

## From Unitary to Asymmetric Federalism in Germany: Taking Stock after 50 Years

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*Policymaking in the German federal system is influenced by the dynamic interplay of the institutions of cooperative federalism, of party competition in a parliamentary system, and of distributive conflicts between governments. This is shown in an analysis of 50 years of German federalism. It is argued that while the institutional setting outlived most reform efforts, changing patterns of party politics and growing distributive conflicts induced adjustments in intergovernmental relations. Since the 1980s, such adjustments have also been stimulated by European politics. In unified Germany, intergovernmental cooperation is now burdened with asymmetries between the East and the West, which are also expressed in a more regionalized party system. However, as party political confrontations have diminished, a pragmatic revision of the federal system seems feasible.*

From a comparative point of view, German federalism is a case in itself. Some scholars have even raised doubts as to whether the German state can be labeled as a federal system.<sup>1</sup> One reason for this can be found in the Constitution. It assigns legislative power mainly to the federal government, whereas the *Länder* are, in most cases, responsible for implementing the law. Moreover, the federal system is embedded in a society with centralized organizations of interest<sup>2</sup> in a highly developed welfare state, in an increasingly Europeanized economy, and in a political culture that emphasizes national unity and uniform living conditions in all regions.<sup>3</sup> Territorial diversity and competition between decentralized governments, which are often said to characterize a truly federal system, are not supported. Even so, the division of power, decentralization, and the participation of *Land* governments in national policymaking are basic features of German federalism. The sharing of legislative, administrative, and financial functions between governments and the widespread orientation toward unity and

**AUTHOR'S NOTE:** This article is a revised and extended version of a paper published in Thomas Ellwein and Everhard Holtmann (eds.), *50 Jahre Bundesrepublik Deutschland* (special issue of *Politische Vierteljahresschrift* No. 30), Opladen: Westdeutscher Verlag, 1999. I thank the editors and the publisher for permitting the reuse of the paper, Erna Anderl-Fröhlich for translating the original text, and Rainer Eising for helpful comments.

<sup>1</sup>Kenneth Wheare, *Federal Government*, 4th ed. (London: Clarendon Press, 1963), p. 26; Heidrun Abromeit, *Der verkappte Einheitsstaat* (Opladen: Leske & Budrich, 1992).

<sup>2</sup>Peter Katzenstein, *Politics and Policymaking in West Germany: The Growth of a Semi-Sovereign State* (Philadelphia: Temple University Press, 1987), p. 15.

<sup>3</sup>Konrad Hesse, *Der unitarische Bundesstaat* (Karlsruhe: C. F. Müller, 1962).

© Publius: The Journal of Federalism 29:4 (Fall 1999)

equality have contributed to the emergence of a system of interlocking politics (*Politikverflechtung*), which is typical of cooperative federalism.

This system has been criticized for its increasing policymaking costs, reducing governmental problem-solving capacity, and causing stalemates.<sup>4</sup> The Constitution stipulates that more than 50 percent of federal laws cannot be passed without a majority of *Länder* government's votes in the *Bundesrat*. Therefore, institutional reforms and policy changes are said to be impeded by conflicts of interests between the federal and *Land* governments. When the opposition party in the Federal Parliament (the *Bundestag*) is supported by a majority in the Federal Council (the *Bundesrat*), confrontation between the competing political parties may obstruct the much needed cooperation, which often occurs. Similar arguments apply to policy fields in which the federal and *Land* governments jointly decide on the allocation of funds to regions. Here, distributive conflicts make it difficult to concentrate resources on regions in need. During recent years, cooperative federalism has been blamed increasingly for blocking the passage of necessary reforms. Representatives of political parties and associations have pleaded for a competitive federalism with a clear separation of powers between levels of government and for fiscal autonomy of the *Land* governments.<sup>5</sup>

These recommendations are based on questionable analyses and result in problematic consequences. In the following sections, I show that cooperative federalism in Germany is much more flexible and open to institutional adaptation and policy change than is often assumed. Indeed, the federal system is burdened by tensions between the constitution of the federal polity, the structures of the party system, and basic principles of policymaking (definition of problems and norms of problem solving). They are caused by inconsistencies in the architecture of the German political system that emerged during its historical development.<sup>6</sup> However, these tensions create constant pressure for adjustment and evolution. Therefore, the German federal state has to be acknowledged as a dynamic system.

Nevertheless, the current state of German federalism is ambivalent. In the West German Federal Republic, the fact that there were no severe inequalities among regions enabled intergovernmental cooperation despite competition among political parties. After 1990, regional disparities between West and East Germany, which might become more significant

<sup>4</sup>Fritz W. Scharpf, *Optionen des Föderalismus in Deutschland und Europa* (Frankfurt a.M./New York: Campus, 1994); Fritz W. Scharpf, Bernd Reissert, and Fritz Schnabel, *Politikverflechtung: Theorie und Empirie des kooperativen Föderalismus in der Bundesrepublik* (Kronberg: Scriptor, 1976).

<sup>5</sup>For a summary of the debate, see Ursula Männle, ed., *Föderalismus zwischen Konsens und Konkurrenz* (Baden-Baden: Nomos, 1998).

<sup>6</sup>Gerhard Lehbruch, *Parteienwettbewerb im Bundesstaat: Regelsysteme und Spannungslagen im Institutionengefüge der Bundesrepublik Deutschland*, 2nd ed. (Opladen: Westdeutscher Verlag, 1998), pp. 14-30.

within the European Union, made the federal system asymmetric. Cooperation is now complicated by intense distributive conflicts. However, party system structures are now more pluralistic, and the bargaining strategies of governments led by different parties have become more pragmatic. To introduce a more competitive federalism in such a situation would only highlight asymmetries, and in turn, make blockades more likely.

### TENSIONS AND DYNAMICS IN GERMAN FEDERALISM: AN ANALYTICAL APPROACH

Tensions between the different patterns of politics inherent in the German federal system are caused by historical development that combined elements of a consociational and competitive democracy. When the *Parlamentarischer Rat* (Parliamentary Council) assembled in Bonn on 1 September 1948 in order to work out a constitution for West Germany, it was clear that this state would be federal. This condition of forming a constitutional government laid down by the Western occupying powers in the *Frankfurter Dokumente* (Frankfurt Documents) was not disputed by the leading politicians of the emergent state. The exact shape of the federal constitution was, however, a matter of dispute. Apart from some controversy about the allocation of tasks and tax revenues, the form of the second chamber as a senate or council of *Land* governments became a matter of intense debate. To put it briefly, a decision had to be made as to which of two federal models ought to be implemented: the American model of a federal system consisting of the people of the states, or the German model of a federal state of governments.

The decision in favor of the German model can be explained by the logic of negotiations between actors participating in the drafting of the *Grundgesetz* (Basic Law). A key decision was taken after the Bavarian *Ministerpräsident* (state premier) Hans Ehard (CSU) and the North Rhine-Westphalian Minister of the Interior Walter Menzel (SPD), came to agree on the creation of a *Land* governments council (*Bundesrat*) on 26 October 1948 without having a mandate from their parties.<sup>7</sup> This decision followed the tradition of the German federalism. It was accurately called "a late victory of Bismarck."<sup>8</sup> Therefore, the outcome also revealed the path dependency of institutional development and the effect of principles that evolved during the course of history.<sup>9</sup>

<sup>7</sup>Michael F. Feldkamp, *Der Parlamentarische Rat 1948-1949. Die Entstehung des Grundgesetzes* (Göttingen: Vandenhoeck & Ruprecht, 1998), p. 103; Rudolf Morsey, "Die Entstehung des Bundesrates im parlamentarischen Rat," *Der Bundesrat als Verfassungsorgan und politische Kraft*, ed. Bundesrat (Bad Honnef: Neue Darmstädter Verlagsanstalt, 1974), pp. 63-77.

<sup>8</sup>Gerhard Lehbruch, "Ein später Sieg Bismarcks," *Der Bürger im Staat* 29 (1: 1979): 34-37.

<sup>9</sup>Ellen Immergut, "The Normative Roots of the New Institutionalism: Historical Institutionalism and Comparative Policy Studies," *Theorieentwicklung in der Politikwissenschaft—eine Zwischenbilanz*, eds. Arthur Benz and Wolfgang Seibel (Baden-Baden: Nomos, 1997), pp. 325-355.

The federal state of the Basic Law corresponds to an executive federalism as it was established (under the leadership of Otto von Bismarck) with the building of the German Reich in 1871.<sup>10</sup> This cooperative federalism of governments took over an idea for regulating conflicts that emerged much earlier in German history. It became evident in the "Permanent Reichstag" (since 1666), and during the nineteenth century, in the *Deutscher Bund* (German Confederation) and the *Norddeutscher Bund* (Northern Federation).<sup>11</sup> Governing by the division of power, negotiation, contracting, and cooperation remained the predominant state practice in Germany, while processes of concentrating power led to the foundation of the modern state in England and France. At that time, the German Reich was fragmented. The centralization of sovereignty took place in the *Länder*; the politics of the Reich primarily focused on getting the princes to compromise. The cooperative federal state of 1871 mirrored this type of politics. Although parts of the legislation were centralized, administrative powers were left to the *Länder*. At the same time, *Land* governments participated in legislation through the *Bundesrat*. Moreover, a significant part of tax revenue remained with the *Länder*. Other concepts of a federal state can be found in the history of federalism in Germany.<sup>12</sup> The draft constitution of 1848 was strongly influenced by the American model of a democratic federal polity. The failure of the 1848 revolution and of liberalism, however, led the development of government in the direction of a cooperative federalism and an executive federalism.

In the 1871 constitution of the German Reich, the *Bundesrat* (the assembly of the representatives of the *Land* governments) was the supreme body of legislation and government. The Weimar constitution of 1918 marked the transition to a parliamentary form of government in Germany. The chamber of the *Länder* (now called *Reichsrat*) clearly lost its power and influence. The institution of the *Bundesrat* of the Basic Law of 1949 again strengthened the *Länder*, particularly because the number of laws requiring consent of the *Bundesrat* grew significantly. The cooperation between the federal and *Land* governments laid down in the Basic Law, was now accompanied by party competition in the parliamentary system. The Basic Law of 1949, in creating a democratic government, imitated the Westminster model. By joining a democracy with confrontation among parties to cooperative federalism based on traditional pattern of compromise between governments, a uniquely mixed constitution emerged.<sup>13</sup> As both elements of governance are innately incompatible, politics is marked by continuous tension. The competitive orientations predominating in party politics make

<sup>10</sup>Heiderose Kilper and Roland Lhotta, *Der Föderalismus in der Bundesrepublik Deutschland* (Opladen: Leske & Budrich, 1996), pp. 46-50.

<sup>11</sup>Gerhard Lehbruch, "Die korporative Verhandlungsdemokratie in Westmitteleuropa," *Schweizerische Zeitschrift für Politische Wissenschaft*, Special Issue 2 (1996): 19-41.

<sup>12</sup>Thomas Nipperdey, *Nachdenken über die deutsche Geschichte* (München: Beck, 1986), pp. 60-109.

<sup>13</sup>Lehbruch, *Parteienwettbewerb im Bundesstaat*, p. 25.

compromises in negotiations between the federal and *Land* governments rather difficult. On the other hand, a successful cooperation between the federal and *Land* governments weakens the parliaments. It threatens to paralyze party competition, which constitutes a basic element of the parliamentary system.<sup>14</sup>

A second line of tension stems from the relationship between cooperation and distributive conflicts among territories. The cooperative federal state of the Federal Republic of Germany was accurately called a unitary federal state.<sup>15</sup> The practice of cooperation between the federal and *Land* governments and the cooperation between *Länder* have always been aimed at creating uniform legal and economic conditions as well as equal standards of public services in the whole territory of Germany. This did not cause any problems until the mid-1960s because either unitarization served legal uniformity, or growing tax revenues provided the necessary resources for redistributive policies aiming at equality. Cooperation and unitarization reinforced each other. It would, however, be wrong to put them on the same footing. The term "cooperative federalism" means the specific structure of a state, while unitarization describes the circumstances of intergovernmental processes and the characteristic features of policies. If conditions in the *Länder* reveal significant disparities, and if policies aimed at unitarization require massive redistribution, it is to be expected that the performance of the cooperative federal state is affected. This is what we have observed since the end of the 1970's, and particularly since German unification.

A third line of tension results from the integration of the German federal state into the European Community (EC) and later into the European Union (EU). In the Federal Republic, this was often described as centralization because responsibilities were transferred to European institutions, and the *Länder* were not compensated by being given adequate participation. The development of institutions in Europe, however, primarily changed the cooperation between the federal and *Land* governments. German intergovernmental relations have become part of a system of multi-level governance that differs in terms of its functioning from interlocking politics in the German federal state.<sup>16</sup>

The development of the German federal system over the last 50 years can essentially be characterized by changes along these three lines of tension. This follows a commonly acknowledged model of analysis which states that the outcome of policymaking is determined by the interplay of

<sup>14</sup>Arthur Benz, "Verhandlungssysteme und Mehrebenen-Verflechtung im kooperativen Staat," *Regierungssystem und Verwaltungspolitik*, eds. Arthur Benz and Wolfgang Seibel (Opladen: Westdeutscher Verlag, 1997), pp 83-102; Lehmsbruch, *Parteienwettbewerb im Bundesstaat*, pp. 28-30.

<sup>15</sup>Hesse, *Der unitarische Bundesstaat*.

<sup>16</sup>Arthur Benz, "From Cooperative Federalism to Multi-level Governance: German Regional Policy in the EU" (paper presented at the Annual Meeting of the American Political Science Association, Boston, 3-6 September 1998).

politics, policies, and polity. It can also be justified with basic theories of federalism.<sup>17</sup> The importance of institutions is taken for granted by federalism research in general, but is emphasized in legal or comparative political science studies. The fact that the structure of the party system is a decisive factor for federal systems was underlined by William H. Riker<sup>18</sup> in comparative research, and by Gerhard Lehmbruch in his studies of the Federal Republic.<sup>19</sup> The influence of policies was emphasized in politico-economic theories of federalism<sup>20</sup> as well as in studies of intergovernmental relations.<sup>21</sup>

The following synopsis of the development of the German federal state after 1949 is based on this analytical framework. In order to clarify the present argument, the interplay of policies and party politics and their consequences on the internal dynamics of the federal polity will be described first. The objective is to demonstrate how the institutions of the cooperative federal state worked under different patterns of distributive conflicts and different structures of party competition. Distributive conflicts depend on the funds available for distribution (i.e., they are less serious in times of economic growth than in periods of stagnation or recession). Moreover, the more disputed the norms of distributive justice are, the more intense these conflicts become. Overall, they have grown steadily in Germany since the mid-1970s. The structure of party competition in the federal state is described by two features. First, the party system can show dual (high degree of polarization) or plural (low degree of polarization) structures of conflict.<sup>22</sup> Second, the majorities in the Federal Parliament (the *Bundestag*) and at the *Land* level (the *Bundesrat*) can be parallel or opposed. Germany had dual-party competition and parallel majorities until 1966, and then between 1983 and 1990. From 1969 until 1982, majorities were still opposed with a dual-party competition. Since 1990, party majorities on the *Länder* level have been opposed to that at the federal level and became unstable, and party competition has tended to be plural. These changes of politics and policies correlate with institutional developments that can be labeled as periods of unitarization and reform (1949 until 1969), of incremental adaptation (1969 until 1989), of exceptional centralization caused by German unification (1990), and of asymmetric federalism (1991 to present). The effects of European integration on the institutional

<sup>17</sup>Edgar Grande, "Föderalismus und Parteiensystem im internationalen Vergleich." (München: Technische Universität München, 1998; manuscript).

<sup>18</sup>William H. Riker, *Federalism: Origins, Operation, Significance* (Boston: Little Brown, 1964).

<sup>19</sup>Gerhard Lehmbruch, *Parteienwettbewerb im Bundesstaat*, 1st ed. (Stuttgart: Kohlhammer: 1976).

<sup>20</sup>Paul E. Peterson, Barry G. Rabe, and Kenneth K. Wong, *When Federalism Works* (Washington, D.C.: The Brookings Institution, 1986); Paul E. Peterson, *The Price of Federalism* (Washington, D.C.: The Brookings Institution, 1995).

<sup>21</sup>For example, Scharpf, Reissert and Schnabel, *Politikverflechtung*; Manfred G. Schmidt, *Politikverflechtung zwischen Bund, Ländern und Gemeinden* (Hagen: Fernuniversität Hagen, 1994); Deil S. Wright, *Understanding Intergovernmental Relations*, 3rd ed. (Pacific Grove, CA: Brooks/Cole, 1988).

<sup>22</sup>Klaus von Beyme, *Parteien in westlichen Demokratien* (München: Piper, 1982), pp. 309-316; Giovanni Sartori, *Parties and Party Systems. A Framework for Analysis* (Cambridge: Cambridge University Press, 1976).

context of German federalism and on intergovernmental relations will be dealt with separately. Their influence has increased significantly since the second half of the 1980s. It can now be assumed that "Europeanization" will challenge the existing institutional structures of the cooperative federal state and the political practice of cooperation among the federal and *Land* governments no less than distributive conflicts among territories and changes in the party system. It would, however, be premature to draw final conclusions because the exact outcome of European integration is still uncertain.

### UNITARIZATION AND REFORMS

The structure of the federal system laid down in the Basic Law of 1949 mirrors a compromise between supporters of a centralized and supporters of a decentralized federal system. The allocation of responsibilities among governments followed the principle of subsidiarity (Articles 30, 70, and 83 of the Basic Law), but gave the federal government significant leeway to become active in legislation. The *Bundesrat* was not designed as a real second chamber. Its powers equal those of the *Bundestag* only in certain matters; however, the definition of these matters is rather flexible. Nevertheless, the *Bundesrat* could become quite powerful as an arena in which the influential *Land* prime ministers could encroach upon the politics of the federal government. The part of the constitution regulating financial matters was passed in a provisional form, and received its final shape, only after a number of constitutional reforms during the 1950s and 1960s.

The reality of politics developed within this relatively open institutional framework under conditions favoring unitarization. The historical and cultural differences between the *Länder* were significantly smaller than in the past. As the *Länder* were reestablished after World War II in the territories of the occupying powers, in many cases historically grown areas were split up. Moreover, migrations after the war and the favorable economic development in all parts of West Germany reduced the cultural differences between regions. The *Länder* did, of course, differ in terms of economic strength. Particularly, the small *Land* of Schleswig-Holstein was burdened by a vast influx of refugees and a weak economic structure, while the Saarland, after joining the Federal Republic, had relatively slim chances of development and suffered from significant financial problems. The same held true for many rural areas. Their advantages in the immediate period after the war quickly turned out to be disadvantages, when competition within the European market pressed for structural changes. Lower Saxony, Hesse, and Bavaria were handicapped by economic problems of the so-called *Zonenrandgebiet* (border regions in the East).

These disparities did not, however, create serious distributive conflicts between the *Länder*. Conflicts were prevented by social integration caused

partially by the population's political apathy. Furthermore, there was a consensus in Germany for continuing the tradition of the welfare state, not only to reduce specific social disadvantages of individuals or groups, but also to help create equivalent living conditions in all regions. Moreover, the economic growth in the 1950s made it possible to react primarily with distributive policies aimed at easing economic disparities between the *Länder*. When the federal government benefited from unexpectedly high tax revenues during the early 1950s, it started to support economically weak *Länder* with financial aid. This was much more important for them than the initially modest transfer of money from rich to poor *Länder*. Although this practice was disputed for reasons of constitutionality, it was de facto accepted and finally received its legal basis in a constitutional reform in 1969.

The political party framework also allowed work toward unitarization. Governments led by the Christian-Democratic Party (CDU) had a majority in the *Bundestag* and in the *Bundesrat*. Under Kurt Schumacher, the Social Democratic Party (SPD) pursued a competitive opposition strategy. However, for the majority of voters, the party was considered unfit to govern (also due to the spreading phobia about socialism in regard to the East-West conflict). The clear-cut, dual-party competition at the federal level was counteracted by the willingness to cooperate between the federal and *Land* governments. This was, in turn, supported by the parallel majorities in *Bundestag* and *Bundesrat*. Cooperation was also based on a broad consensus between the great associations of employers and the unions. Both were interested in stabilizing the economic upswing and the establishment of the welfare state. These are the reasons why the federal government was able to take over political leadership in the West German state.

The tendencies toward unitarization became practically evident through efforts to forge a uniform legal and economic order, and through policies aimed at ensuring equivalent living conditions in all parts of the federal territory. But these measures were not the only results of the federal government's newfound powers. Although the federal government exploited all competences granted in the Basic Law, and extended them through a number of constitutional changes, the *Land* executives also took part in strengthening this unitarization through cooperation with the federal government. Similar effects resulted from horizontal coordination of *Länder* policies. Already in the early-1950s, the most important bodies of cooperation between the *Länder* were established, such as the *Ministerpräsidentenkonferenz* (conference of state prime ministers) and the conferences of *Land* ministers. Among them, the Conference of the Ministers of Culture and Education (already founded in 1948) became particularly important. Moreover, the first reform of the financial constitution in 1955 supplemented the original system of fiscal autonomy of governments (hardly



realized at all) with elements of revenue sharing. Consequently, financial policies became increasingly a matter of cooperation between the federal and *Land* governments.

The years between 1966 and 1969, when the Grand Coalition formed the federal government, were decisive for the development of the federal state because they brought favorable political conditions for constitutional reforms. These reforms, however, did not introduce new developments into the institutional framework of the federal system. They created nothing more than the constitutional basis for the cooperation long since exercised between the federal and *Land* governments. The joint tasks and federal grants, which were now regulated by Articles 91a, 91b, and 104a, section 4 of the Basic Law, can be traced back to the practice of funding that emerged during the 1950s. The amendment to the financial constitution extended revenue sharing (which now includes the value-added tax), thus following a trend that started in 1955. The constitutional reform did have important consequences because it transferred the informal cooperation between the federal and *Land* governments of the past to institutionalized negotiation systems. Interlocking politics was thus consolidated.

These reforms were supported by the concordat of the established political forces. This was partly due to the fact that the SPD, under Fritz Erler and Willy Brandt, had already changed their strategy toward cooperative opposition and finally became a party in government in 1966. From the mid-1960s, decreasing economic growth motivated industry and trade unions to coordinate their wage policy with the fiscal policy of the federal government and the monetary policy of the *Bundesbank* (Federal Bank) within the framework of a "concerted action." The coordination of economic policy also involved the *Länder*, which cooperated with the federal government in the *Konjunkturrat* (Council for Economic Policy) and the *Finanzplanungsrat* (Council for Financial Planning). Although the objective of acquiring an equivalent standard of living pursued in the 1950s, with the help of distributive policies, still remained important, the economic growth and the stabilization of overall economic development became predominant concerns and were pursued through Keynesian macroeconomic policy. This course made a uniform tax and spending policy of all federal, *Land*, and local authorities indispensable.

The reforms of the Grand Coalition gave unitarization and interlocking politics in the federal system its fundamental format, which still exists today. They became possible because a political consensus on the basic principles of German politics prevented party competition from hampering the cooperation between representatives of the federal and the *Land* governments. The political aim of creating a welfare state, which guarantees an adequate standard of living in all regions, formed the basis of this consensus. It also comprised uniformity of law and equal education

opportunities (the *Länder* are responsible for education) in the whole territory. Both the federal and *Land* governments contributed to achieving these objectives. The parallel majorities in the *Bundestag* and the *Bundesrat* were supportive, although they were not exclusively decisive for unitarization. An important driving force was the administration. By negotiating on acceptable policies for the whole federal territory, it contributed to reducing the level of political conflicts, while conforming to the interests of all governments. At the same time, it safeguarded itself against the influence of party politics.<sup>23</sup> The low level of distributive conflicts also played a decisive role. At first, economic growth created increasing tax revenue, which helped to reduce differences in financial strength between the *Länder*. Under these circumstances, redistributive processes of financial equalization were only a minor burden for the wealthier *Länder*, particularly because the federal government contributed to financial transfers. Later, the 1966-67 recession forced the distributive target into the background, and pushed the goal of overall economic growth into the foreground.

### INTERLOCKING POLITICS AND INCREMENTAL ADAPTATION

The Social-Liberal coalition government, which took over the government from the Grand Coalition in 1969, set out with an ambitious program of reform. Apart from a new orientation in foreign policy (*Ostpolitik*), "internal reforms" were planned. In this context, the structure of the federal state should be amended. A reorganization of the territory of the *Länder* was started, which had already been recommended by the occupying powers. Furthermore, a comprehensive revision of the constitution was thought to create the basis for an integrated planning and budgeting system, including federal and *Länder* policies. However, both the reorganization of the *Länder* territory and constitutional reform failed. In addition, attempts shifting educational and territorial planning to the federal level were equally unsuccessful and were abandoned in the mid-1970s.

The reasons for this failure were manifold, and varied according to policies. One decisive factor was that after 1969, confrontation between the parties affected the relationship between the federal and *Land* governments and made decisions in the cooperative federal state more difficult. At that time, majorities in the *Bundestag* and *Bundesrat* were opposed. The Social-Liberal federal government was, from the very beginning, confronted with a slight majority of CDU/CSU in the *Länder*, which was further extended during the 1970s. At least in the first half of the 1970s, the Social-Liberal coalition and the opposition parties held controversial positions on a range of issues. Foreign, educational, internal, economic, social, and financial policies became highly ideological under the dual-party competition;

<sup>23</sup>Lehmbruch, *Parteienwettbewerb im Bundesstaat*, pp. 111-113.

hence, compromises between the federal government and the majority in the *Bundesrat* were extremely arduous.

The result was a dilemma in interlocking politics. Because of cooperative federalism's institutional framework, the federal and *Land* governments were forced to negotiate before making important decisions. At the same time, consensus in these negotiations was more difficult to achieve due to party confrontations. This explains why the reform processes lost momentum.<sup>24</sup> Moreover, the ambition of achieving an integrated macroeconomic policy had to be renounced. After the economic crisis triggered by the oil crisis, which was further exacerbated by structural crises in different industrial sectors (i.e., mining, steel, shipbuilding, and textiles), the government's resources were reduced considerably. To make matters worse, the economic concordat between government, industry, and unions (the so-called "social partners") and the *Bundesbank* did not work. The government could not counter the monetarist *Bundesbank* policy with fiscal measures, and the trade unions no longer moderated their wage demands.<sup>25</sup> In the face of rising unemployment, the financing of the welfare systems was jeopardized so measures of consolidation became necessary. In environmental policy, programs agreed upon had to be safeguarded against deficiencies in their implementation. Ambitious environmental goals had to be revised due to the supposed conflict between ecology and economy.

Nevertheless, the expected political gridlock did not occur. Instead, it was prevented by incremental adaptations, both of policies and of intergovernmental relations. Adaptations concerning policies became evident when, with the election of Helmut Schmidt as chancellor, the Social-Liberal coalition adopted a pragmatic crisis management that was even approved by the opposition. Economic policy, rather than aiming at structural changes, merely reacted to sectoral or regional exacerbation of problems. More or less short-term special programs were thought to be a panacea. Even social and environmental policies were induced by crises. They dealt with symptoms rather than changing the underlying causes of the problems. Existing patterns of resource allocation between territories or social groups remained almost unchanged, and the effects of incremental policymaking were distributive rather than redistributive. Conflicts concerning the allocation of scarce money could thus be diminished. There was still a general consensus that equivalent living conditions in all regions were a principal objective and that the status quo of social benefits ought to be secured. The available revenues also permitted the continuation of distributive policies. Their scope was reduced, however, and during the 1980s, grants to economically weak regions and the elaborate system of fiscal equalization among *Länder* were criticized increasingly.

<sup>24</sup>Lehmbruch, *Parteienwettbewerb im Bundesstaat*, pp. 114-129; Scharpf, Reissert, and Schnabel, *Politikverflechtung*, pp. 236-243.

<sup>25</sup>Fritz W. Scharpf, *Sozialdemokratische Krisenpolitik in Europa* (Frankfurt a.M./ New York: Campus, 1987), pp. 165-178.

Apart from these limited adaptations of policies, a de facto decentralization has become evident since the mid-1970s despite the failure of institutional reforms. The structural problems of the economy and the social consequences of the overall economic stagnation varied from region to region. At the same time, the distributive programs of the federal government did not prevent the increase of regional disparities. Therefore, the *Länder* reacted with their own regional economic policies and with strategies to reduce unemployment.<sup>26</sup> The hopes for a "revival of politics and policies from below" were, however, only partially fulfilled. Decentralization favored the wealthy and the large *Länder*, which showed off with structural and technological programs. The small and financially weak *Länder* remained dependent on grants and increasingly fell victim to consolidation measures of the federal government.

The new CDU/CSU/FDP coalition government, which came into office in 1982, was not able to bring about the announced programmatic turnaround despite initially parallel majorities in the *Bundestag* and *Bundesrat*. A reason for this was that the Social-Liberal government had already set out in the direction of this turnaround via incremental adaptation. Furthermore, attempts at institutional reforms of the federal system were even thwarted by resistance from CDU-led *Land* governments. Finally, a trend toward opposite majorities in the federal and *Land* governments soon became evident. The SPD was successful in most *Land* elections, and in 1990, the SPD-led *Land* governments attained the majority in the *Bundesrat*. Gerhard Lehbruch's prognosis "that in the future, the electorate trend in *Landtag* elections could be opposed to what happens in *Bundestag* elections"<sup>27</sup> became true.<sup>28</sup> All in all, the structural framework of politics in the federal system was not essentially changed. The dual-party competition also continued even after the FDP changed coalition partners and turned from a social liberal party into an economic liberal one, and the Greens were treated at first as a fringe party of the political spectrum. However, one thing changed—policies. Distributive conflicts between regional and local administrations intensified in the 1980s. Some of the conflicts were due to the emerging regional disparities; others were due to the growing financial restrictions of regional and local administrations. This became apparent in the conflict concerning financial equalization, namely, the transfer payments between wealthy and poor *Länder* (*Länderfinanzausgleich*).<sup>29</sup> Although the transfer level agreed upon in the 1970s could still be maintained, the negotiations between the federal and *Land* governments

<sup>26</sup>Joachim Jens Hesse and Arthur Benz, *Die Modernisierung der Staatsorganisation* (Baden-Baden: Nomos, 1990), pp. 78-180.

<sup>27</sup>Lehbruch, *Parteienwettbewerb im Bundesstaat*, 1st ed., p. 159.

<sup>28</sup>Reiner Dinkel, "Landtagwahlen unter dem Einfluß der Bundespolitik," *Wahlen und politische Einstellungen in der Bundesrepublik Deutschland*, eds. Jürgen W. Falter, Hans Rattinger, and Klaus Troitzsch (Frankfurt a.M./ New York: Campus, 1989), pp. 253-262.

<sup>29</sup>Wolfgang Renzsch, *Finanzverfassung und Finanzausgleich* (Bonn: Dietz, 1991), pp. 261-273.

became more difficult despite parallel majorities. Only by using opportunities of informal federal-*Land* negotiation inside the CDU/CSU<sup>30</sup> were decisions on fiscal issues by majority votes made possible.

### EXCEPTIONAL CENTRALIZATION IN THE PROCESS OF UNIFICATION

In united Germany, the distributive conflicts looming in the 1980s surfaced in an unprecedented severity and turned into the most predominant problem of German federalism and intergovernmental relations. The financial burden of German unification soon led to disputes over its distribution between the federal government and the Western *Länder*. Political party conflicts were pushed into the background. On one hand, all parties had wanted German unification; on the other hand, no party had a program for the process of unification. Therefore, nothing but the details of an ad hoc management led to differences.

In this "exceptional case," brought about through the rapid sequence of events when the GDR collapsed, the federal executive took the lead. For a certain time span, the party conflict was put on ice and the *Länder* took a back seat. Centralization in this situation meant nothing other than that the federal government had the extraordinary power to control political processes.<sup>31</sup> It was, however, like all other actors, faced with the problem that the turbulent development was hardly calculable, particularly because the government did not have an elaborate strategy for managing unification but only reacted to developments. This put the federal government in a dilemma. On one hand, it had to show its ability to act and was under considerable pressure to make decisions; on the other hand, it had no program to follow. A number of key decisions were made in this situation, which was decisive for further development.

The establishment of the German Unity fund was of particular significance for the development of the federal state. It was the result of negotiation processes between the federal and *Land* governments; and was agreed upon during a period when the federal government no longer was the only protagonist controlling unification. It therefore displayed all the characteristics of a negotiated compromise.<sup>32</sup> Under strong pressure to quickly support the East German regions, the federal government took over the lion's share of the financial burden. However, financing was to a large extent covered by borrowing, even partly at the expense of the taxpayers

<sup>30</sup>Gerhard Lehmbruch, "Institutional Linkages and Policy Networks in the Federal System of West Germany," *Publius: The Journal of Federalism* 19 (Winter 1989): 221-235; Josef Schmid, *Die CDU: Organisationsstrukturen, Politiken und Funktionsweisen einer Partei im Föderalismus* (Opladen: Westdeutscher Verlag, 1990).

<sup>31</sup>Gerhard Lehmbruch, "Die improvisierte Vereinigung: Die dritte deutsche Republik," *Leviathan* 18 (4: 1990): 462-486.

<sup>32</sup>Jens Altemeier, *Föderale Finanzbeziehungen unter Anpassungsdruck: Verteilungskonflikte in der Verhandlungsdemokratie* (Frankfurt, New York: Campus, 1998), pp. 82-88.

(i.e., an oil tax increase and a supplementary charge on income called the "solidarity fee"). The establishment of the German Unity fund postponed a new regulation of the apportionment of tax revenues between the federal and *Land* governments, and of financial equalization between the *Länder*. A similar decision made to avoid conflicts was the integration of the "new" *Länder* into the joint task of "improvement of the regional economic structure." Although it would have made sense to clearly privilege the Eastern regions by cutting grants to Western regions, the "old" *Länder* were only partly burdened and a compromise was achieved by augmenting the funds. The federal government supplemented this aid by funds from its Reconstruction East (*Aufbau Ost*) program.

At least for a short time, German unification pushed centralization of policymaking, which had been feared by many experts. However, this was induced by the situation and did not lead to institutional consolidation because the centralization of power was tied to a centralization of burdens. When the politics of German unification became a routine part of federal-*Land* cooperation, the federal government found itself in a rather weak negotiating position against the *Länder*. As the driving force behind unification, it was also made accountable for the outcome. Therefore, the result was not a "unitary state in disguise."<sup>33</sup>

### ASYMMETRIC FEDERALISM IN THE JOINT-DECISION TRAP?

German unification did not open the "window to reform"<sup>34</sup> as many observers had hoped.<sup>35</sup> A constitutional reform agreed upon in the unification treaty between the governments of the Federal Republic and the GDR did not fulfill expectations. It was prepared by a Joint Constitutional Commission of the *Bundestag* and the *Bundesrat*. In this commission, the negotiations on matters concerning the interests of the federal or *Land* governments were heavily influenced by party politics. Hence, it is not astonishing that during the consultations, many proposed amendments to the Basic Law fell by the wayside.<sup>36</sup> The important changes concerning the weighting of votes in the *Bundesrat* (one additional vote for each of the four large *Länder*) and the involvement of the *Länder* in decisions of the federal government on European policies resulted from package deals settled outside the Constitutional Commission. Institutional reforms aiming at decentralization and greater autonomy of governments failed.<sup>37</sup>

<sup>33</sup>Abromeit, *Der verkappte Einheitsstaat*.

<sup>34</sup>John T. S. Keeler, "Opening the Window to Reform," *Comparative Political Studies* 25 (4: 1993): 433-486.

<sup>35</sup>Hartmut Klatt, "German Unification and the Federal System," *German Politics* 1 (3: 1992): 12-15.

<sup>36</sup>Arthur Benz, "A Forum of Constitutional Deliberation? A Critical Analysis of the Experience of the Joint Commission on the Constitution," *German Politics* 3 (3: 1994): 99-117; Arthur Benz, "Verfassungspolitik im kooperativen Bundesstaat," *Die Reformfähigkeit von Industriegesellschaften* eds. Karl-Heinz Bentele, Bernd Reissert, and Roland Schettkat (Frankfurt a.M./ New York: Campus, 1995), pp. 147-164.

<sup>37</sup>Charlie Jeffery, "The Non-Reform of the German Federal System after Unification," *West European Politics* 18 (2: 1995): 252-272; Rainer-Olaf Schultze, "Statt Subsidiarität und Entscheidungsautonomie-Politikverflechtung und kein Ende: Der deutsche Föderalismus nach der Vereinigung," *Staatswissenschaften und Staatspraxis* 4 (2: 1993): 225-255.

Comparable cases of deadlock seemed to become prevalent in other policies, too. (At least there were ubiquitous regrets about them.) For example, in fiscal policies, essential problems were not solved or solved adequately. Even decisions that first appeared to be successful, such as the Solidarity Pact,<sup>38</sup> after a closer analysis, turned out to postpone effective decisions by avoiding redistribution. This holds true in particular for one of the most important elements of the Solidarity Pact, namely, the amendment of the law on fiscal equalization among the *Länder*. Although most experts pleaded for overhauling this law, the result of Federal-Land bargaining must be regarded as a non-reform. The distributive effects of the German Unity fund with a strong burden on the federation were not essentially revised. The *Länder* themselves agreed upon a proposal that only marginally modifies the regulations on transfer payments. The necessary financial funds for redistribution for the benefit of the East German *Länder* were raised by changing the proportional share of the VAT between the federation and *Länder* to the detriment of the federal government. After difficult negotiations, the federal government agreed to this solution and compensated its loss partly at the cost of the taxpayer (by maintenance of the solidarity fee).<sup>39</sup> However, despite fundamental distributive conflicts in united Germany, there was rarely a real stalemate in policymaking. Redistributive policies were de facto transformed into distributive ones, with the costs often being externalized.<sup>40</sup> Only in some policy fields did inter-governmental negotiations end in a real blockade; the great tax reform failed in the 13th period of legislation (1994-1998). The parties and governments of the federation and *Länder* could not come to an agreement, although deficiencies in the income tax led to massive revenue losses for all governments. Reactions in economic policy toward mass unemployment have been increasingly restricted to appeals. In environmental policy, the Federal Republic of Germany has long since lost its role as a model in Europe. Indeed, Germany has even become notorious for failing to transform European guidelines into national laws.

It seems that the federal system of united Germany is now caught in the "joint-decision trap."<sup>41</sup> This notion describes a situation "in which beneficiaries of the status quo can block all reforms, or at least extract exorbitant

<sup>38</sup>Razee Sally and Douglas Webber, "The German Solidarity Pact: A Case Study in the Politics of Unified Germany," *German Politics* 3 (1: 1994): 18-46.

<sup>39</sup>Roland Czada, "Der Kampf um die Finanzierung der deutschen Einheit," (Discussion Paper 95/1, Köln: Max-Planck-Institut für Gesellschaftsforschung, 1991); Wolfgang Renzsch, "Föderative Problembewältigung: Zur Einbeziehung der neuen Länder in einen gesamtdeutschen Finanzausgleich ab 1995," *Zeitschrift für Parlamentsfragen* 25 (1: 1994): 116-138; Wolfgang Renzsch, "Budgetäre Anpassung statt institutionellen Wandels: Zur finanziellen Bewältigung der Lasten des Beitritts der DDR zur Bundesrepublik," *Transformation der politisch-administrativen Strukturen in Ostdeutschland*, eds. Hellmut Wollmann et al., (Opladen: Leske & Budrich, 1997), pp. 49-118.

<sup>40</sup>Alteimer, *Föderale Finanzbeziehungen unter Anpassungsdruck*, pp. 152-241; Renzsch, "Budgetäre Anpassung statt institutionellen Wandels," 108-114.

<sup>41</sup>Fritz W. Scharpf, "The Joint-Decision Trap: Lessons from German Federalism and European Integration," *Public Administration* 66 (Autumn 1988): 239-278.

side payments."<sup>42</sup> Indeed, outcomes of policymaking in some fields give reason to take this theory for granted. However, the situation is more diverse.

If we consider legal and domestic policies, we find decisions significantly altering the status quo, some of them even changing the constitution. This shows that it would be wrong to speak of a general political gridlock.<sup>43</sup> For example, the federal and *Land* governments agreed on amending Article 16 of the Basic Law in order to reduce the influx of asylum-seekers. In the fight against organized crime, the inviolability of the home (Article 13 of the Basic Law) was restricted. These decisions are worth mentioning because they concern basic rights that ought to trigger fundamental conflicts between the parties. In the field of social policy, the nursing care insurance (*Pflegeversicherung*) was successfully introduced. It has a redistributive character insofar as it led to a "far-reaching shift of financing burdens"<sup>44</sup> between *Länder* or municipalities and contributors, although it was not accompanied by a predictable territorial redistribution.

Based on the proposed analytical framework, these different results can be explained by the specific features of distributive conflicts and political party structures in the federal system. The economic imbalances between East and West Germany have only marginally been reduced even ten years after the fall of the Berlin Wall. Meanwhile, conflict has intensified because the severe regional disparities have provoked disputes about the norm of distributive justice. West German *Länder* increasingly feel the burden of transfer payments to East Germany, which are necessary in the system of fiscal equalization and in social insurance. Therefore, the principle of solidarity among the *Länder* and the objective of equivalent living conditions are now challenged openly. Instead, more diversity and competition between the *Länder* is demanded.<sup>45</sup> As long as there is not an accepted norm of distributive justice, a consensus on the reallocation of resources can hardly be achieved. Therefore, it is not surprising that decisions are being blocked which would change the territorial distribution of revenues and resources. Apart from fiscal policy, this also holds true for institutional reforms of the federal system. Not only changes in the financial constitution, but also of the allocation of power between the federal and *Land* governments set off different consequences for individual

<sup>42</sup>Fritz W. Scharpf, *Games Real Actors Play. Actor-Centered Institutionalism in Policy Research* (Boulder, CO: Westview Press, 1997), p. 144.

<sup>43</sup>Ute Wachendorfer-Schmidt, "Germany's Federalism in the 1990s—a Case of Political Immobility" (Paper presented to the ESPR Joint Session Workshop "Does Federalism Matter?" Warwick, 23-28 March 1998); Ute Wachendorfer-Schmidt, "Der Preis des Föderalismus in Deutschland," *Politische Vierteljahresschrift* 40 (1: 1999): 3-39.

<sup>44</sup>Ulrike Götting and Karl Hinrichs, "Probleme der politischen Kompromißfindung bei der gesetzlichen Absicherung des Pflegefallrisikos—Eine vorläufige Bilanz," *Politische Vierteljahresschrift* 34 (1: 1993): 47-71.

<sup>45</sup>Decision of the CDU party meeting in May 1998; Premier Edmund Stoiber, *Address of State to the Bavarian Landtag* (4 February 1998), printed in *Föderalismus zwischen Konsens und Konkurrenz*, ed. Ursula Männle (Baden-Baden: Nomos, 1998), pp. 169-179; Otto Graf Lambsdorff, "Plädoyer für einen echten Föderalismus," *Süddeutsche Zeitung*, 1 September 1997, p. 10.



regional and local governments. Practically all the proposed concepts of "re-federalization"<sup>46</sup> (i.e., a decentralization of power to more autonomous *Land* governments) would reinforce asymmetry between East and West.

After the phase of depoliticization during the process of German unification, party competition quickly regained its weight. It has, however, changed insofar as tendencies of a moderate pluralization and a regionalization gained ground.<sup>47</sup> The relationship between the coalition partners CDU/CSU and FDP was influenced by increasing tension several years before the coalition lost power in 1998. The Green party (now called *Bündnis 90/Die Grünen*) meanwhile grew into a second, strong opposition party. More important are the processes of regionalization in the party system. Inside the CDU and the SPD, regional organizations gained influence against the central party leaders. Different party political structures emerged in both parts of united Germany. The PDS has its weight as an East German regional party, whereas in West Germany, the Greens became the third political force on the *Länder* level. After the "Red-Green" coalition (SPD-*Bündnis 90/Die Grünen*) won elections in 1998, majorities in the *Bundestag* and *Bundesrat* seemed to be parallel until March 1999 when the CDU won elections in Hesse. However, in the *Länder*, a variety of coalitions now form the government, so that a simple numbering of SPD-led and CDU/CSU-led *Länder* is no longer correct.<sup>48</sup> In the *Bundesrat*, there is no clear majority of one party. Majorities have to be negotiated from case to case.

Under these circumstances, politics become dependent on random factors in intergovernmental negotiations. Decisions made by coalition governments in individual *Länder*—which frequently include both parties that support and parties that oppose the federal government—may be turned into key decisions in the legislation of the federation. Cooperation deadlock is just as possible as reform policies. The latter are the less probable the more the relationship between East and West German *Länder* is affected. One remarkable feature of the overall German party system is the differentiation between East and West. Divergent interests of *Land* governments and distributive conflicts resulting from the economic disparities between the two parts of Germany are thus reinforced by different political party orientations. As a consequence, the federal system is asymmetric.<sup>49</sup> More

<sup>46</sup>Hartmut Klatt, "Reform und Perspektiven des Föderalismus in der Bundesrepublik Deutschland," *Aus Politik und Zeitgeschichte* B28/86 (12 July 1986): 3-21.

<sup>47</sup>Oskar Niedermayer, "Das gesamtdeutsche Parteiensystem," *Parteiendemokratie in Deutschland*, eds. Oscar W. Gabriel, Oskar Niedermayer, and Richard Stöss (Opladen: Westdeutscher Verlag, 1997), pp. 106-130.

<sup>48</sup>In March 1999, the 69 votes in the *Bundesrat* were allocated as follows: CDU/CSU governments (Bavaria and Saxony), 10 votes; CDU/FDP governments (Baden-Württemberg and Hesse), 11 votes; Grand-coalition (CDU/SPD) governments (Bremen, Berlin and Thuringia), 11 votes; SPD-governments (Lower-Saxony, Saarland, Brandenburg and Saxony-Anhalt), 19 votes; SPD/*Die Grünen* governments (Hamburg, North Rhine-Westphalia and Schleswig-Holstein), 13 votes; SPD/FDP governments (Rhineland-Palatinate), 4 votes; and SPD/PDS governments (Mecklenburg-West Pomerania), 3 votes.

<sup>49</sup>Arthur Benz, "Reformbedarf und Reformchancen des kooperativen Föderalismus nach der Vereinigung Deutschlands," *Verwaltung und Verwaltungspolitik im Prozeß der deutschen Einheit*, eds. Wolfgang Seibel, Arthur Benz, and Heinrich Mading (Baden-Baden: Nomos, 1993), p. 460.

often than in the past, intergovernmental policymaking threatens to end in a joint-decision trap. Cooperation between the federal and *Land* governments is still necessary due to the continuity of the institutional structures. However, the diverging interests among the *Länder* and between the federal and *Land* governments make cooperation more difficult.<sup>50</sup> The federal government is forced to support the Eastern *Länder*. However, in implementing such a policy, it provokes conflicts with Western *Land* governments. While Eastern *Länder* profit from the engagement of the federal government, Western *Länder* argue more and more against joint policymaking and demand more autonomy. But given the asymmetries in the federal system, institutional reforms are unlikely.

### FROM INTERLOCKING POLITICS TO MULTI-LEVEL GOVERNANCE: THE FEDERAL STATE IN THE EUROPEAN UNION

Whereas the consequences of German unification for the federal state can primarily be found in changes in party competition and in rising distributive conflicts, European integration brought about some institutional changes. This led, however, to an extension of joint decision-making and its consolidation by institutionalization. The development triggered by Europeanization stabilized the cooperative federal state and does not deviate from historically marked developments.<sup>51</sup>

European integration was hardly a matter of dispute between the parties in Germany, and therefore not a matter of party competition. It gave, however, reasons for Federal-*Land* conflicts. Very early, the *Länder* saw European integration as a two-fold problem. On one hand, they feared losing power and autonomy when tasks were transferred to European institutions or when European law gained ground. On the other hand, they complained about the loss of influence if they were not involved in policymaking at the European level. In the reforms concerning the German federal system, the focus was on the second aspect. This coincided with the interest of *Land* executives to safeguard their participation in intergovernmental politics, whereas the centralization of power seemed to be acceptable for them as long as the European institutions merely assumed functions that supplemented regional policies.

During the drafting of the Maastricht Treaty, the *Länder*, in unison with other European regions, formulated their essential demands. They proposed a regional chamber, a direct involvement in the Council of Ministers when regional tasks were discussed, and a right to take legal action before

<sup>50</sup>Rainer-Olaf Schultze, "Wieviel Asymmetrie verträgt der Föderalismus," *Politikwissenschaftliche Spiegelungen: Ideendiskurs-Institutionelle Fragen-Politische Kultur und Sprache*, eds. Dirk Berg-Schlosser, Gisela Riescher, and Arno Waschkuhn (Opladen: Westdeutscher Verlag, 1998), pp. 199-216.

<sup>51</sup>Klaus H. Goetz, "National Governance and European Integration: Intergovernmental Relations in Germany," *Journal of Common Market Studies* 33 (1: 1995): 91-116.

the European Court of Justice. Instead of a regional chamber, the consultative Committee of the Regions was established by Maastricht. In matters falling exclusively into the realm of the *Länder*, a representative of the *Länder* can chair the German delegation in the Council of Ministers. What was more important for the *Länder* was safeguarding their involvement in the European policies of the federal government. The redraft of Article 23 of the Basic Law embodied the participation of the *Bundesrat* and gave a constitutional basis to what was previously regulated by a normal law. European policies thus became a new joint task of the federal and *Land* governments. Participation rights of the *Land* governments depend on the degree of their involvement. On matters that fall exclusively into their domain, they can force the federal government with a two-thirds majority to adopt their position.<sup>52</sup> In order to make participation more effective, an EU committee of the *Bundesrat* was created. Representative offices of the *Länder* established in Brussels in the mid-1980s were endorsed by law.<sup>53</sup>

These participation rights for the *Länder* meant an expansion and stabilization of joint decision-making. But at the same time, Europeanization fundamentally changed federal-*Land* cooperation. European integration did not, as some scholars have assumed,<sup>54</sup> simply lead to a doubling of interlocking politics. It has created a qualitatively new multi-level system.<sup>55</sup> The involvement of the *Länder* in European policymaking at the national level does not mean that they can directly participate in intergovernmental negotiations. They are turned into external lobbyists and controllers of the German representatives within the European political system. Between the intergovernmental relations of the federal state and those at the European level similar "inconsistencies of structures" can occur, as between the *Bund-Länder* cooperation and party competition. When the *Bundesrat* obliges the federal government to take the position of the *Länder* into account, there is a danger that it could be outvoted in the case of majority decisions in the European Council of Ministers. In the case of unanimous decisions, European policies can be obstructed if the German government is not able to strike a compromise. Hence, decisions may be blocked even if from the viewpoint of the *Länder*, they would be acceptable as second-best solutions. Knowing these problems, the *Land* governments restrict themselves to formulating non-binding opinions or using their veto right to "buy"

<sup>52</sup>Georg Ress, "The Constitution and the Maastricht Treaty: Between Conflict and Cooperation," *German Politics* 3 (3: 1994): 47-74.

<sup>53</sup>Heinz Laufer and Ursula Münch, *Das föderative System der Bundesrepublik Deutschland* (Opladen: Leske & Budrich, 1998), pp. 291-322; Michael Morass, *Regionale Interessen auf dem Weg in die Europäische Union. Strukturelle Entwicklung und Perspektiven der Interessenvermittlung österreichischer und deutscher Landesakteure im Rahmen der Europäischen Integration* (Wien: Braunmüller, 1994).

<sup>54</sup>Rudolf Hrbek, "Doppelte Politikverflechtung: Deutscher Föderalismus und Europäische Integration. Die deutschen Länder im EG-Entscheidungsprozess," *Die deutschen Länder und die Europäischen Gemeinschaften*, eds. Rudolf Hrbek and Uwe Thaysen (Baden-Baden: Nomos, 1986), pp. 17-31.

<sup>55</sup>Benz, "From Cooperative Federalism to Multi-level Governance"; Arthur Benz and Burkard Eberlein, "The Europeanization of Regional Policies: Patterns of Multi-Level Governance," *Journal of European Public Policy* 6 (June 1999), 329-348.

concessions from the federal government in intrastate decisions. In this way, such as by threatening to refuse to agree to the Maastricht Treaty, they achieved the very "Länder friendly" new Article 23 of the Basic Law and the corresponding law implementing this constitutional regulation.<sup>56</sup>

Since the *Länder* have not yet exercised their rights, it is difficult at this point to tell the exact effects of these regulations.<sup>57</sup> Because of the reasons mentioned above, they will hardly be inclined to block European policymaking. However, it can not be ruled out that they will increasingly force the federal government into package deals for their benefit. There is another factor, which shows that European integration weakens the negotiating position of the federal government in federal-*Land* cooperation. The EU law is largely based on guidelines that must be transformed into national law by the member states. When the consent of the *Bundesrat* is required for legislation, the federal government can be put under considerable pressure because it is accountable for the implementation of EU guidelines. The fact that federal legislation is forced to make a decision because it is bound to the results of European politics strengthens the negotiating position of the *Land* governments.

This, however, does not necessarily make deadlocks more likely to occur. Rather, the EU legislation may work as an impetus for decisions in the federal state. European institutions act as intervening or supervisory bodies in the national political process that initiate legislative processes, and in the shape of the Commission, promote innovations.<sup>58</sup> They influence agendas and political ideas and create a framework for decisions, which in turn prevent political gridlock. Reforms of postal services, telecommunication, and railways provide convincing examples. Therefore, at first sight, European integration has a paradoxical consequence for German federalism. It strengthened the institutional forms of joint decision-making and thus the structural framework responsible for stalemates and incrementalism in the *Bund-Land* cooperation. Yet, at the same time, it influences the substance of policymaking processes and changes the consequences of non-decisions for the federal and *Land* governments. This explains why we still have to expect governments to adopt conflict-reducing strategies, which Fritz W. Scharpf discovered as typical for joint policymaking.<sup>59</sup> However, in the European multi-level system, these strategies do not inevitably lead to worse solutions to problems than in the national joint decision-making because European policies prescribe the framework and agendas of negotiations and encourage innovations. This can be well observed in regional

<sup>56</sup>Benz, "Verfassungspolitik im kooperativen Bundesstaat."

<sup>57</sup>Hartmut Klatt, "Die innerstaatliche Beteiligung der Bundesländer an der deutschen Europapolitik," *Die europäische Union der Regionen*, ed. Peter Nitschke (Opladen: Leske & Budrich, 1998), pp. 133-166.

<sup>58</sup>Adrienne Héritier, "Die Koordination von Interessenvielfalt im europäischen Entscheidungsprozeß: Regulative Politik als 'Patchwork,'" *Theorieentwicklung in der Politikwissenschaft-eine Zwischenbilanz*, eds. Arthur Benz and Wolfgang Seibel (Baden-Baden: Nomos, 1997), pp. 261-279.

<sup>59</sup>Scharpf, Reissert, and Schnabel, *Politikverflechtung*.

policy. The EU policies designed to control subsidies for member states and to support less developed regions did not modify the institutional structure of the corresponding German joint task. The policies of the *Bund-Land* cooperation, however, changed toward a stronger concentration of grants to regions in need and toward a strategy of “endogenous” regional development.<sup>60</sup>

Another paradoxical consequence of European integration is that the de facto strength of the *Land* governments increased despite the fact that they were not granted the powers they had demanded in the EU.<sup>61</sup> The reason for this—apart from the strong negotiating position of the *Länder* against the Federal government—is that in the European Common Market, nations no longer compete to attract firms and corporations, but regional locations. Economic development depends less and less on the currency, or on the fiscal and foreign policies of the federal government, but increasingly on the infrastructure offered by *Länder* and local governments in competition with other regions.<sup>62</sup> As the political authorities responsible for regional development policy, the *Länder* have become important partners for the European Commission in its cohesion policy (which intends to make weaker regions competitive). Here, we can observe patterns of informal cooperation between the Commission and the *Land* governments, which bypass the federal government. To a certain degree, the federal government’s role is reduced to conveying information.<sup>63</sup>

De facto regionalization and the competition of regions exacerbate disparities between the *Länder*, particularly between the East and the West. The capability of individual *Land* governments to invest in improving their regional infrastructure depends on their present financial strength, whereby the East German *Länder* have the additional disadvantage of a significantly worse infrastructure than the West German *Länder*. EU programs within the framework of its cohesion and structural policies aim at reducing these imbalances. However, it is doubtful whether they are sufficient. Without supplementary financial transfers and effective redistributive programs at the federal level, imbalances within the structures of the German federal system threaten to be reinforced in the wake of European integration.

European integration has consolidated the institutional structures of the cooperative federal state. It has not directly touched domestic party competition, because the European party federations have not yet gained

<sup>60</sup>Thomas Conzelmann, “Europeanisation of Regional Development Policies? Linking the Multi-Level Governance Approach with Theories of Policy Learning and Policy Change,” *European Integration online papers* 2 (4: 1998), (<http://eiop.or.at/eiop/texte/1998-004a.htm>); Frank Nägele, *Regionale Wirtschaftspolitik im kooperativen Bundesstaat: Ein Politikfeld im Prozeß der deutschen Vereinigung* (Opladen: Leske & Budrich, 1997), pp. 94-140.

<sup>61</sup>Beate Kohler-Koch et al., *Interaktive Politik in Europa: Regionen im Netzwerk der Integration* (Opladen: Leske & Budrich, 1998).

<sup>62</sup>Scharpf, *Optionen des Föderalismus in Deutschland und Europa*, pp. 161-167.

<sup>63</sup>Nicola Staeck, *Politikprozesse im Mehrebenensystem der europäischen Union. Eine Policy-Netzwerkanalyse der europäischen Strukturpolitik* (Opladen: Leske & Budrich, 1997), p. 179.

real significance. Rather, the probability of political gridlock has become smaller. Generally speaking, there are no reasons to assume that the steering and regulating power of the state has generally decreased in Europe's multi-level system.<sup>64</sup> However, Europeanization threatens to exacerbate disparities in the German federal state. In Germany, extremely strong and extremely weak regions are facing each other in regional competition and pursuing different interests in European politics. They have different relations with the EU depending on their participation in EU programs. Thus, asymmetric federalism is being maintained if not actually reinforced.

### CONCLUSION

Particularly after German unification, the German federal state has proven to be worthwhile despite its deficiencies. It has shown a surprising degree of continuity and adaptability.<sup>65</sup> With moderate constitutional changes, the Eastern *Länder* were integrated into the political system of the Federal Republic and the market economy. However, there are more and more doubts as to whether the problems in the wake of German unification and the challenges of European integration can be met with incremental reactions.<sup>66</sup> Institutional reforms are being demanded and are more clearly expressed. At the same time, political stalemates are deplored, and cooperative federalism is being held accountable for them.

Based on the analysis presented here, two points ought to be considered when it comes to an evaluation of the state of German federalism. One concerns the normative criteria of assessment; the other concerns the necessity and quality of institutional reforms.

In order to determine the efficiency of the cooperative federal state and the need for reform, an adequate benchmark has to be established. The differentiation of innovative policy, incrementalism, and non decision-making provides categories in order to determine the degree of policy change as opposed to the status quo.<sup>67</sup> However, the quality of solutions also has to be taken into account. In his study on joint policymaking in the German federal system, Fritz W. Scharpf criticized the incrementalism in

<sup>64</sup>Benz, "From Cooperative Federalism to Multi-level Governance"; Volker Eichener, "Effective European Problem-solving: lessons from the regulation of occupational safety and environmental protection," *Journal of European Public Policy* 4 (December 1997): 591-608; Edgar Grande, "Das Paradox der Schwäche. Forschungspolitik und die Einflußlogik europäischer Politikverflechtung," *Europäische Integration*, eds. Markus Jachtenfuchs and Beate Kohler-Koch (Opladen: Leske & Budrich 1996), pp. 373-399; Fritz W. Scharpf, "Introduction: The Problem-solving capacity of multi-level governance," *Journal of European Public Policy* 4 (December 1997): 520-538.

<sup>65</sup>Roland Czada, "Schleichwege in die Dritte Republik," *Politische Vierteljahresschrift* 35 (2: 1994): 245-270; Klaus H. Goetz "Kooperation und Verflechtung im Bundesstaat," *Der kooperative Staat*, ed. Rüdiger Voigt (Baden-Baden: Nomos, 1995), pp. 145-166; Gerhard Lehmbruch, "Die deutsche Vereinigung. Strukturen und Strategien," *Politische Vierteljahresschrift* 32 (4: 1991): 602.

<sup>66</sup>See, for example, Uwe Leonardy, "Deutscher Föderalismus jenseits 2000: Reformiert oder deformiert," *Zeitschrift für Parlamentsfragen* 30 (2: 1999): 135-162.

<sup>67</sup>George Tsebelis, "Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism," *British Journal of Political Science* 25 (3: 1995): 289-325.

policymaking. He argued that cooperative federalism led to a systematic reduction of the performance of government and did not allow for solutions to redistributive problems.<sup>68</sup> However, after German unification, incrementalism was assessed in a rather positive way because it appeared to be appropriate for an unstable situation. Situations of stalemates are also ambivalent; they can obstruct solutions, but at the same time, thwart wrong decisions and become the starting points of learning processes. Innovations are generally regarded as positive, although they can result in undesired consequences.

Even starting from the assumption that non-decisions in policymaking since the mid-1990s in the fields of financial, economic, social, and environmental policies are extremely detrimental, it is questionable whether they were caused by the institutional structures of the cooperative federal state. After analyzing 50 years of German federalism, one can conclude that decision making and outcomes of federal-*Land* cooperation are widely influenced by the specific constellation of party competition and the degree of distributive conflicts between regions and governments. This conclusion is true despite federalism's tendency towards unitarization and joint decision-making and also a higher probability of an incremental development than of innovation. That distributive conflicts between regions and governments have considerably increased in the asymmetric federal state is certainly a reason why one must expect more situations of deadlock, and why institutional reforms are becoming less likely. In addition, distributive policies bear the risk of exacerbating problems if burdens are merely shifted and imbalances are not tackled at their roots. However, the present constellation of party competition might offer a chance for more policy change. It leads to unstable majorities but also makes variable coalitions in negotiation processes possible. This constellation offers opportunities for effective cooperation,<sup>69</sup> although it is not inconceivable that intergovernmental policymaking ends in bargaining, confrontation, and stalemates. Furthermore, European politics might give an impetus to innovation and reform, thus raising the probability for finding more solutions that are effective.

Similar to its history, the future of the cooperative federal state in Germany must, therefore, be viewed with careful differentiation. In any case, it is not as somber as protagonists of a "competitive federalism" like to describe it. A moderate restructuring of the federal state toward more autonomy for the *Länder*, a disentanglement of tasks, and more competition are desirable. However, radical institutional reforms will not solve the central problem of asymmetries caused by economic imbalances between East and West Germany. Moreover, due to the fact that a two-thirds

<sup>68</sup>Scharpf, Reissert, and Schnabel. *Politikverflechtung*.

<sup>69</sup>Thomas König, "Politikverflechtungsfälle oder Parteienblockade? Das Potential für politischen Wandel im deutschen Zweikammersystem," *Staatwissenschaften und Staatspraxis* 8 (2: 1997): 135-159.

majority is needed in the *Bundestag* and in the *Bundesrat* for constitutional amendments, such reforms are not feasible within the framework of today's constitution. What is needed are measures and programs to reduce the imbalances in the federal system and to increase the effectiveness and efficiency of intergovernmental cooperation through limited structural and procedural changes.<sup>70</sup> The necessity and contents of institutional policies can only be assessed correctly on the basis of a detailed analysis. On one hand, the variety of institutional and informal patterns of intergovernmental relations must be taken into account. On the other hand, problems caused by institutions must be separated from problems caused by political majorities and coalition structures or by the basic situational context.

<sup>70</sup>Goetz, "Kooperation und Verflechtung im Bundesstaat," p. 160.



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