A blockaded system of government?

SUMMARY

For over ten years, commentators have been discussing the ‘reform blockage’ in German politics, often blaming it on Germany’s complex political system in which power is dispersed among a range of actors. This chapter reviews the main institutional features of government and governance in Germany, and asks whether the current distribution of powers between and among tiers of government is capable of mastering the country’s problems.

INTRODUCTION

More than any other single area under discussion in this book, Germany’s political institutions bear the mark of history. Most obviously, as Chapter 2 discussed, the entire political system was constructed in conscious reaction to the experience of Nazi dictatorship. But the Federal Republic’s institutions also reflect the desire to avoid the authoritarianism of imperial Germany and the weaknesses of the Weimar Republic. In that sense, the post-1949 political set-up has proven to be extraordinarily successful, and Germany is now without doubt one of the most stable liberal democracies in the developed world (see Lijphart, 1999).

But in recent years, the focus has been rather different. One of the themes of this book is the scale of challenges Germany currently has to master, many of which are linked directly or indirectly to unification. Yet actual policy reforms, as will become
apparent in subsequent chapters, have tended, when they have happened at all, to be decidedly modest in scope, leading to widespread exasperation at the failure of political parties to grasp the nettle. Of course, political parties generally reflect broader trends in society, and long-term changes in both parties and key social groupings are explored in more detail in Chapters 5–8. But, at the same time, a recurrent question in German public debate has been whether the country’s political system itself is to blame, and whether the division of power within the system institutionally dictates political solutions which are, frankly, inadequate when addressing the country’s increasing economic and social problems.

This chapter therefore outlines the political institutions of Germany and their patterns of interaction in order to establish whether the reform blockage is due to the political system as a whole, or rather just the result of a lack of political will on the part of key actors. It shows that ‘incremental policy change’ (Katzenstein, 1987) is a defining feature of politics in Germany. In particular, it pinpoints federalism as a key source of tension, both in terms of articulating interests and in its impact on party politics (see Rowe and Jacoby, 2009; Wachendorfer-Schmidt, 2005).

**BACKGROUND**

Structurally, Germany’s political institutions are defined by two main principles: first, they reflect that, ever since its foundation as a unified country in 1871, Germany has been a federal state, with discrete political and constitutional constructions mirroring the country’s geographical, religious and cultural diversity; and second, the political institutions, and many other areas of public life, were designed specifically to make a recurrence of totalitarian rule impossible. The political structure of the Weimar Republic – with a weak legislature and a very strong, directly elected president – was widely held to be at least partly responsible for facilitating the rise of the Nazis; so, as Chapter 2 argued, the authors of the Basic Law in 1948 and 1949 were determined not to allow this to happen again. Thus the Chancellor’s position as the head of government was bolstered at the expense of the President, and the legislature’s role was also strengthened; furthermore, the Basic Law introduced a strong Constitutional Court into the panoply of German political institutions. The key components of the resulting institutional constellation are outlined in Box 4.1 (see also Schmidt, 2003a).

**BOX 4.1 THE POLITICAL INSTITUTIONS OF GERMANY**

Germany is a federal country made up of sixteen individual states (Länder), of which three (Hamburg, Bremen and Berlin) are city-states. Each state has a directly-elected parliament (Landtag) and government (headed by a Ministerpräsident). The Länder have their own competencies (especially education and policing), although their principal task is to implement federal legislation. The Länder vary considerably in
area, population and economic development (see Table 4.3). Each Landtag is elected on a four- or five-year basis. Land elections are not usually bundled systematically to coincide with each other or with national elections (in the way, for instance, that elections in the USA are), although on occasions two (or more) Länder go to the polls on the same day. In practice, this means that one or more Land elections usually take place somewhere in Germany every few months.

At the federal level, Germany is made up of the following sets of political institutions:

1 The legislature

The Bundestag is Germany’s national parliament and is based in Berlin. Its regular size is 598 members, although in practice there are frequently more parliamentarians than this due to Überhangmandate (surplus extra seats – see Chapter 5 for a discussion of elections). After the 2009 election it had 622 members, who are normally elected for four-year terms. The Bundestag elects the Chancellor (Bundeskanzler(in)) and is the country’s primary legislature. As in other parliamentary democracies, a lost vote of no confidence in the Chancellor may trigger early elections; however, in Germany there is the further option of a ‘constructive vote of no confidence’ (konstruktives Misstrauensvotum), in which the Chancellor is simultaneously replaced by an alternative candidate, thereby providing continuity of government. In the history of the Federal Republic, this vote has occurred only twice, in 1972, when it failed, and in 1982, when it succeeded.

Subject to the approval of the Bundesrat (see below), the Bundestag discusses bills and passes laws. Much of its work is done in committees, and it is not a ‘debating’ parliament in the way that the UK’s House of Commons is. Most of the bills it debates are proposed by the federal government, although both the Bundestag and the Bundesrat have the right of initiative as well. The parties (see Chapter 5) are organised into parliamentary groupings (Fraktionen) within the Bundestag, each comprising at least 5 per cent of the parliament’s membership. Each Fraktion elects a leader (Fraktionsvorsitzende(r)), who is its principal spokesperson in parliament. Especially for the two larger parties, this is therefore one of the most influential positions in German politics.

In addition, the Länder are represented collectively in federal policy-making by means of the Bundesrat in Berlin, in which each Land has between three and six votes (totalling sixty-nine), depending on its population. The votes of any single Land must be cast unanimously. Following the 2006 federalism reform (see below), an absolute majority of the Bundesrat (thirty-five votes) is required to pass laws in about 35–40 per cent of cases, including any legislation which incurs significant costs to the Länder in their implementation of federal policy. In the case of no agreement being reached between the two chambers, a conciliation committee (Vermittlungsausschuss) is
convened to negotiate a compromise. In all other cases, the Bundestag may overturn any rejection of a bill by the Bundesrat.

2 The executive

The Chancellor heads the federal government (Bundesregierung), the executive arm of the political system. In 2010, there were fourteen ministries plus the Federal Chancellery. The ministries are split geographically between Berlin and the former capital, Bonn.

Historically, the federal government has been based on a coalition, typically between one of the two largest parties and one smaller party. Although the Chancellor has a much stronger position under the Basic Law than was the case under the Weimar Republic, his or her main formal power is the ability to set the parameters of policy (Richtlinienkompetenz). Individual ministers are independent in the political management of their portfolios (Ressortprinzip) (on the power resources of the Chancellor, see Schmidt, 2003a: 27–30; Helms, 2004).

The head of state is the Federal President (Bundespräsident), whose role is largely ceremonial, save in exceptional cases such as an early dissolution of parliament (as in 2005). The President is elected every five years by the federal assembly (Bundesversammlung), drawn from the Bundestag and the Länder parliaments. He or she can serve a maximum of two terms of office.

3 The judiciary

Courts play a major role in German politics. All decisions by any form of state authority, whether at local, regional or national level, can be subjected to judicial scrutiny by administrative courts (Verwaltungsgerichte) – a further historically grounded check on executive power.

The highest court in the land is the Constitutional Court (Bundesverfassungsgericht), based in Karlsruhe. Its sixteen judges, organised into two courts (or senates), are elected jointly by the Bundestag and Bundesrat and serve terms of up to twelve years. The Court has the power, upon referral, to review and strike down any legislation passed by the Bundestag and Bundesrat. In one of the main expressions of Germany’s ‘militant democracy’, the Court may also ban ‘anti-constitutional’ parties, which it has done twice, in 1952 (the neo-Nazi SRP) and 1956 (the communist KPD).
As Box 4.1 shows, power in Germany’s political system is spread across a range of actors, not only within the federal government, but between the federal level and the Länder. The principal axes in which this fragmentation of power takes place are federalism, the dynamics of coalition politics, and the impact of the Constitutional Court (Katzenstein, 1987). These dimensions are so important to understanding how German politics work that they need to be explained briefly in turn.

**Federalism**

First, German federalism is relatively unusual compared with other federal systems. Elsewhere, the purpose of federalism is to help manage diversity (often in geographically extensive countries such as the USA, Canada or Australia). In the Federal
Republic, the constitutional aim of federalism has been to create unity, at least in financial terms, between the various component federal states. Moreover, before the 2006 reform (discussed below), there was no strict delineation of competencies between the national and sub-national levels. For instance, Article 73 of the Basic Law laid down those areas where the federation had exclusive rights of legislation, and Article 75 areas in which the federal government could issue so-called ‘framework legislation’ (Rahmengesetzgebung). But Article 74 specified a range of so-called ‘concurrent’ legislative competencies, to include such significant areas of public policy as regulation of the economy and labour law. These were areas in which the Länder were free to legislate, but only in the absence of federal legislation. In practice, these areas saw a gradual encroachment of federal law over the decades; by the beginning of the new millennium, the only significant areas of public policy remaining in the sole competence of the Länder were education, law enforcement and public broad-
casting. In fact, the principal task of the Länder was and remains to implement federal legislation (the so-called Bundesauftragsverwaltung); accordingly, the majority of civil servants (Beamte) in Germany are employed by the Länder, with only a small minority in the direct service of the federal government. Nonetheless, where they do have the opportunity to do so, and especially in education policy, the Länder have been keen to make use of any leeway they have to assert their independence (Box 4.2).

**BOX 4.2 THE COMPLEXITIES OF FEDERALISM: EDUCATION POLICY IN GERMANY**

Education policy is perhaps the clearest example of individual Länder imposing their own policy priorities within an otherwise constrained federal system (for an overview of this area, see Conradt, 2008: 62-5; also Der Spiegel, 2010a for a trenchant critique of federalism in education policy). Although the Kultusministerkonferenz (KMK) brings together education ministers from all sixteen Länder to try and agree common practice where possible, it is a coordinating body only and hence education policy at all levels remains heterogeneous. Key examples include the following.

- There is much greater provision of (state-subsidised) nursery provision in eastern Germany than in western Germany (see discussion in Chapter 8).
- There is considerable divergence from the orthodox division of secondary schools into Hauptschule, Realschule and Gymnasium, which are respectively aimed at pupils according to their increasing academic ability. Some Länder maintain this, while others allow comprehensive schools (Gesamtschulen) to coexist. Some Länder, especially in the east, have sought a third way by merging the Haupt- and Realschule into one, while maintaining the Gymnasium for the most academically gifted children.
- Admission to each of these three forms of school is by teachers’ recommendation from primary school (Grundschule). While some Länder allow parents to overrule this recommendation, in others this is binding.
- The extent to which all-day education (Ganztagsschule) is available, as well as the content of the curriculum taught, also varies from Land to Land.
- Some Länder impose tuition fees on university students while others do not.
- Very broadly speaking, the southern Länder, especially Baden-Württemberg and Bavaria, tend to be more conservative in their education policy, while city-states such as Hamburg and Berlin tend to be more left wing, reflecting the respective general political orientation of the Land (Payk, 2009; Turner, 2011). There is also a distinction to be made between west and east: while the western Länder are currently making the transition from a nine- to eight-year secondary curriculum leading to Abitur (roughly, junior college diploma or A-levels), this system was employed by eastern Länder throughout the GDR’s history.

German federalism also differs from that of other countries in that the Länder do not possess independent tax-raising powers. Instead, there is an intricate division of
taxes between the federation, the Länder and local municipalities (Kommunen). While the income from some taxes is wholly allocated to particular levels (for instance, petrol tax is exclusively a federal tax), most tax revenues, including those from the two main taxes (income tax and sales tax/value added tax), accrue to all three levels, but in varying proportions depending on the tax in question. Crucially, although the federation can decide unilaterally to raise its taxes, no Land and no municipality can do the same independently, even in the case of those taxes that benefit solely these two levels. There are only very limited exceptions to this rule, such as the ability of municipalities to vary the level of administrative charges, like parking fines. This means that while the Länder and municipalities bear full responsibility for their expenditure, they are unable to raise taxes to cover any shortfalls in revenue (or excess expenditure), which in times of slow economic growth therefore tend to be covered by borrowing. Indeed, because most expenditure is fixed (for instance, salaries and pensions of public servants, the majority of which are in Länder employment), neither can the Länder do much to reduce outgoings. A similar situation befalls the municipalities, significant elements of whose expenditure (such as childcare provision) have in the past been prescribed by Land or federal governments without the input of the municipalities themselves. Given this institutionalised trend towards meeting shortfalls between expenditure and revenue through public borrowing, it comes as no surprise that most Länder and municipalities are heavily indebted (see Table 4.3).

In addition to the interconnections between the federal level and the Länder as a group, there are a range of political and financial mechanisms linking the Länder to each other. The most important of these is the horizontal fiscal equalisation scheme between the Länder (Länderfinanzausgleich), which amounted to €8.3 billion in 2008. This system aims to deliver equal levels of per capita income across federal states in accordance with the constitutional goal of creating equal living conditions throughout Germany (Article 72 of the Basic Law). In 2008, twelve of the sixteen Länder were beneficiaries, including all the Länder on the territory of what used to be the GDR. The horizontal equalisation scheme is supplemented by vertical equalisation payments from the federal government, amounting to over €14.8 billion in 2008, which went to eleven of the same twelve states as the horizontal payments (see Table 4.3 below). Significantly, neither of these systems existed when the Federal Republic was founded in 1949; both developed over time.

German federalism produces political interdependencies, too. The Länder are collectively represented in the federal policy-making process via the Bundesrat (as shown in Box 4.1), which must be consulted on all legislation, even that which lies in the federal government’s exclusive range of competencies. While the Bundestag can overrule any opposition from the Bundesrat in such laws, the latter wields a veto in over one-third of legislation, including the most significant bills, such as tax reforms. This is a considerable reduction from the 60 per cent or so of legislation over which the Bundesrat could collectively exercise a veto prior to the 2006 federalism reform (of which more below), but the Bundesrat remains the most visible ‘veto point’ in German politics, and thereby casts a spotlight on the political composition of majorities within it. We shall return to this central point in the next section.

Because of this immensely complex interweaving of political competencies and financial dependencies, Germany’s system of federalism has traditionally been
described as ‘co-operative’ or ‘interlocking’ (Scharpf et al., 1976), in that it would simply not function if the various levels, as well as the individual actors within those levels, did not co-operate with each other (for examples of how this worked in the past, see Leonardy, 1991). This theme of co-operation, or more broadly speaking consensus, is one that runs through much of German politics.

One other function of federalism in the German political system needs to be mentioned: the recruitment of elites. It is very rare indeed for politicians to emerge on the national stage without first having worked their way up through the party organisation at local and Land level. Indeed, Land elections provide a perfect opportunity for aspiring chancellors to show their party that they are capable of winning elections. Accordingly, both chancellors and chancellor-candidates are frequently either ex- or serving Land minister-presidents, including Helmut Kohl and Gerhard Schröder, respectively, although Angela Merkel is a notable exception to this rule. The corollary to this is that all chancellors have to deal with powerful and confident minister-presidents, not only from the opposition but from their own party, who are often looking for a way to profile themselves at the expense of the national leadership.

The dynamics of coalition politics

The second dimension to consider is that of coalition politics. Only once, following the 1957 election, has a single party (the CDU/CSU) been in a position to command a majority in parliament without a coalition partner, although even then it chose to form a coalition (see Table 4.1). The involvement of one of the smaller parties, in particular the liberal FDP, which is the only party to have formed national-level alliances with both of the large parties, has over time served to produce what Gordon Smith (1976) has described as the ‘politics of centrality’, in other words a broadly centrist public policy profile. This occurs in two ways. First, each coalition partner, irrespective of their size, has a full right of veto over any government policy proposal. Second, the principle of ministerial independence (the Ressortprinzip) means that incumbents are free to run their portfolios as they see fit. Especially if they come from the minor coalition partner, ministers are therefore effectively immune to political pressure from the Chancellor as head of the federal government. The dynamics of coalition government also hold true at Land level, although there are likely to be more coalition permutations, as well as more instances of single-party government (see Table 4.3 below and Chapter 5).

The Constitutional Court

The third dimension of fragmentation of power is the Constitutional Court. It too represents a direct response to Nazi dictatorship, during which the courts had no remit to challenge the dismantling of liberal democracy. Like the United States Supreme Court, the Constitutional Court has had a profound impact over the years on politics in Germany (see Kommers, 1997). Its importance is based on its wide-
ranging powers of judicial review, which can focus on specific laws as well as individual norms of public policy. Furthermore, the Court acts as arbiter in disputes between other political institutions, most frequently between the federal and Länder levels. Judicially, it has handed down rulings affecting practically all areas of life in Germany, including social and tax policy (for instance, in 2001 and 2010), abortion (in 1975 and 1993), European integration (1994 and 2009), the fiscal equalisation scheme between the Länder (1999), the deployment of German troops abroad (1994), asylum policy (1996), and repeatedly the public financing of parties (see Chapter 5). In terms of adjudicating disputes between institutions, it has occasionally been called upon to clarify the financial relationships within the community of Länder, as well as between individual Länder and the federation (of which more below). It was also asked to rule on whether the early dissolution of the Bundestag in 2005, which triggered a federal election later that summer, was constitutional.

Politically, the relevance of the Court for politics in Germany should not be underestimated. The fact that it has ruled so widely means that practically all areas of politics and public policy are potentially subject to judicial scrutiny. Moreover, as cases can be referred to the Court for consideration not only by lower courts, but by individual Land governments, the Bundesrat and one-third of the members of the Bundestag, the process of judicial review is also a powerful tool for opposition parties seeking to reverse a defeat in the formal legislative process. This is precisely what happened in 1993, when the Bavarian (and Catholic) CSU referred a cross-party

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**Table 4.1 Federal governments and Chancellors, 1949–2011**

<table>
<thead>
<tr>
<th>Election year</th>
<th>Federal government</th>
<th>Chancellor</th>
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<tbody>
<tr>
<td>1949</td>
<td>CDU/CSU–FDP, DP</td>
<td>Konrad Adenauer (CDU)</td>
</tr>
<tr>
<td>1953</td>
<td>CDU/CSU–FDP, DP, GB/BHE</td>
<td>Konrad Adenauer (CDU)</td>
</tr>
<tr>
<td>1957</td>
<td>CDU/CSU, DP</td>
<td>Konrad Adenauer (CDU)</td>
</tr>
<tr>
<td>1961</td>
<td>CDU/CSU–FDP</td>
<td>Konrad Adenauer (CDU); from 1963 Ludwig Erhard (CDU)</td>
</tr>
<tr>
<td>1965</td>
<td>CDU/CSU–FDP; from 1966</td>
<td>Ludwig Erhard (CDU); from 1966</td>
</tr>
<tr>
<td></td>
<td>CDU/CSU–SPD</td>
<td>Kurt-Georg Kiesinger (CDU)</td>
</tr>
<tr>
<td>1969</td>
<td>SPD–FDP</td>
<td>Willy Brandt (SPD)</td>
</tr>
<tr>
<td>1972</td>
<td>SPD–FDP</td>
<td>Willy Brandt (SPD); from 1974 Helmut Schmidt (SPD)</td>
</tr>
<tr>
<td>1976</td>
<td>SPD–FDP</td>
<td>Helmut Schmidt (SPD)</td>
</tr>
<tr>
<td>1980</td>
<td>SPD–FDP; from 1982</td>
<td>Helmut Schmidt (SPD); from 1982 Helmut Kohl (CDU)</td>
</tr>
<tr>
<td></td>
<td>CDU/CSU–FDP</td>
<td>Helmut Kohl (CDU)</td>
</tr>
<tr>
<td>1983</td>
<td>CDU/CSU–FDP</td>
<td>Helmut Kohl (CDU)</td>
</tr>
<tr>
<td>1987</td>
<td>CDU/CSU–FDP</td>
<td>Helmut Kohl (CDU)</td>
</tr>
<tr>
<td>1990</td>
<td>CDU/CSU–FDP</td>
<td>Helmut Kohl (CDU)</td>
</tr>
<tr>
<td>1994</td>
<td>CDU/CSU–FDP</td>
<td>Helmut Kohl (CDU)</td>
</tr>
<tr>
<td>1998</td>
<td>SPD–Greens</td>
<td>Gerhard Schröder (SPD)</td>
</tr>
<tr>
<td>2002</td>
<td>SPD–Greens</td>
<td>Gerhard Schröder (SPD)</td>
</tr>
<tr>
<td>2005</td>
<td>CDU/CSU–SPD</td>
<td>Angela Merkel (CDU)</td>
</tr>
<tr>
<td>2009</td>
<td>CDU/CSU–FDP</td>
<td>Angela Merkel (CDU)</td>
</tr>
</tbody>
</table>

DP = Deutsche Partei; GB/BHE = Gesamtdeutscher Block/Bund der Heimatvertriebenen und Entechneten

This is a slightly simplified representation of the governments that have been in power in Germany since 1949. For a full breakdown, which includes full dates and transitional governments (for instance, in 1982), see Schmidt (2003a: 52–3).
compromise in the Bundestag over abortion to the Court, where the new ruling was struck down. In consequence, a veritable cottage industry of pundits has sprung up around the business of second-guessing the approach the Court will adopt to any given issue. It thus remains a highly important yet unpredictable player in German politics (Blankenburg, 1996).

Other elements in the German polity

The entire political process is overseen by the head of state, the Federal President (Table 4.2). As noted above, and in contrast to the Weimar Republic, his/her position is largely ceremonial, and although the choice and election of a president is often a highly partisan affair, the office is above party politics and thus enjoys considerable moral authority. However, in recent years, incumbents have fully exploited this moral authority to make strategic interventions in domestic politics. Thus Richard von Weizsäcker criticised all the parties in Germany for what he saw as their obsession with power rather than making a difference, while Roman Herzog was one of the first public figures to call for a greatly accelerated pace of reform in 1997. More recently, Horst Köhler in 2006 refused to sign into law two bills which had already been passed by the two chambers of parliament (Strohmeier and Wittlinger, 2010). Certainly, successive incumbents have been insulated from such criticism by the high level of public respect their office enjoys. Equally, the resignation of Horst Köhler in 2010, the first time a president has done so, over some ill-chosen remarks about the grounds on which German troops might be deployed abroad, highlights the risks an incumbent takes by involving themselves in daily politics.

Three other sets of domestic institutions need to be mentioned: political parties, parapublic institutions, and interest groups (Katzenstein, 1987). As discussed in greater detail in Chapter 5, German political parties are unusual in that they are constitutionally recognised as political actors. Katzenstein (1987) classifies them, alongside parapublic institutions and federalism, as one of the three ‘nodes’ of the entire political system. Indeed, the degree to which state structures, and especially public appointments, have been penetrated by political parties has led some com-

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**Table 4.2 Federal Presidents, 1949–2011**

<table>
<thead>
<tr>
<th>Period</th>
<th>President</th>
</tr>
</thead>
<tbody>
<tr>
<td>1949–59</td>
<td>Theodor Heuss (FDP)</td>
</tr>
<tr>
<td>1959–69</td>
<td>Heinrich Lübke (CDU)</td>
</tr>
<tr>
<td>1969–74</td>
<td>Gustav Heinemann (SPD)</td>
</tr>
<tr>
<td>1974–79</td>
<td>Walter Scheel (FDP)</td>
</tr>
<tr>
<td>1979–84</td>
<td>Karl Carstens (CDU)</td>
</tr>
<tr>
<td>1984–94</td>
<td>Richard von Weizsäcker (CDU)</td>
</tr>
<tr>
<td>1994–99</td>
<td>Roman Herzog (CDU)</td>
</tr>
<tr>
<td>1999–2004</td>
<td>Johannes Rau (SPD)</td>
</tr>
<tr>
<td>2004–2010</td>
<td>Horst Köhler (CDU)</td>
</tr>
<tr>
<td>2010–</td>
<td>Christian Wulff (CDU)</td>
</tr>
</tbody>
</table>
mentators to talk of Germany as a ‘party state’ (*Parteienstaat*) (see Chapter 5 and Schmidt, 2003a: 46–55). By contrast, parapublic institutions are formally state bodies, but they operate according to technocratic rather than political principles (see Katzenstein, 1987:58–80; Busch, 2005b). Two key examples of parapublic institutions are the (now largely emasculated) *Deutsche Bundesbank*, which managed Germany’s monetary policy until the introduction of the Euro in 1999, and the Federal Labour Agency (*Bundesagentur für Arbeit*), which oversees unemployment and labour market programmes. Lastly, interest groups include not only the industry-based union movement and employers’ organisations (see Chapter 7), but churches and sectoral organisations, such as farmers’ and doctors’ lobby groups. Often, parapublic institutions act as a nexus between government, employers and unions, and in contrast to the government, many interest groups are characterised by a high degree of centralisation (Katzenstein, 1987).

Crucially, in a further example of an institutional response to Nazi dictatorship, the state delegates the implementation of significant areas of its activities to both parapublic bodies and interest organisations. This is clearly visible in health policy, where the principle of self-governance is particularly well entrenched. Accordingly, significant elements of cost management and control are devolved to both parapublic institutions, in the form of the state health insurance administration (*Allgemeine Ortskrankenkassen*), and interest groups, in the form of the doctors’ organisation which deals with the insurance companies over all billing matters (the *Kassenärztliche Vereinigung*) (see also Chapter 8).

One final dimension deserves consideration. Since 1957, Germany has been one of the key members of what has now become the European Union (EU). As the competencies of the EU have increased, especially following the Single European Act in 1986, so the influence of the EU on national policy-making has risen: between 1998 and 2002 over one-third of all laws passed in Germany originally emanated from the supranational arena (Töller, cited in Schmidt and Zohlnhöfer, 2006:24; see also Sturm and Pehle, 2005). In areas such as agriculture, where the degree of policy integration is greatest, this proportion was even higher. Perhaps the most notable example of the impact of the EU in the German context is the entire transfer of monetary policy to the European Central Bank with the introduction of the Euro in 1999. Chapters 7 and 9 discuss the impact of Germany on the EU, and *vice versa*, in greater detail.

Remarkably, the essentials of this institutional configuration, and especially the operation of federalism, remained relatively untouched by unification (Jeffery, 1995; Jeffery 2005: 85–6). Five *Länder* were re-established on the territory of the GDR, and post-1990 the state of Berlin incorporated both the western and eastern halves of this formerly divided city. Most of the existing elements and structures of policymaking, including the parapublic institutions and the close involvement of sectoral interest groups in the delivery of policy, were transferred wholesale to the five new *Länder* plus Berlin (Jacoby, 2000). Only relatively minor structural changes were undertaken, such as the increase of the number of votes of the four largest western *Länder* from five to six to maintain their relative weight in the *Bundesrat*. Even though a government commission was set up to review the suitability of Germany’s constitution in a post-unification environment, it concluded that only cosmetic amendments
were necessary. But, in reality, unification has proved to be a significant challenge for the operation of the German polity, in particular the relations between the Länder and the functioning of the Bundesrat in federal politics (see below).

This complex web of institutions, and the range of interactions it produces, has famously been characterised by Katzenstein (1987) as a ‘semi-sovereign’ state (see also Green and Paterson, 2005). This term refers to the fact that power is highly fragmented both within the central (i.e. federal) government, due to coalition politics and the relatively limited direct power of the Chancellor, and between the federal government and the Länder, the Federal Constitutional Court, parapublic institutions and the key interest groups. Put differently, Germany is distinguished in international terms by an unusually large number of ‘veto players’: that is, ‘an individual or collective actor whose agreement . . . is required for a change in policy’ (Tsebelis, 1995: 301).

The result is that there is an institutional predisposition within the German political system towards only gradual policy evolution, or, as Katzenstein (1987) terms it, ‘incremental policy change’ (see also Green and Paterson, 2005). In turn, this institutional bias towards incremental policy change strengthens the dynamics of historical precedence, in that policy priorities, once agreed upon by the parties via the institutional process, become very difficult to change in their essence. Known in the political science literature as ‘path dependence’ (Peters, 1999: 63), this dynamic is visible in a range of domestic and foreign policy areas, from the issue of conscription (see Chapter 10) to the operation of the pension system (see Chapter 7). This predisposition is complemented by a normative emphasis on consensus between the main political parties wherever possible (Dyson, 1982). Again arising as a reaction to the sometimes polarised nature of politics in the Weimar Republic, there has historically been a palpable dislike of outright adversarial politics as sometimes found in Anglo-Saxon democracies. The result has been an inherent tendency within the German political system towards centrist politics.

But, as Katzenstein (1987: 350) notes, incremental change does not per se equate with stagnation: ‘It is easy to mistake incremental change for incapacity to change [. . .] There is a world of difference between incrementalism and immobilism.’ Indeed, the period of the first ‘Grand Coalition’ between 1966 and 1969, and perhaps especially the run-up to unification in 1989–90, showed that the German political system has been capable of reacting relatively rapidly when circumstances require.

Nonetheless, more recently, there has been a sense within Germany that the political system is no longer delivering appropriate outputs. For over two decades, politicians and commentators have been debating Germany’s economic position in a globalising world (the Standortdebatte), and what reforms to its welfare and economic system are necessary to maintain this position (to be discussed further in Chapters 7 and 8). This question has become especially acute in the context of the huge additional financial burden of unification (outlined in Chapter 3). Since the mid-1990s, this debate has become ever more anguished: in 1997, the word ‘Reformstau’ (‘reform blockage’) came into vogue and Federal President Roman Herzog made a public plea for greater purpose in tackling the challenges of social and economic reform. Since late 1998, when the SPD–Green government under Gerhard Schröder came to power, there has been a sense either that reforms have not
been politically possible, or that where they have been attempted (as in healthcare – see Chapter 8), they have simply not been sufficient to address the extent of the problem. Even under the Grand Coalition between the CDU/CSU and SPD from 2005–09, which nominally had a dominant majority, the record of reforms was modest (Zohlnhöfer, 2009). The following chapters discuss the challenges and the solutions sought in a range of policy areas, but the task here is to examine the notion and dimensions of a blockaded system of government in greater detail.

### ISSUES

Given the complexity of German federalism, it is probably not surprising that much of the debate over the ability of Germany’s political institutions to deliver effective policy solutions has revolved around this particular issue. In essence, there have been four main topics discussed under this heading (see also Wachendorfer-Schmidt, 2005):

- the function of the *Bundesrat* as a veto player;
- the division of competencies between the federation and the *Länder*;
- the impact of European integration;
- the future financial relationship between the individual *Länder*.  

The first question, concerning the *Bundesrat*’s function as a veto player in national politics, is perhaps the most visible in the public eye: as noted above, Germany’s second chamber has been arguably the most powerful veto player, with around 60 per cent of all legislation prior to 2006, including most significant domestic policy initiatives, requiring its approval. Indeed, it was this dynamic which prompted Fritz Scharpf (1988) to characterise (West) German federalism as a ‘joint decision trap’, in which the potential for the *Bundestag* and *Bundesrat* to exercise a veto over the other’s wishes necessarily produced outcomes at or around the lowest common denominator.

Furthermore, the party political relationship between the two chambers is highly complex. Even when the same coalition of parties has dominated both chambers, the *Bundesrat*’s approval could never be taken for granted, although this was obviously more likely than when the coalition of parties with at least a nominal majority differed between the two chambers. Yet a hostile *Bundesrat* majority has not necessarily led to a blockade of the federal government’s bills, due both to the high value placed on consensus politics and to the ability of the federal government to offer sweeteners to individual *Länder* and hence ‘divide and rule’ the *Bundesrat*. A prime example of this dynamic occurred during the vote on the 2000 tax reform, when the SPD–Green federal government secured the votes of *Länder* such as Bremen, which was governed by an SPD–CDU coalition at the time, by promising federal aid for local programmes (Jeffery, 2005: 92).

The key reason why the federal government has occasionally been able to divide and rule the *Länder* is because they, like many other areas of German society, are much less homogeneous now than they were prior to unification (Jeffery, 2005: 81–5). As
Table 4.3 shows, the sixteen Länder vary very widely in terms of population, wealth, unemployment and public debt. In consequence, it has become much harder to develop joint positions among them, with each facing different political priorities depending mainly on whether they are large or small, rich or poor, and in the east or west.

This heterogeneity among the Länder is reflected in the political composition of the sixteen Land governments. Before unification, there was a more-or-less clear divide between those states governed by parties in the federal coalition and those governed by the opposition: in other words, there were two clear blocs of votes in the Bundesrat. However, since unification, with ever more parties competing successfully at Land level, the resulting composition of Land governments has also become more diverse. In particular, this has meant that coalitions which cut across the government–opposition divide in the Bundestag have become more common.

This matters because, for (all-important) consent legislation to pass the Bundesrat, thirty-five of the possible sixty-nine votes must be cast in favour. But in cases where a Land coalition does not reflect the government–opposition divide at federal level, it is usual for these Länder to abstain from contested Bundesrat votes. In turn, because of the requirement for an absolute majority of votes for consent bills to pass, abstentions effectively count as rejections. A by-product of this dynamic is that it becomes much easier for the main opposition party (at least to threaten) to blockade a government bill than it is for a federal government to pass it. Federal governments since

<table>
<thead>
<tr>
<th>Land</th>
<th>Population (millions)</th>
<th>GDP per capita (€)</th>
<th>Unemployment rate (%)</th>
<th>Public debt (€ billion)</th>
<th>Horizontal equalisation transfers (€ billion)</th>
<th>Votes in Bundesrat</th>
<th>Composition of government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baden-Württemberg</td>
<td>10.7</td>
<td>33,953</td>
<td>4.1</td>
<td>41.7</td>
<td>−2.6</td>
<td>6</td>
<td>Green– SPD</td>
</tr>
<tr>
<td>Bavaria</td>
<td>12.5</td>
<td>35,526</td>
<td>4.2</td>
<td>22.1</td>
<td>−2.9</td>
<td>6</td>
<td>CSU– FDP</td>
</tr>
<tr>
<td>Berlin</td>
<td>3.4</td>
<td>25,867</td>
<td>13.9</td>
<td>56.0</td>
<td>+3.1</td>
<td>4</td>
<td>SPD– LP</td>
</tr>
<tr>
<td>Brandenburg</td>
<td>2.5</td>
<td>21,495</td>
<td>13.0</td>
<td>17.1</td>
<td>+0.6</td>
<td>4</td>
<td>SPD– LP</td>
</tr>
<tr>
<td>Bremen</td>
<td>0.7</td>
<td>41,435</td>
<td>11.4</td>
<td>15.3</td>
<td>+0.5</td>
<td>3</td>
<td>SPD– Green</td>
</tr>
<tr>
<td>Hamburg</td>
<td>1.8</td>
<td>49,382</td>
<td>8.1</td>
<td>21.7</td>
<td>−0.4</td>
<td>3</td>
<td>SPD</td>
</tr>
<tr>
<td>Hesse</td>
<td>6.1</td>
<td>36,467</td>
<td>6.6</td>
<td>31.6</td>
<td>−2.5</td>
<td>5</td>
<td>CDU– FDP</td>
</tr>
<tr>
<td>Lower Saxony</td>
<td>7.9</td>
<td>26,766</td>
<td>7.7</td>
<td>50.2</td>
<td>+0.3</td>
<td>6</td>
<td>CDU– FDP</td>
</tr>
<tr>
<td>Mecklenburg-Western Pomerania</td>
<td>1.7</td>
<td>21,345</td>
<td>14.1</td>
<td>9.9</td>
<td>+0.5</td>
<td>3</td>
<td>SPD– CDU</td>
</tr>
<tr>
<td>North Rhine-Westphalia minority</td>
<td>17.9</td>
<td>30,473</td>
<td>8.5</td>
<td>113.6</td>
<td>+0.1</td>
<td>6</td>
<td>SPD– Green</td>
</tr>
<tr>
<td>Rhineland-Palatinate</td>
<td>4.0</td>
<td>26,340</td>
<td>5.6</td>
<td>25.2</td>
<td>+0.4</td>
<td>4</td>
<td>SPD– Green</td>
</tr>
<tr>
<td>Saarland</td>
<td>1.0</td>
<td>30,043</td>
<td>7.3</td>
<td>9.5</td>
<td>+0.1</td>
<td>3</td>
<td>CDU– FDP– Greens</td>
</tr>
<tr>
<td>Saxony</td>
<td>4.2</td>
<td>22,572</td>
<td>12.8</td>
<td>9.6</td>
<td>+1.3</td>
<td>4</td>
<td>CDU– FDP</td>
</tr>
<tr>
<td>Saxony-Anhalt</td>
<td>2.4</td>
<td>22,408</td>
<td>14.0</td>
<td>19.8</td>
<td>+0.6</td>
<td>4</td>
<td>CDU– SPD</td>
</tr>
<tr>
<td>Schleswig-Holstein</td>
<td>2.8</td>
<td>26,074</td>
<td>7.6</td>
<td>22.4</td>
<td>+0.2</td>
<td>4</td>
<td>CDU– FDP</td>
</tr>
<tr>
<td>Thuringia</td>
<td>2.3</td>
<td>22,116</td>
<td>11.3</td>
<td>15.3</td>
<td>+0.6</td>
<td>4</td>
<td>CDU– SPD</td>
</tr>
</tbody>
</table>

Source: Statistisches Bundesamt and Statistische Ämter des Bundes und der Länder; Bundesagentur für Arbeit, www.arbeitsagentur.de
unification have, as a rule, found it difficult to build and maintain a reliable majority in the Bundesrat. This was even the case under the Grand Coalition from 2005–09, when the federal government, at least initially, nominally enjoyed a clear majority in both chambers of parliament. Then, especially, ambitious Land minister-presidents used the Bundesrat to parade on the national political stage at the federal government’s expense. Furthermore, because of the system of staggered Land elections, federal governments have generally found it impossible to regain a Bundesrat majority once it has been lost (see Saalfeld, 2005: 64). The sole exception post-1961 was the CDU/CSU–FDP government under Helmut Kohl. Throughout the 1980s, it enjoyed a comfortable Bundesrat majority, but it lost this after the Lower Saxony election in spring 1990. It regained its majority through the extra-ordinary circumstances of unification in October 1990, when the five new, predominantly CDU–FDP-governed eastern Länder joined the Federal Republic. However, even this position was short-lived, and the federal government once again lost its majority in early 1991 following the Hesse and Rhineland–Palatinate elections.

The big political question arising out of Germany’s intricate system of majorities is whether parties in opposition at federal level, once a federal government has lost its majority in the Bundesrat, can and do utilise their strong position in that chamber to obstruct the federal government’s legislative agenda systematically. Certainly, the German political scientist Gerhard Lehmbruch (2002 [1976]) thought so in the 1970s, when the CDU/CSU opposition was clear about its intention to use its Bundesrat majority in order to hinder the SPD–FDP federal government’s bills. But more recently, scholars such as Charlie Jeffery (2005: 91–2) have been more circumspect about making this claim (see also Lees, 2005: 116–24). They point out that only a small minority of bills are vetoed by the Bundesrat (see Rudzio, 2003: 330), and that Länder interests are a better indicator of voting intentions than the party political composition of their governments. As a result of these interests, as noted above, the federal government has, on rare but significant occasions, been able to ‘buy off’ individual, and often cash-strapped, Länder. Nonetheless, the threat of a potential veto by the Bundesrat can be as effective as wielding the veto itself. It is principally this requirement for a federal government to work with the federal opposition via the Bundesrat, especially when the two largest parties are not in government together, that has prompted Manfred Schmidt (2002) to characterise Germany as a permanent ‘grand coalition state’.

While the ability of the Bundesrat to act as a veto player impacts primarily on federal politics, there has also been a growing discussion between the federal government and the Länder about the distribution of competencies, which culminated in the 2006 federalism reform (see below). In truth, such conflicts are arguably inherent in federal systems, and the Constitutional Court has been called upon on several occasions in the past to resolve them. But the concerns of the Länder have arisen out of the long-term trend for the federation to encroach on their competencies, primarily through the Bundestag’s rigorous exploitation of its right in the past to legislate in ‘concurrent’ policy areas (Article 74 of the Basic Law). In essence, as noted above, this left the Länder with very few possibilities to conduct their own politics: it is no surprise that the minister-president of a Land is known, affectionately, as a Landesvater or -mutter, a kind of avuncular or matronly figure whose primary role is to inaugurate
public works projects and spread goodwill at events such as regional garden shows (the ubiquitous \textit{Landesgartenschauen}).

The third issue to affect federalism is related to the previous point and constitutes perhaps an even more serious challenge to the competencies of the L\"{a}nder: Germany's membership of the European Union and the resulting process of European integration (Bulmer \textit{et al.}, 2000: 33–40; see also Chapter 9). Since the mid-1980s, and especially since the Single European Act of 1986, the L\"{a}nder have collectively grown ever more concerned over what they have seen as the federal government's eagerness to transfer sovereignty to the EU in those areas which had traditionally been the L\"{a}nder's areas of competence. In consequence, the L\"{a}nder have demanded more input into the EU's policy process, both in the form of their own representations in Brussels (Moore, 2006) and via their right to represent issues of direct concern to them in the Council of Ministers. Indeed, they famously threatened to veto the ratification of the 1992 Maastricht Treaty if progress was not made on their demands. Similarly, the L\"{a}nder were the driving force behind the EU's decision at the 2000 Nice European Council meeting to set up the (ultimately ill-fated) constitutional convention.

Finally, the whole relationship between the individual L\"{a}nder has begun to be challenged from within. In particular, the comparatively rich southern states of Hesse, Baden-W\"{u}rttemberg and Bavaria, the three main contributors to the horizontal fiscal equalisation scheme, have emerged as the leading critics of the current system and the way in which it binds together the L\"{a}nder. In their view, the goal of equal living conditions appears to be ever more difficult to achieve, not least because of the significant economic differences between the old and new L\"{a}nder. In place of the current arrangements, these three L\"{a}nder, especially Bavaria, have argued for a much greater degree of autonomy, to include the 'repatriation' of competencies, especially from the EU level, as well as less scope for the fiscal equalisation system (Jeffery, 2005: 87–8). On this basis, they challenged the entire system of the L\"{a}nderfinanzausgleich in the Constitutional Court in 1998. Although this resulted in a partial victory for the three plaintiff L\"{a}nder, it ultimately translated into only a marginal reduction of their payments into the system.

Meanwhile three poorer western L\"{a}nder, Saarland, Bremen and Berlin, have argued at different times before the Constitutional Court for additional financial assistance not from the other L\"{a}nder but from the federal government. As Table 4.3 shows, all three are small states suffering from structurally weak economies, with high levels of unemployment and public debt. In 1992, the Constitutional Court ruled that Saarland and Bremen were entitled to special grants from the federal government, on the basis that they were no longer in a position to recover from their parlous financial positions by themselves. By contrast, the state of Berlin was not so lucky. During the partition of Germany, West Berlin enjoyed lavish financial assistance from the federal government, reflecting its position as an outpost of the West deep inside the Iron Curtain. But after unification, these funds dried up, and, unusually for a capital city, Berlin remains desperately weak economically: half of its population is unemployed, living on income support or drawing pensions; its total public debt is around €60 billion; and it is by far the largest beneficiary of horizontal transfers from the financial equalisation scheme, accounting by itself for over one-third of total receipts. The city's situation has not been helped by a notorious case of corruption surrounding the
collapse in 2001 of a state-owned financial institution, the Bankgesellschaft Berlin, which saddled the city with a further €10 billion of debt. In 2005 the city’s Mayor, Klaus Wowereit, displayed the city’s typical black humour when he famously described it as ‘poor, but sexy’ (‘Arm, aber Sexy’). The capital took the federal government to the Constitutional Court in 2003 arguing that, like Bremen and Saarland, it should benefit from additional federal support. But in October 2006 its claim was rejected by the Court, which argued that the problem was not so much one of revenue as one of expenditure. In a direct reference to Wowereit’s much-quoted description, the presiding judge commented that perhaps Berlin was so sexy because it was not so poor after all.

Together, these three disputes illustrate how tensions between territorial units are developing. On the one hand, the richer states are less willing to subsidise their poorer neighbours; but, on the other hand, poorer states are finding it harder to improve their financial positions without assistance. At the same time, the other main player, the federal government, has, in light of its own fiscal pressures, been unwilling to step in. So far, such disputes have therefore tended to necessitate adjudication by the Constitutional Court.

Federalism has been perhaps the most visible area of debate over the question of whether Germany’s institutional structure is a help or a hindrance in the pursuit of reform, but other elements of the political system are also coming under scrutiny. Periodically, there are suggestions to replace Germany’s broadly proportional electoral system (see Chapter 5), which almost by definition produces coalition governments, with a majoritarian, first-past-the-post system. The role and power of the Constitutional Court is certainly discussed critically, too, although this tends to take place internationally rather than domestically (e.g. Stone Sweet, 2000): the Court regularly ranks among the top institutions in Germany for the level of trust it is accorded by the population. Perhaps most of all, organised interest groups have been blamed for Germany’s economic problems (e.g. Streeck, 2005): even a casual observer of German politics will notice the degree to which the unions, churches and dispensing chemists, to name but three interest groups, manage to influence policy in the SPD, CDU/CSU and FDP, respectively.

**DEBATES**

Despite the complexity of the issues surrounding institutional reform in Germany, there have been a number of attempts in recent years to make real progress, especially over the question of the structure and content of federalism. In the aftermath of unification, there was a lively debate about the political and financial viability of sixteen independent Länder, each with a full-scale parliament, government ministries, senior administrative elite and often even its own broadcasting network. A number of proposals were made to merge the smallest Länder (in particular the city-states) with their larger neighbours (Sturm, 1992: 131–3). But, perhaps inevitably, such initiatives did not progress beyond an initial phase: there was never a realistic chance that states such as Lower Saxony and Rhineland–Palatinate, with their own considerable fiscal challenges, would agree to take on the financial liabilities of the
neighbouring states of Bremen and the Saarland, respectively, both of which were saddled with even worse debts per capita. Only in one case was a merger between two Länder attempted, between Berlin and Brandenburg in 1996. But this was defeated in a referendum and no further mergers have since been mooted (McKay, 1996).

Yet, against the odds, the German system of government has shown itself to be capable of evolution. In 2003, the SPD-led federal government and the sixteen Länder agreed to set up a joint commission charged with the ‘modernisation’ of Germany’s federal system. Indeed, the protagonists (mainly the CDU/CSU and SPD) soon reached wide-reaching agreement on a range of issues. Although the discussions temporarily collapsed in December 2004 over the division of competencies in education policy, they were restarted under the Grand Coalition just one year later, following the 2005 election. In late 2006, a package of reforms to the federal structure almost identical to the 2004 deal prior to its collapse became law, and this has gone some way to disentangling the policy process at the federal level (cf. Auel, 2008; Jeffery, 2008). Between 2007 and 2009, a second commission was charged with examining the financial relations between the federation and the Länder. Although no progress was made with issues such as the horizontal and financial equalisation scheme, the two sides did agree a far-reaching limitation of new public debt (Schuldenbremse) in an attempt to call a halt to the almost exponential increase in public debt since unification. Box 4.3 summarises the main results of the two commissions.

### Box 4.3 The Federalism Reform Commissions

#### The First Reform Commission (2003–06)

- Proportion of consent laws needing approval of Bundesrat reduced from 60 per cent of the total to about 35 per cent. However, most major pieces of legislation will still be consent laws (cf. Zohlnhöfer, 2008).
- In return, some competencies are passed to the Länder, such as the right to regulate pay and conditions for civil servants.
- Education remains the reserve of the Länder; university construction, which had been a ‘joint task’ of the federal government and the Länder since 1969, returns solely to being a competence of the Länder.
- In specific areas such as environmental policy, Länder are given new right to legislate for exceptions from federal-level laws.

#### The Second Reform Commission (2007–09)

- Although other financial aspects remained unresolved, the Commission agreed to impose a strict limit (Schuldenbremse) on new structural government debt, which is not linked to cyclical economic conditions.
Even so, the financial relationships between the Länder have generated some highly acrimonious disputes since unification. Because the five eastern Länder plus Berlin are all economically much weaker than even the poorest western state, the balance of the fiscal equalisation scheme has shifted eastwards since 1990: of the €8.3 billion distributed by the horizontal fiscal equalisation scheme in 2008, over 80 per cent went to the five eastern Länder plus Berlin, which in total accounted for just 20 per cent of the country’s population. The imbalance was even greater among the vertical equalisation payments from the federal government, under which the same six Länder received over 90 per cent of payments, amounting to over €13.9 billion in 2008. Inevitably, this has created ‘losers’ in the west: the rich western states lose because they have to pay more, and the poor western states (of which there are plenty) lose because they receive less. To make matters worse, there is so far no indication that the economic situation in eastern Germany will develop enough, even over the coming decades, to allow the six new Länder to become independent of the Länderfinanzausgleich. Thus states like Bavaria are faced with having to support the poorer Länder for a very long time to come, which is obviously a source of political tension within that state’s governing party, the CSU. At the same time, critics of the Bavarian position are quick to point out that Bavaria itself benefited for most of the period before 1990 from the same equalisation scheme.

So far, the issue has been dealt with by the federal government stepping in and shouldering most of the costs via the vertical equalisation scheme. In 1995, a first so-called ‘solidarity pact’ (Solidarpakt I) was negotiated between the Länder and the federal government. This was renewed in 2003, with the Solidarpakt II running until 2019. However, in both cases, the final deal depended on the willingness of the federal government to underwrite much of the additional expenditure that this involved (Sally and Webber, 1994; Jacoby, 2005: 39–44; Jacoby, 2008). In consequence, the Solidarpakt II continues to commit the federal government to long-term support of the Länder, as the €14.8 billion paid through the vertical support mechanism in 2008 (almost double the total generated by the horizontal mechanism) illustrates. In the longer term, though, the fiscal implications of the constitutional Schuldenbremse (see Box 4.3) means that such federal largesse is unlikely to continue. Overall, this debate underlines that unification has brought out tensions in the organisation of German federalism which the existing structures have so far failed to resolve.
This chapter has provided a broad overview of the institutional configuration of Germany’s political system. It has shown that its structure and consensual norms of operation clearly reflect the historical legacy of the Weimar Republic and the Third Reich. It has argued that the wide dispersal of power within the system, combined with a comparatively high number of ‘veto points’, has conditioned the political system to only gradual policy change. Significantly, even in times of rapid change, most notably the period leading up to unification in 1989 and 1990, there was little change in the institutions themselves, as the wholesale ‘transfer’ of structures, and especially of federalism, to the east illustrates.

In thinking about whether Germany has a blockaded political system, therefore, it is useful to distinguish between policy change and institutional change, as well as the links between these two factors. As many of the following chapters will go on to illustrate, policy change has indeed continued to demonstrate the incremental tendencies inherent in the political system. But, as this chapter has also shown, the institutional structures themselves have not changed much since unification: even after the federalism reforms, the most important characteristics of ‘co-operative federalism’, in particular its financial arrangements, remained in place, despite the fact that Germany’s sixteen Länder are now a highly diverse range of entities with corresponding political priorities.

In turn, this heterogeneity of the Länder, which has translated into a lack of party political majorities in the Bundesrat, has frustrated the federal government’s ability to make policy. Simultaneously, even the potential of a Bundesrat veto has made it possible for the main federal opposition party to act as a ‘status preserver’ for electoral reasons. Since the financial pressures created by unification mean that most political debates in Germany now revolve around cuts in provision rather than distribution of extra expenditure, it is difficult not to conclude that Germany’s highly consensual political system makes it easy to fudge, if not block outright, the formulation of the painful measures most commentators agree are necessary to improve economic performance.

In other words, post-unification Germany’s political institutions are faced with a challenge that they were simply not set up to manage. Therefore it is difficult to deny that the political system in Germany, with its tendency towards the ‘joint-decision trap’, does not at least contribute to the ponderous public policy response to rapidly accelerating social and economic challenges. Yet, ironically, a full-scale revision of political structures towards a more majoritarian, ‘Westminster’ type of democracy is not necessary (Lijphart, 1999). Two relatively simple measures would probably suffice to break up the logjam. First, the requirement that consent laws attract an absolute majority of Länder votes could be inverted; in other words, the Länder would only be able to block consent legislation by an absolute majority. Second, by bundling Land elections around a set date in the calendar, mirroring, for instance, mid-term congressional elections in the United States, the phenomenon of constant electioneering, which has frustrated the ability of any government to make a sustained effort to solve difficult political problems, would also be reduced. Of course, the flip-side of this is that Land elections would become a de facto referendum on the federal government,
whereas at present they reflect, at least to some extent, regional peculiarities (Jeffery and Hough, 2001). More boldly, the possibility of reducing the total number of Länder through mergers might yet be revisited. However, these remain nothing more than theoretical options at present. Germany’s political institutions remain locked in their pre-unification structures.

The federalism commissions indicated that structural reform is possible, although notably their completion cannot be separated from the existence of a formal Grand Coalition at federal level. Crucially, the most fundamental reforms, in particular to the number of Länder, as well as to the financial arrangements between them, remain as elusive as ever. However, the question of whether this largely stable political system in structural terms necessarily leads to gridlock in policy terms requires a more nuanced perspective. As the following chapters will show, the federal government has undoubtedly been able to bring some major changes to public policy, notably in response to the global financial crisis (see Chapter 7) and the structure of some aspects of Germany’s welfare state (see Chapter 8). But as these chapters will also explore, the question in this context is whether this is a uniform picture, or whether other attempts at reform have proved less successful in addressing the challenges Germany faces.

### QUESTIONS FOR DISCUSSION

1. Who has power in German politics?
2. ‘The Bundesrat is the main reason for Reformstau in Germany.’ Discuss.
3. How does the position of Chancellor compare with: a) the British Prime Minister; b) the French President; and c) the US President?

### FURTHER READING


