995*; *Jahrbuch der Bundesrepublik Deutschland 1997*, p. 179;

Table 4a: Fiscal Equalization between the States (*Länderfinanzausgleich*)
1994 – 1999 in millions of DM

	1994	1995	1997	1999
Baden-Württemberg	- 410	- 2,804	-2,423.0	-3,426
Bavaria	- 669	- 2,533	-3,079.4	-3,188
Berlin			4425.2	5,316
Brandenburg	- 37	865	975.8	1,147
Bremen	558	562	350.6	665
Hamburg	60	- 118	-263.7	665
Hesse	- 1,827	- 2,154	-3,129.7	4,744
Lower Saxony	958	451	672.0	1,037
Mecklenburg- West Pomerania	38	771	834.6	921
North Rhine-Westphalia	158	- 3,442	-3032.6	2,578
Rhineland-Palatinate	657	229	304.6	379
Saarland	434	180	202.9	294
Saxony	- 148	1,763	1,895.8	2,149
Saxony-Anhalt	54	1,123	1162.0	1,300
Schleswig-Holstein	72	- 142	-5.1	174
Thuringia	94	1,017	1110.1	1,218

Table 4b: Fiscal Equalization between the States (*Länderfinanzausgleich*) 1995 – 2001 in millions of Euro

(4b: Ausgleichszuweisungen und -beiträge im Länderfinanzausgleich in Mio. Euro)

Year	NW	BY	BW	NI	HE	RP	SH	SL	HH	HB	Insg. West.	SN	ST	TH	BB	MV	Insg. Ost	BE.	Insgesamt
1995	-1.763	-1.295	-1.433	231	-1.101	117	-72	92	-60	287	-4.996	907	574	521	442	394	2.838	2.159	+/-5.724
1996	-1.598	-1.463	-1.289	283	-1.657	118	8	120	-246	325	-5.399	1.005	635	576	529	438	3.182	2.217	+/-6.253
1997	-1.564	-1.586	-1.232	344	-1.610	151	-3	104	-140	179	-5.356	981	601	574	504	431	3.091	2.266	+/-6.134
1998	-1.583	-1.486	-1.778	403	-1.758	219	0	117	-314	466	-5.715	1.020	617	595	534	448	3.214	2.501	+/-6.920
1999	-1.318	-1.630	-1.752	530	-2.426	194	89	150	-340	340	-6.162	1.099	665	623	586	471	3.444	2.718	+/-7.466
2000	-1.141	-1.884	-1.957	568	-2.734	392	185	167	-556	442	-6.519	1.182	711	670	644	500	3.707	2.812	+/-8.273
2001*)	-269	-2.298	-2.132	954	-2.623	231	59	146	-266	403	-5.796	1.036	595	575	500	436	3.142	2.654	+/-7.588
2002*)	-1.627	-2.038	-1.640	486	-1.904	417	111	138	-190	407		1.036	601	565	534	435		2.670	+/-7.399

Source: Bundesministerium der Finanzen: Dokumentation zu den Bund - Länder Finanzbeziehungen auf der Grundlage der geltenden Finanzverfassungsordnung, October 2002, p. 43a
(<http://www.bundesfinanzministerium.de/Anlage14372/Finanzbeziehungen-Bund-und-Laender.pdf>)

Table 5a: Political Party Strengths in the 16 German States [UPDATE]

	Election Year	CDU/CSU		SPD		Greens		FDP		PDS		Others		Total Seats	Governing party/ coalition
		seats	% of vote	seats	% of vote	seats	% of vote	seats	% of vote	seats	% of vote	seats	% of vote		
Baden-Württemberg	1996	69	41.3	39	25.1	19	12.1	14	9.6	0	-	14 ¹	9.1 ¹	155	CDU/FDP
Bavaria	1998	120	52.8	70	30.0	14	6.1	0	2.8	0	-	0	4.3	204	CSU
Berlin	1999	76	40.8	42	22.4	18	9.9	0	2.2	33	17.7	0	7.0	169	CDU/SPD
Brandenburg	1999	25	26.6	38	39.3	0	1.9	0	1.9	22	23.3	5 ²	5.3 ²	88	SPD/CDU
Bremen	1999	42	37.1	47	42.6	10	9.0	0	-	0	-	1 ²	3.0 ²	100	SPD/CDU
Hamburg	1997	36	25.1	58	40.4	19	13.5	0	-	0	-	8 ³	5.6 ³	121	SPD/Greens
Hesse	1999	50	43.4	46	39.4	8	7.2	6	5.1	0	-	0	-	110	CDU/FDP
Lower Saxony	1998	67	36.4	81	44.3	13	7.4	0	4.4	0	-	0	7.5	161	SPD
Mecklenburg-West Pomerania	1998	24	30.2	27	34.3	0	-	0	-	20	24.4	0	-	71	SPD/PDS
North Rhine-Westphalia	1995	89	37.7	108	46.0	24	10.0	0	-	0	-	0	-	221	SPD/Greens
Rhineland-Palatinate	1996	41	38.7	43	39.8	7	6.9	10	8.9	0	-	0	-	101	SPD/FDP
Saarland	1999	26	45.5	25	44.4	0	3.2	0	2.6	0	-	0	4.3	51	SPD
Saxony	1999	76	58.1	14	10.7	0	2.6	0	1.1	30	22.2	0	6.5	120	CDU
Saxony-Anhalt	1998	37	34.4	36	34.0	5	5.1	0	3.6	21	19.9	0	3.1	99	SPD/Greens
Schleswig-Holstein	1996	30	37.2	33	39.8	6	8.1	4	5.7	0	-	2 ⁴	2.5 ⁴	75	SPD/Greens
Thuringia	1999	49	51.0	18	18.5	0	1.9	0	1.1	21	21.4	0	3.0	88	CDU
Germany	1998	245	35.1	298	40.9	47	6.7	43	6.2	36	5.1	0	5.9	669	SPD/Greens

Notes:

1 Die Republikaner (REP)

2. Deutsche Volkunion (DVP)

3. Statt-Partei

4. Südschleswiger Wählerverband

Source: Statistisches Jahrbuch 1999; Fischer Weltalmanach 1997, p. 127-172; updated by author

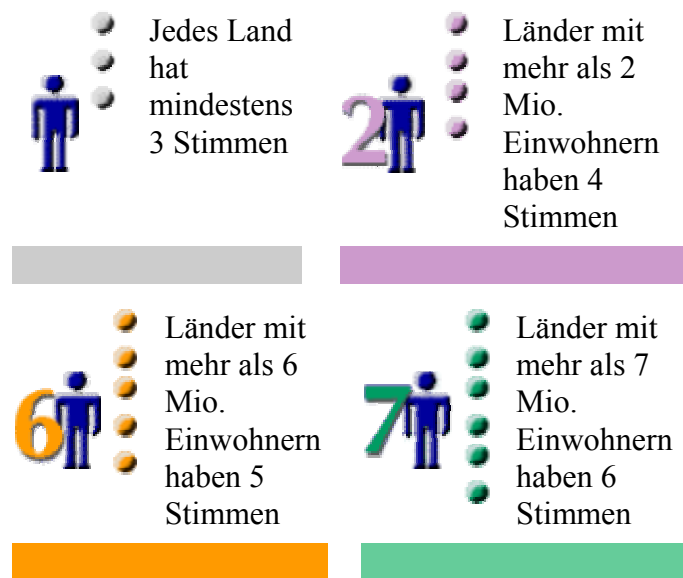
Table 5b: The German *Länder* (2003)

Land	Einwohner in Mio.*	MP	Stimmen im BR	Reg.-Parteien
Baden-Württemberg	10,65	Teufel	6	CDU/FDP
Bayern	12,38	Stoiber	6	CSU
Berlin	3,39	Wowereit	4	SPD/PDS
Brandenburg	2,58	Platzeck	4	SPD/CDU
Bremen	0,66	Scherf	3	SPD/CDU
Hamburg	1,73	von Beust	3	CDU/PRO/FDP
Hessen	6,09	Koch	5	CDU
Mecklenburg-Vorpommern	1,75	Ringstorff	3	SPD/PDS
Niedersachsen	7,98	Wulff	6	CDU/FDP
Nordrhein-Westfalen	18,07	Steinbrück	6	SPD/B 90/ Grüne
Rheinland-Pfalz	4,05	Beck	4	SPD/FDP
Saarland	1,07	Müller	3	CDU
Sachsen	4,36	Milbradt	4	CDU
Sachsen-Anhalt	2,56	Böhmer	4	CDU/FDP
Schleswig-Holstein	2,81	Simonis	4	SPD/B 90/ Grüne
Thüringen	2,40	Althaus	4	CDU

* Quelle: Statistisches Bundesamt, Stand: 30.09.2002

Table 5c: Die Länder haben ein abgestuftes Stimmengewicht.

Es orientiert sich an der Einwohnerzahl (Artikel 51 Abs. 2 Grundgesetz).



35 Stimmen = Mehrheit
46 Stimmen = Zweidrittelmehrheit
69 Stimmen = Gesamtstimmen

Table 6a: State Governments and Votes in the *Bundesrat* by Political Party (2003)

SPD-led Governments

<i>Land</i>	Government	SPD Alone	SPD Greens	SPD PDS	SPD FDP	SPD CDU	All "A" States
North Rhine-Westphalia (6)	SPD Greens		6				
Schleswig-Holstein (4)	SPD Greens		4				
			10				
Berlin (4)	SPD PDS			4			
Mecklenburg-Western Pomerania (3)	SPD PDS			3			
				7			
Rhineland-Palatinate (4)	SPD FDP				4		
Brandenburg (4)	SPD CDU					4	
Bremen (3)	SPD CDU					3	
						7	28

CDU-led Governments

<i>Land</i>	Government	CDU or CSU Alone	CDU FDP	CDU SPD	All "B" States
Bavaria (6)	CSU	6			
Hessen (5)	CDU	5			
Saxony (4)	CDU	4			
Thuringia (4)	CDU	4			
Saarland (3)	CDU	3			
		22			
Baden-Württemberg (6)	CDU FDP		6		
Lower Saxony (6)	CDU FDP		6		
Saxony-Anhalt (4)	CDU FDP		4		
Hamburg (3)	CDU FDP PRO		3		
			19		
					41

35 votes = absolute majority

46 votes = two-thirds majority

69 votes = total number of votes

Table 6b: Distribution of Seats in the Federal Council (Oct. 2003)

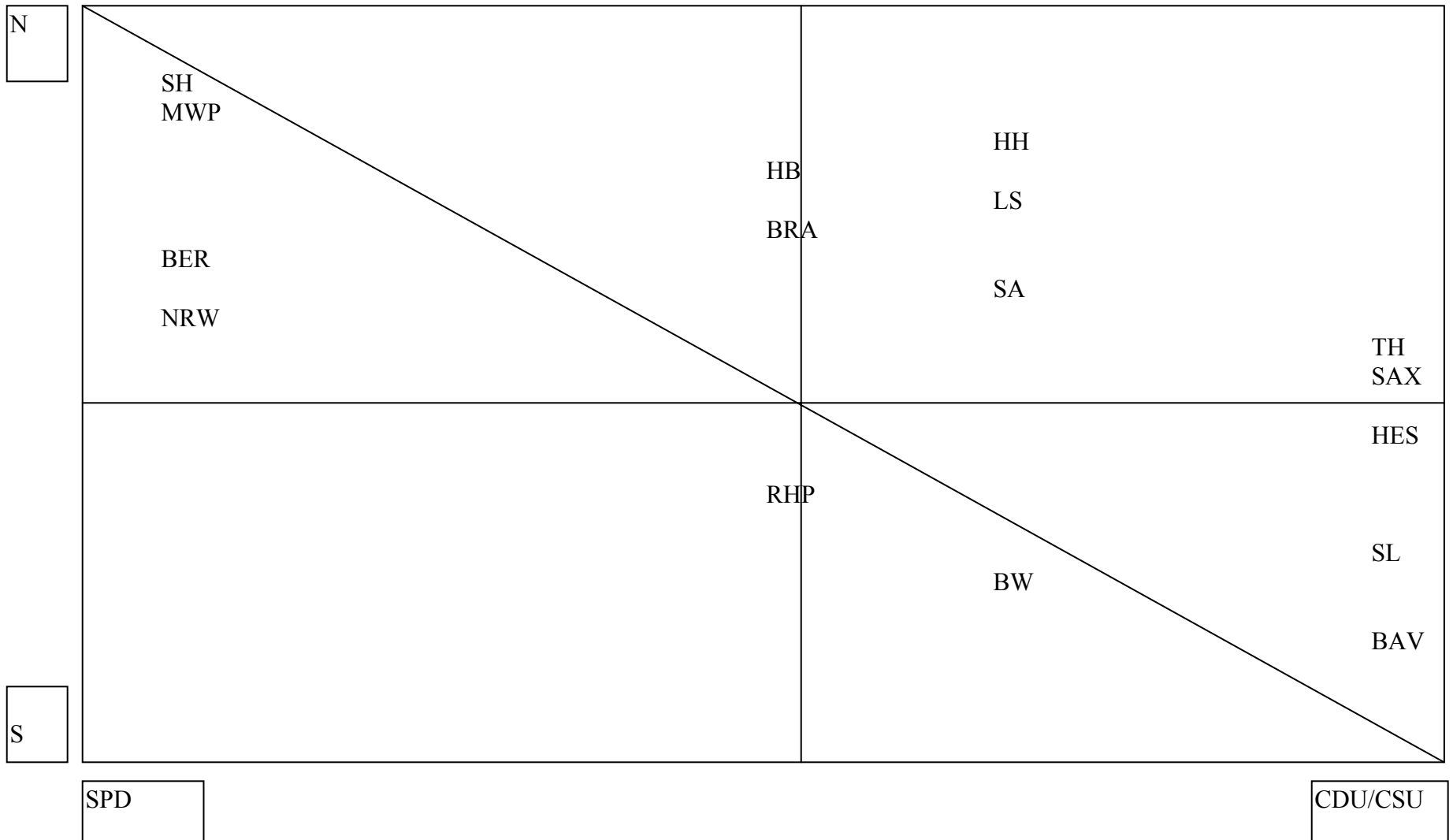
CDU-led <i>Länder</i> :			SPD-led <i>Länder</i> :		
Baden-Württemberg	6	CDU/FDP	Berlin	4	SPD/PDS
Bayern	6	CSU	Brandenburg	4	SPD/CDU
Hamburg	3	CDU/PRO/ FDP	Bremen	3	SPD/CDU
Hessen	5	CDU	Mecklenburg-Vorpommern	3	SPD/PDS
Niedersachsen	6	CDU/FDP	Nordrhein-Westfalen	6	SPD/Bündnis 90/ Die GRÜNEN
Saarland	3	CDU	Rheinland-Pfalz	4	SPD/FDP
Sachsen	4	CDU	Schleswig-Holstein	4	SPD/Bündnis 90/Die Grünen
Sachsen-Anhalt	4	CDU/FDP			
Thüringen	4	CDU			
41 Votes			28 Votes		

Table 7: Distribution of Votes in the Federal Council (2003)

States with CDU/CSU-led state governments	States with SPD-led state governments	States in the “Swing Bloc”
1. CDU or CSU majority government <ul style="list-style-type: none"> • Bavaria (6) • Hessen (5) • Saxony (4) • Thuringia (4) • Saarland (3) • 	1. SPD-Greens coalition government <ul style="list-style-type: none"> • North Rhine-Westphalia (6) • Schleswig-Holstein (4) 	1. SPD-FDP coalition government <ul style="list-style-type: none"> • Rhineland-Palatinate (4)
2. CDU-FDP coalition governments <ul style="list-style-type: none"> • Baden-Württemberg (6) • Lower Saxony (6) • Saxony-Anhalt (4) • Hamburg (3) 	2. SPD-PDS coalition government <ul style="list-style-type: none"> • Berlin (4) • Mecklenburg-Western Pomerania (3) 	2. SPD-CDU coalition government <ul style="list-style-type: none"> • Bremen (3) • Brandenburg (4)
Total: 41	Total: 17	Total: 11

Source: Jahrbuch der Bundesrepublik Deutschland 2002

Updated by author.



References

- Anderson, Jeffrey. 1992. *The Territorial Imperative. Pluralism, Corporatism and Economic Crisis*. New York: Cambridge University Press.
- Benz, Arthur, Fritz W. Scharpf, Reinhard Zintl. 1992. *Horizontale Politikverflechtung. Zur Theorie von Verhandlungssystemen*. Frankfurt/New York: Campus Verlag.
- Benz, Arthur and Klaus H. Goetz. Eds. 1996. *A New German Public Sector? Reform, Adaptation and Stability*. Aldershot, UK/Brookfield, USA: Dartmouth.
- Bermann, George A. 1994. "Subsidiarity and the European Community." In Paul Michael Lützel. Ed. *Europe after Maastricht. American and European Perspectives*. Providence, RI: Berghahn Books.
- Beyme, Klaus von. 1993. *Das Politische System der Bundesrepublik Deutschland nach der Vereinigung*. München and Zürich: Piper.
- Borkenhagen, Franz H. U.; Bruns-Kl̄ss, Christian; Memminger, Gerhard; and Stein, Otti. Eds. 1992. *Die Deutschen Länder in Europa. Politische Union und Wirtschafts- und Währungsunion*. Baden-Baden: Nomos-Verlagsgesellschaft.
- Braunthal, Gerhard. 1996. *Parties and Politics in Modern Germany*. Boulder, CO: Westview Press.
- Burgess, Michael and F. Gress. 1993. "The Quest for a Federal Future: German Unity and European Union," in Michael Burgess and A.-G. Gagnon (eds.) 1993. *Comparative Federalism and Federation: Competing Traditions and Future Directions*, Harvester Wheatsheaf: Hempel Hampstead.
- Conradt, David P. 1996. *The German Polity*. 6th Ed. White Plains, NY: Longman.
- Furlong, Paul and Andrew Cox. Eds. 1995. *The European Union at the Crossroads. Problems at Implementing the Single Market*. Boston, GB: Earlsgate Press.
- Gallagher, Michael; Laver, Michael; and Mair, Peter. 1995. *Representative Government in Modern Europe*. 2nd Ed. New York et al.: McGraw-Hill.
- Goetz, Klaus H. 1995. "National Governance and European Integration: Intergovernmental Relations in Germany." *Journal of Common Market Studies*. Vol. 33. No. 1 (March 1995): 91-116.
- Gunlicks, Arthur G. and Voigt, Rüdiger. Eds. 1991. *Föderalismus in der Bewährungsprobe: Die Bundesrepublik Deutschland in den 90er Jahren*. Bochum: Universitätsverlag Dr. N. Brockmeyer.
- Gunlicks, Arthur B. 1995. "The 'Old' and the 'New' Federalism in Germany," in Peter H. Merkl. Ed. *The Federal Republic of Germany at Forty-Five. Union without Unity*. New York: New York University Press.
- Hadley, Charles D., Michael Morass, and Rainer Nick. (1989). "Federalism and Party Interaction in West Germany, Switzerland, and Austria." *Publius*, 19 (4), 81-97.

- Handbuch des Bundesrates für das Geschäftsjahr 1996/97*. Edited by the *Bundesrat*. Baden-Baden: Nomos Verlagsgesellschaft.
- Handbuch des Politischen Systems Österreichs. Erste Republik 1918-1933*. Edited by Emmerich Talos et al. 1995. Wien: Manzsche Verlags- und Universitätsbuchhandlung.
- Hartmann, Jürgen. Ed. 1994. *Handbuch der deutschen Bundesländer*. 2nd rev. Ed. Frankfurt and New York: Campus Verlag.
- Hega, Gunther M. 2000. "Federalism, Subsidiarity, and Education Policy in Switzerland." *Regional and Federal Studies. An International Journal*, vol. 10, no. 1, Summer.
- Hega, Gunther M. 1999. *Consensus Democracy? Swiss Education Policy between Federalism and Subsidiarity*. New York and Bern: Lang.
- Heger, Matthias. 1990. *Deutscher Bundesrat und Schweizer Ständerat*. Berlin: Duncker & Humblot.
- Heidenheimer, Arnold J. 1958. "Federalism and the Party System: The Case of West Germany." *American Political Science Review* 52 (1958): 808-828.
- Hrbek, Rudolf. 1995. "Federal balance and the Problem of Democratic Legitimacy in the European Union." *Aussenwirtschaft*, 50. Jg. (1995), 1: 43-66.
- Huelshoff, Michael G., Andrei S. Markovits, and Simon Reich. Eds. 1993. *From Bundesrepublik to Deutschland. German Politics after Unification*. Ann Arbor: University of Michigan Press.
- Jeffery, Charlie and Peter Savigear. Eds. 1991. *German Federalism Today*. New York: St. Martin's Press.
- Jeffery, Charlie and Roland Sturm. Eds. 1993. *Federalism, Unification and European Integration*. London: Frank Cass.
- Jeffery, Charlie. Ed. 1999. *Recasting German Federalism. The Legacies of Unification*. Continuum Int. Publ. Group.
- Jesse, Eckhard. 1998. "Das deutsche Parteiensystem nach der Vereinigung." *German Studies Review*, vol. 21, no. 1 (February), p. 69-82.
- Kersbergen, Kees van and Verbeek, Bertjan. 1994. "The Politics of Subsidiarity in the European Union." *Journal of Common Market Studies*, vol. 32, no. 2 (June 1994): 215-236.
- Kilper, Heiderose and Roland Lhotta. 1996. *Föderalismus in der Bundesrepublik Deutschland*. Opladen: Leske & Budrich.
- Ladrech, Robert. 1994. "Europeanization of Domestic Politics and Institutions: The Case of France." *Journal of Common Market Studies*, vol. 32, no. 1 (March 1994): 69-88.
- Laufer, Heinz and Ursula Münch. 1998. *Das föderative System der Bundesrepublik Deutschland*. Opladen: Leske und Budrich.
- Lehmbruch, Gerhard. 2000. *Parteienwettbewerb im Bundesstaat. Regelsysteme und Spannungslagen im Politischen System der Bundesrepublik Deutschland*. 3. Ed. Wiesbaden: Westdeutscher Verlag.
- Lippert, Barbara, Dirk Günther, Rosalind Stevens-Ströhm, Grit Viertel, and Stephen Woolcock. 1993. *Die EG und die neuen Bundesländer. Eine Erfolgsgeschichte von kurzer Dauer?* Bonn: Europa Union Verlag.
- Lösche, Peter. 1993. *Kleine Geschichte der deutschen Parteien*. Stuttgart: Kohlhammer.

- Lützeler, Paul Michael. Ed. 1994. *Europe after Maastricht. American and European Perspectives*. Providence, RI: Berghahn Books.
- Männle, Ursula. Ed. 1998. *Föderalismus zwischen Konsens und Konkurrenz. Tagungs- und Materialienband zur Fortentwicklung des deutschen Föderalismus*. Baden-Baden: Nomos.
- Marks, Gary. 1992. "Structural Policy in the European Community," in Alberta Sbragia. Ed. *Euro-Politics. Institutions and Policymaking in the "New" European Community*. Washington, D.C.: The Brookings Institution.
- Merritt, Richard. 1995. *Democracy Imposed: U.S. Occupation Policy and the German Public, 1945-1949*. New Haven: Yale University Press.
- Merten, Detlef. Ed. 1994. *Die Subsidiarität Europas*. 2nd ed. Berlin: Duncker & Humblot.
- Münch, Ursula. 1997. *Sozialpolitik und Föderalismus. Zur Dynamik der Aufgabenverteilung im sozialen Bundesstaat*. Opladen: Leske Budrich.
- Münch, Ursula and Tanja Zinterer. 2000. "Reform der Aufgabenverteilung zwischen Bund und Ländern: Eine Synopse verschiedener Reformansätze zur Stärkung der Länder 1985-2000." *Zeitschrift für Parlamentsfragen*, Jahrgang 31, Heft 3 (September 2000), pp. 657-680.
- Newman, Michael. 1996. *Democracy, Sovereignty and the European Union*. New York: St. Martin's Press.
- Padgett, Stephen. Ed. 1993. *Parties and Party Systems in the New Germany*. Brookfield, VT: Dartmouth.
- Padgett, Stephen. Ed. 1994. *Adenauer to Kohl. The Development of the German Chancellorship*. Washington, D.C.: Georgetown University Press.
- Pfetsch, Frank R. 1997. *Die Europäische Union. Eine Einführung*. München: W. Fink Verlag.
- Pfitzer, Albert. 1987. *Der Bundesrat. Mitwirkung der Länder im Bund*. Heidelberg: Decker & Müller.
- Reuter, Konrad. 1991. *Praxishandbuch Bundesrat. Verfassungsrechtliche Grundlagen, Kommentar zur Geschäftsordnung, Praxis des Bundesrates*. Heidelberg: C.F. Müller Juristischer Verlag.
- Ryan, John. 1995. "The Federal Republic of Germany and the effect of the European Union Regional Policy on its federal system." *Local Government and Policy Making*. Vol. 22, No. 1 (July 1995): 32-39.
- Rhodes, Martin, Paul Heywood, and Vincent Wright. Eds. 1997. *Developments in West European Politics*. New York, NY: St. Martin's Press.
- Scharpf, Fritz W. et al. 1976/77. *Politikverflechtung. Theorie und Empirie des kooperativen Föderalismus in der Bundesrepublik*. Kronberg: Scriptor, vol. 1, 1976, vol. 2, 1977.
- Scharpf, Fritz W. 1994. *Optionen des Föderalismus in Deutschland und Europa*. Frankfurt and New York: Campus.
- Schmitter, Philippe C. and Gerhard Lehbruch (Eds.) (1979). *Trends towards Corporatist Intermediation*. Beverly Hills and London: Sage Publications.
- Schultze, Rainer-Olaf. 2000. "Indirekte Entflechtung: Eine Strategie für die Föderalismusreform?" *Zeitschrift für Parlamentsfragen*, Jahrgang 31, Heft 3 (September 2000), pp. 681-698.

- Scott, Andrew; Peterson, John; and David Millar. 1994. "Subsidiarity: A 'Europe of the regions' v. the British Constitution?" *Journal of Common Market Studies*, vol. 32, no. 1 (March 1994): 48-67.
- Smith, Gordon. 1992. "The Nature of the Unified State." In Smith, Gordon; Patterson, William E.; Merkl, Peter H.; and Padgett, Stephen (Eds.). *Developments in German Politics*. Durham, N.C.: Duke University Press.
- Smith, Gordon; Patterson, William E.; Merkl, Peter H.; and Padgett, Stephen (Eds.). 1992. *Developments in German Politics*. Durham, N.C.: Duke University Press.
- Sontheimer, Kurt. 1993. *Grundzüge des Politischen Systems der neuen Bundesrepublik Deutschland*. München, Zürich: Piper.
- Statistisches Bundesamt. Several Years. *Statistisches Jahrbuch der Bundesrepublik Deutschland*. Wiesbaden.
- Stewing, Clemens. 1992. *Subsidiarität und Föderalismus in der Europäischen Union*. Köln: Carl Heymanns Verlag.
- Straub, Peter and Rudolf Hrbek. Eds. 1998. *Die europapolitische Rolle der Landes- und Regionalparlamente in der EU*. Baden-Baden: Nomos.
- Sturm, Roland. 2001. *Föderalismus in Deutschland*. Leske Budrich: Opladen.
- Timmermann, Heiner, Ed. 1998. *Subsidiarität und Föderalismus in der Europäischen Union*. Berlin: Duncker & Humblot.
- Umbach, Maiken. Ed. 2002. *German Federalism. Past, Present, Future*. Basingstoke and New York: Palgrave.
- Vierzig Jahre Bundesrat. Tagungsband zum wissenschaftlichen Symposium in der Evangelischen Akademie Tutzing vom 11. bis 14. April 1989*. Ed. by the Bundesrat . 1989. Baden-Baden: Nomos-Verlagsgesellschaft.
- Wachendorfer-Schmidt, Ute. (Ed.) 2000. *Federalism and Political Performance*. London and New York: Routledge.
- Wehling, Hans-Georg. Ed. 2000. *Die deutschen Länder. Geschichte, Politik, Wirtschaft*. Leske Budrich: Opladen.