

INTERGOVERNMENTAL RELATIONS IN GERMAN FEDERALISM – JOINT DECISION-MAKING AND THE DYNAMICS OF HORIZONTAL COOPERATION

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1. INTRODUCTION

In a comparative perspective, Germany has been often regarded as a typical example of a cooperative federalism. However, scholars usually have emphasized the vertical dimension of intergovernmental relations. Accordingly, the “interlocking relationship of the federal and the state governments” (Watts, 2008: 35) has been considered as the characteristic feature of German federalism.

In fact, what is known as “*Politikverflechtung*” (interlocking politics or joint decision-making; Scharpf, 1997: 143-145) in Germany mainly relates to federal-Land-relations. They emerged in a constitutional framework, where the division of competences does not relate to distinguishable policies, but interdependent state functions. Most legislative powers are centralized, whereas powers to implement federal law are mostly allocated to the *Land* governments. Consequently, federal government requires expertise from the *Land* administration when designing a law, and *Land* governments affected in their administrative competences by federal legislation have a stake in this process.

In this federal system, vertical intergovernmental relations predominate, and horizontal relations between the *Länder* are embedded in them. Governments of the *Länder* coordinate their policies either in negotiations with the federal government, or in order to build coalitions against the federal government. These

coalitions vary, depending on issues at stake or the political situation. Sometimes, the *Land* governments try to stand together against the federal government. In fiscal policies, particular economic interests of rich and poor *Länder* usually determine cooperation and conflicts. In other policies, coalitions among *Länder* reflect party political complexions of governments. Parties constitute organizations linking the federal and the *Länder* levels. But the territorial and political cleavages are counterbalanced by cooperation of civil servants in policy fields interested in solving specific problems and in maintaining their resources and programs. Thus when *Land* governments and administrations negotiate among themselves, they work in a federal frame of reference shaped by regional differentiation of the country, party politics and perceptions of professionals in the administration (mostly trained in law). The strong impact of integrating parties and administrative networks explains why Germany rightly was called a unitary federalism (Hesse, 1962).

However, horizontal relations should not be underrated. Firstly, they exist in those policies the *Länder* hold exclusive powers, like education and culture. Second, governments of neighboring *Länder* cooperate across borders in order to coordinate their policies. Third, since German unification, we observe governments of the Eastern and Southern *Länder* to intensify their relationships in order to better coordinate their positions in the federal system. These changes in intergovernmental relations reflect trends towards regionalization of politics, driven by social, economic and political developments. This trend undermines the integrating forces of the party system and of administrative relations and the efforts to accomplish uniformity of the law and economic or social conditions. Intergovernmental cooperation has become more politicized and conflict ridden.

2. HISTORICAL EVOLUTION AND CONSTITUTIONAL FRAMEWORK

The roots of German federalism can be traced back to the area of state formation in continental Europe (Lehmbruch, 2002). The territory which later became Germany comprised parts of the 'Central-European city belt' (Rokkan, 1999) where

political and economic activities spread among cities and principalities. Fragmentation of power and, after reformation, cultural cleavages prevented all attempts of state building from the centre (Urwin, 1982). The institutions of the modern state like government, parliament and bureaucracy arose at the level of the *Länder*, with only the Emperor, the assembly of estates (“*Reichstag*”), the legal order and the supreme court (“*Reichskammergericht*”) constituting a central political framework. At about the same time when France evolved into a sovereign, centralized state, the old German Reich, integrated mainly by feudal relations between the emperor and the rulers of the territories, degenerated. After the Westphalian Peace (1648), horizontal relations between leaders of states incrementally replaced the vertical relations of the feudal order, until the “Holy Roman Empire of the German Nation” ceased to exist in 1806. Until 1870, German states cooperated in a confederal arrangement, the “*Deutsche Bund*”, hold together by a congress of representatives.

During the 19th century, liberal movements and nationalist forces aiming at a united German state gained ground. The 1848 revolution led by moderate liberals and radical democrats ended with a constitutional assembly which, inspired by the U.S. model, drafted a constitution for a democratic federation. After the failure of the revolution, nationalist forces prevailed. As a consequence, unification of the German states succeeded under the leadership of the Prussian government. The constitution revealed a typical bargain among states trying to maintain as much of their power as possible, and the leaders of Prussia had to make concessions to the strong southern states (Ziblatt, 2006).

In 1871, the German federal state came into being at a time, when not only nationalist ideas prevailed, but also industrialization turned the conflict between capital and labor into the predominating social and political cleavage. Emerging political parties and interest organizations reflected this social conflict of an industrialized society, while territorial or cultural cleavages lost their impact. Therefore, the central government was increasingly pressed to regulate social conflicts on a nation-wide basis, although the states founding the German Reich

could preserve their bureaucracies in the “federal bargain” (Riker, 1964). The result was a functional division of powers, with administration remaining in the hands of the *Land* governments and the federal government taking over major areas of legislation in the emerging welfare state. The *Land* governments also obtained the right to participate in federal legislation via the *Bundesrat*, the second legislative chamber. Evolution of parties along with civil society and state formation combined to what Peter Katzenstein later characterized as a ‘decentralized state in a centralized society’ (Katzenstein, 1987). The concept of cooperative federalism, emerging against this backdrop, was supported by a prevalent legalistic conception of the state which emphasized uniformity of the law.

Centralist forces became stronger with democratization and the development of the welfare state in the Weimar Republic. However, the *Land* governments continued to wield administrative powers and their political influence at the federal level. After World War II, the prime ministers of the recreated West German *Länder* played leading roles in the process of constitution-making. As a consequence, the structure of the federal system laid down in the Basic Law of 1949 mirrors a compromise between supporters of centralization and decentralization. The allocation of responsibilities confirmed the functional division of powers. The *Bundesrat*, representing *Land* executives and not citizens of the *Länder* was restored. Unlike a genuine second legislative chamber, its legislative powers equal those of the federal parliament only in matters affecting the competences of the *Länder*. Nevertheless, the *Bundesrat* could become an arena in which the influential *Land* premiers could encroach upon the politics of the federal government, and which facilitated the emergences of intergovernmental networks of bureaucracies involved in the drafting of bills.

Even before the Federal Republic was founded, *Land* governments started to engage in intergovernmental relations. The prime ministers met for the first time in 1947. Besides constitutional policy, culture, education and housing were the policies that needed to be coordinated. In 1948, the Conference of Ministers of Cultural Affairs was set up which over the years turned into a strong institution with

its own bureaucracy. Other forms of cooperation followed soon. In addition, networks of administrations re-emerged. The reason for this development was the growing demand for uniform solutions in a modern state, where administrative capacities required in policy-making remained decentralized. Moreover, as Gerhard Lehbruch argued, intergovernmental cooperation among executives helped to shield the political system from demands formulated by competing political party (Lehbruch, 2000: 111). Therefore, rather than by centralization of power, the evolution of German federalism was characterized by uniform policies made in intergovernmental processes. To be sure, the federal government extended its legislative powers in new policy fields, but the extent has often been overestimated. Centralization “proved difficult because of the desire of *Land* administrations and the attendant policy-networks to maintain their inter-organizational domain. To accommodate this autonomy with the widely perceived demand for nation-wide uniformity of policy outputs, the obvious institutional solution was intensification of intergovernmental bargaining” (Lehbruch, 1989: 227-228).

Horizontal cooperation between *Land* governments responded to interdependencies between decentralized policies and the interest of actors at lower levels to maintain their domains. In addition, the constitutional framework triggered intergovernmental policies. Decisions in the *Bundesrat* need to be prepared in negotiations. Moreover, the allocation of federal grants and, since 1969, joint planning of regional economic policy, agriculture and university building required the responsible *Land* ministries to coordinate their positions. Consequently, embedded in vertical interlocking politics, horizontal relations between the *Land* governments intensified, and so did networks linking specialized administrations of the *Länder*. However, the structure of intergovernmental cooperation has been influenced by party politics, territorial cleavages and policy differentiation. As a result, different patterns of cooperation developed and the dynamics of politics, regional economies and sector-specific interests caused changes during the sixty years since the Basic Law is in force. The following section outlines this variety and dynamics.

3. PATTERNS OF LÄNDER COOPERATION

Soon after its creation, the West German Federal Republic saw not only a consolidation of party democracy, but also the revival of traditional patterns of intergovernmental cooperation among executives. It also became obvious that the number of laws requiring the assent of the *Bundesrat* would be much higher than expected by the members of the Parliamentary Council drafting the constitution. The rise of intergovernmental relations, not foreseen in the constitution, was a matter of intense dispute among lawyers. The practice of horizontal cooperation between the *Land* governments led scholars to speak about a “third level” of the federal system (Klatt, 1987. 1994). However, this concept is misleading. Apart from the difference between linkage and levels, between inter- and intragovernmental politics and policy-making, theoretical debates in those days underestimated the varieties of intergovernmental cooperation (Kropp, 2009; Pietzcker, 1988). *Land* governments coordinate their decisions on federal bills in the *Bundesrat* in highly standardized procedures. The federal and the *Land* governments also negotiate outside formal legislative processes. In addition, premiers and ministers of the *Länder* meet on a more or less regular basis, in order to exchange information or make joint decisions. These meetings are prepared by innumerable standing committees, ad-hoc committees or working groups including civil servants from different ranks of the administrative hierarchy. Finally, in contrast to these multilateral relations, *Land* governments in particular regions or parts of the country meet and cooperate. On the one hand, we observe cross-border cooperation between *Land* governments in city regions. On the other hand, groups of *Länder* cooperate to provide joint services, and during the last two decades *Land* governments sharing common interests convened in order to strengthen their position in intergovernmental negotiations. These patterns of cooperation are linked, and they overlap with political cleavages in a vertically integrated party system.

A) LÄNDER COOPERATION IN FEDERAL LEGISLATION- PROCEDURES IN THE BUNDESRAT:

Participation of the *Land* governments in federal legislation via the *Bundesrat* is not only an element of vertical interlocking politics in German federalism. It also constitutes the institutional base for intense cooperation among the *Länder* determined to prepare decisions on federal bills. In the *Bundesrat*, *Land* governments have a say in all matters of federal legislation, but with the absolute majority of their votes they only can veto those laws which affect competences of the *Länder* and therefore require explicit assent. In these cases, which concern about 50 per cent of all bills, it is decisive for the federal and the *Land* governments to negotiate on policies in order to find a majority of votes. Moreover, representatives of the *Länder* have to make arrangements to prevent unintended effects of voting to occur. Patterns of conflicts between them vary according to issues at stake. However, while *Land* governments should pursue the interest of their constituency, party politics strongly affects their behavior. The organization of negotiations reflects this fact.

Initiatives for legislation regularly start in the executive, where bills are elaborated (see table A 1). At this stage, responsible departments of the federal and the *Länder* level interact in the well established networks of “technocrats” (Beer, 1978). When a bill is transmitted to the *Bundesrat* for deliberation, a two level process is set in motion. Decisions are prepared both in the ministries and cabinets of the *Länder* and in the committees of the *Bundesrat*. In principle, these two processes facilitate an agreement between the coalition partners forming a *Land* government and reduce dissent among the *Länder*. The first process is important, as the representatives of a *Land* (varying according to the number of inhabitants between three and six) have to cast a block vote; the requirement of an absolute majority of votes explains the relevance of negotiations between the *Land* representatives.

Interestingly, committee work of the *Bundesrat* is prepared in separate working groups incorporating governments led by the same party. In a dualist party system, the divide between so called A- and B-*Länder* turned into a standard operation procedure of intergovernmental relations. This grouping paralleled the majority-opposition divide in the *Bundestag*. If a bill concerned a salient political issue, the dualist party structure in both houses of the legislature determined the double majority required for passing a law. In periods, when opposing parties had a majority in the *Bundestag* and in the *Bundesrat*, the federal government had to adjust its legislative initiatives to requests of the opposition (Burkhart, 2008), not unlike policy-making in a grand coalition. Since the last two decades, an increasingly heterogeneous third group of *Länder* governed by coalitions cutting across this divide became important. Since these *Land* governments tend to abstain from a vote in case the cabinet cannot find an agreement, absolute majorities of the *Bundesrat* in favor of a bill are now more difficult to achieve.

After the working groups and committees have issued their recommendation to the plenary, the governments of the *Länder* decide on their vote in the *Bundesrat*. It goes without saying that these decisions are coordinated between federal and *Länder* levels of the parties, if highly salient issues are on the agenda. Next, envoys of the *Länder* at the federal level, i.e. special ministers of federal affairs, negotiate on the expected votes. If no agreement is found until this stage, the prime ministers of the *Länder* held an informal meeting (so-called “fireside chats”; Gebauer, 1995: 87). When the *Bundesrat* finally meets in plenary, a decision on a federal bill is merely a formal act of casting votes (Stegmann, 1996).

Cooperation among the *Länder* on legislative issues constitutes a basic pattern of intergovernmental relations in German federalism. It is shaped by a changing interplay between competition among jurisdictions, party politics and administrative cooperation. Prior to German unification, territorial divides had a inferior impact, and party politics had been moderated by policy-making of special administrations cooperating in networks. This has changed meanwhile. Conflicts of interests among the *Länder* have intensified due to economic disparities. At the same time,

as mentioned above, party structures became more complicated due to the differentiation of the party system. With increasing political conflicts in intergovernmental relations of the *Länder*, we observe an incremental shift of power from administrative networks to political leaders (Gebauer, 1995: 87). This has consequences for policy-making in the federal system.

B) JOINT TASKS

As in every federal system, intergovernmental relations in Germany developed along with the rise of federal grants to the *Länder*. In 1969, an amendment of the Basis Law regulated the allocation of grants and introduced a constitutional framework for joint tasks. Originally competences of the *Länder*, regional development policy, agriculture and fishery, university construction and planning in education had been turned into matters of intergovernmental decision-making (articles 91 a and b). Moreover, the federal government was given the right to support *Länder* and local governments to finance investments in infrastructure like road construction and housing (article 104 a section 4). Similar to participation of *Land* governments in federal legislation, proceedings of the joint tasks link horizontal and vertical intergovernmental cooperation.

Joint tasks concern the allocation of fiscal resources to regions and localities. Consequently, conflicts among the representatives of *Länder* relate to their share of the federal money. Although *Land* governments have to co-finance the projects they are interested in profiting from grants. At the same time, they have to see to it that the federal government provides the resources they deem necessary. Thus the *Land* governments participate in the joint tasks with mixed motives. They compete for the grants while it is in their common interest to maintain or increase this “pool” of money. Given the need to contribute to the common pool, the allocation of grants to regions implied redistribution between the *Länder*.

This dilemma of collective action has apparently led the *Land* governments to play two different games. In decisions on the framework plan and the allocation of the budget, they usually decide in agreement, although majority decisions are possible

if they are accepted by the federal government. At this stage, the *Länder* try to get a fair share according to explicitly defined norms of distributive justice. Different fiscal interests of the *Länder* play a role in implementation of the framework plans. During the last decades, rich *Land* governments have tended to finance projects on their own if these have not obtained high priority in joint planning, while poor *Länder* with problems to co-finance investments have not called for all federal grants they have been entitled to. These inconsistencies appeared in particular in university construction (Wiesner, 2006). Consequently, competence for this matter was passed back to the *Länder* in 2006. Still existing is a “Joint Science Conference” (former Joint Federal-*Länder* Commission for Education and Science), in which governments coordinate decisions on research institutions and funding that are of supra-regional relevance. Decisions in the conference require the consent of at least thirteen *Land* governments and the federal government. In matters of universities, the Conference decides with unanimity. De facto, the ministers of the *Länder* prepare decisions in the Joint Science Conference by formulating recommendations and comments.

Despite proposals for their abolishment, joint tasks of regional development and agriculture continue to exist, although with a revised legal framework. Independent of divergent economic situations of the *Länder*, responsible departments of *Land* governments are interested in maintaining joint decision-making. In regional and agricultural policy, they also profit from the fact that distributive decisions have shifted to the EU level and the joint tasks framework is used to coordinate regional development programs of the *Länder* and the German position in European policy-making.

Beyond the joint tasks regulated in the constitution, federal and *Land* governments coordinate their fiscal policy in the Council for Fiscal Planning (“*Finanzplanungsrat*”) and in the Council for Economic Development (“*Konjunkturrat*”). Both institutions exist on a legal basis. They were established in the late 1960s in order to coordinate mid-term planning of the budget and public borrowing of the federal, *Länder* and local levels. Decisions are not binding, but

provide guidelines for budgetary decisions. So far, coordination has proved as not very effective, although it has to be mentioned that a considerable share of tax revenues in Germany is determined by joint decision-making, i.e. by federal law requiring the assent of the *Bundesrat*. Moreover, the federal government can, to a certain extent, influence lower level expenditures by allocating grants. The reform of fiscal federalism currently under way presumably will strengthen intergovernmental coordination of budget policy.

C) INTERGOVERNMENTAL CONFERENCES AND ADMINISTRATIVE NETWORKS

Beyond processes determined to coordinate their decisions in the *Bundesrat*, German *Länder* cooperate in their own policy domains in order to manage external effects, to define their common interests against the federal government and the EU or to harmonize law and administrative practices. Given the long tradition of intergovernmental relations, the scope of this cooperation surely exceeds what would be required by the economic theory of federalism. Interests of executives to protect their power against parliaments or pressure groups have been important driving forces explaining this development. In some policy fields, cooperation between the *Land* executives started even before the Federal Republic came into being. Meanwhile, it has spread over all policy fields the *Länder* are responsible for.

Without any constitutional rules, *Land* premiers and ministers convene in conferences. Most of these conferences now work according to formal rules, formulated in standing orders or resolutions. Nearly all of them meet on a regular basis, many, in particular the conference of the prime ministers and ministers of finance, additionally convene in extraordinary meetings if necessary. In some conferences the responsible federal minister is a member, in all others, federal representatives are regularly invited and participate as guests. The chair rotates among the *Länder*, with the *Land* ministry in charge serving as a secretary. Only the Conference of the Ministers for Cultural and Educational Affairs has its own bureaucracy, established on the basis of an administrative agreement in 1959. In

2004, the staff of this secretariat amounted to 216 civil servants. Moreover, the conference set up no less than 36 commissions, sub-commissions and working groups.¹ After the government of Lower Saxony threatened to withdraw from the agreement, the conference decided to reform its structures and curb bureaucracy.

Other conferences work without a joint bureaucracy. In general, policy specialists of the *Land* ministries prepare decisions of their ministers or coordinate policies on their own. These networks of “technocrats” have been criticized as inefficient and as lacking legitimacy. In the course of reforms of the public sector, prime ministers of the *Länder* made efforts to consolidate the working structures of intergovernmental relations. During the late 1990s, the number of committees and working groups has been significantly reduced in the fields of agriculture, environment, health and transport. In June 2004, the Conference of the Prime Ministers passed a resolution requesting the sector-specific conferences of minister to cut the number of committees and working groups. The results have been mixed so far and vary between policy sectors. In most cases, committees or working groups have been abolished or combined. Moreover, term-limits for cooperation should avoid the rise of bureaucratic networks. In general, ministers tried to better control the work of subordinate civil servants by defining the mandates and agendas of committees and working groups. Significant reforms are reported for about half of the policy sectors.² The following table outlines changes in the Conference of Ministers of the Environment, which in its 2004 and 2005 meetings decided to diminish the numbers of administrative committees and working groups and to strengthen the powers of political leaders against experts and bureaucrats (see table 1).

¹ (http://www.stk.niedersachsen.de/master/C5394283_L20_D0_l484.html, accessed on 22 February 2009)

² Given the informality and dynamics of intergovernmental cooperation among the *Länder*, it is difficult to gain exact data. I profited from data collected by Christina Zimmer (FernUniversität in Hagen), whose ongoing empirical research aims at getting a clearer insight into intergovernmental cooperation and their changes.

Again, these forms of *Länder* cooperation are integrated in vertical cooperation. Several times a year, the Federal Chancellor invites the prime ministers of the *Länder* to discuss important political, economic and fiscal issues. These meetings aim at coordinating governance at both levels of the federal system, at mitigating conflicts and communicating political agendas (Kropp, 2009). Bureaucracies of the federal and Land ministries are linked by numerous commissions on all administrative ranks. This is where many drafts bills are elaborated and where administrative procedures and practices are standardized. In general, meetings and commission constitute channels of communication between levels which are closely connected to horizontal intergovernmental relations.

Table 1: Reorganization of Länder cooperation in environmental policy³

		<i>before reform</i>	<i>after reform in 2004/2005</i>
first conference ministers	tier: of	2 regular meetings per year regular guests: chairs of federal-Länder commissions (2 nd tier), representative of Expert Council for the Environment	2 regular meetings per year no regular guests
second joint federal-Länder commissions	tier:	12 (heads of departments and of sections)	8 (heads of departments); agendas determined by ministers
third special committees and working groups	tier:	61	24 agendas determined by ministers, usually with a temporary assignment
fourth ad-hoc groups	tier:	?	Abolished

³ Source: Resolutions of conference of ministers of the environment, (https://www.umweltministerkonferenz.de/uploads/64umk_930.pdf; accessed on 23 February 2009) and Sachverständigenrat für Umweltfragen. 2007. Umweltverwaltungen unter Reformdruck. Herausforderungen, Strategien, Perspektiven. Berlin (Erich Schmidt Verlag): 102-105.

In contrast to decision-making in the *Bundesrat*, where votes of *Länder* are weighted, the Land governments cooperate in conferences on an equal basis. Conforming to the principle of cooperation among autonomous governments, decisions regularly require unanimity. However, some conferences have introduced qualified majority or simple majority as decision rules (see table A 2 in the annex). Nevertheless, negotiations aim at an agreement, and decisions by majority have no effects for the opposing *Land* governments. In contrast to legislation and joint tasks which constitute a framework for compulsory cooperation, horizontal *Länder* cooperation in conferences is voluntary and decisions are not binding. Nevertheless, the political impact of decisions should not be underestimated.

As in other federal systems, the executive predominates in intergovernmental relations. In Germany, the still extensive cooperation of bureaucrats of different ranks is a characteristic feature. Nevertheless, parliaments have reacted to executive cooperation. Presidents of German Land parliaments meet at least once a year to discuss common issues of parliaments. Regularly, they pass resolutions on necessary reforms of German federalism, although with limited success. In addition, leaders of the party groups in parliaments meet on a regular basis (Pietzcker, 1988: 34-35). Thus parties not only link levels vertically, but also contribute to communication between the *Länder*.

Representatives of the higher courts of the *Länder* and the Courts of Auditors also convene in informal conferences, usually once a year. Conforming to the autonomy of these institutions, the cooperation is of limited importance. But they provide additional evidence for the particular culture of German federalism, which fosters coordinated and uniform policies rather than competition and divergence between regions or states.

C) REGIONAL COOPERATION

The territorial framework of German federalism was significantly influenced by outcomes of wars. The existing *Länder* were created after World War II when Germany was divided in occupation zones and the allied forces decided to dissolve Prussia. As a result, the borders drawn under these circumstances did not conform to urban development, economic structures of regions or identities of citizens. Therefore, the Western occupying powers recommended a reorganization of the *Länder* territories, and the Basic Law turned this recommendation into a binding constitutional rule. However, except the creation of Baden-Württemberg in 1952, all attempts to change *Länder* territories failed. As a consequence, *Länder* have to coordinate decisions on regional development and public utilities in urban regions divided by Land borders. For this purpose, they set up institutions of trans-border cooperation in regions.

The city states of Bremen, Hamburg and, after German unification, Berlin saw particular need to manage interdependent developments in the urban area spreading across the Land borders. The northern *Land* governments early started cooperation in regional planning. On a more or less regular basis, leaders of government, their secretaries of state and heads of departments meet in conferences. Moreover, the *Länder* established joint administrative institutions (e.g. office for statistics of Hamburg and Schleswig-Holstein) or joint judicial authorities (e.g., Berlin and Brandenburg)

Similar cooperation developed in other urban regions divided by *Länder* borders. By treaties, the governments of Baden-Württemberg, Hesse and Rhineland-Palatinate created an association of the three regional planning authorities of the *Länder*, which in 2006 was reorganized and turned into a single unit. In this context, cooperation among local and regional authorities in policies like transportation, housing, water protection, waste disposal and others have intensified. Similar forms of cooperation in regional planning and related tasks exist between Saxony and Saxony-Anhalt in the urban area of Halle and Leipzig,

between Baden-Württemberg and Bavaria in the region of Ulm, and between Rhineland-Palatinate and Hesse in the region of Frankfurt. *Länder* also run joint regional broadcasting services and, after a number of mergers, joint state banks. More and more, regional cooperation between *Länder* has turned into an alternative to territorial reorganization. With the rising fiscal problems, caused by the current economic crisis, debates on a reform of *Länder* territories got new momentum. However, in the near future, a real change is unlikely to occur. Therefore, the *Länder* will presumably intensify cooperation in order to fulfill regional tasks in more efficient organizations.

4. RECENT DEVELOPMENTS

No matter of the particular form of intergovernmental relations, horizontal cooperation between German *Länder* has gained in importance. In addition to the driving forces existing since long, some recent developments have contributed to this. At the same time, the conditions of cooperation have changed. Of particular relevance are economic, institutional and political developments.

Regarding the economy, German unification brought about disparities in revenues of East and West German *Länder* to an extent which was unknown in the West German Federal Republic. In many policy fields, intergovernmental relations were burdened with redistributive conflicts, not the least as the principle of solidarity and uniformity of living conditions still applies. At the same time, European integration has fostered regionalization. In economic development, member states lost their powers to favor the national economy by regulation and fiscal aids. As a consequence, regional infrastructure and administrative capacities became significant factors influencing decisions of private investors. Rather than nation states, sub-national regions now compete for firms. Competition gives rise to conflicts between sub-national authorities, but it also compels them to cooperate in order to coordinate planning and investments for infrastructure, to provide efficient administrative services and to avoid detrimental rivalries.

The institutional framework of German federalism changed incrementally, when federal legislation increasingly was linked to European politics, which accordingly became a new arena of cooperation among Land governments. Although individual *Land* governments pursue diverging interests in policies concerning their regional economies and although each of them established a bureau in Brussels in order to promote their interests (Jeffery, 1999), the *Länder* have seen the need to join forces when it comes to defend their competence and to strengthen their voice in EU policy-making. During the 1990s, when the European Community made great strides towards economic and political integration, German *Länder* intensified horizontal cooperation in a newly created Conference of European Affairs Ministers. Between 1992 and 2002, this conference held 34 meetings, i.e. on average more than three per year. Meanwhile the frequency of conferences declined to two per year. At the same time, European policies have increasingly influenced the agendas of other conferences of Land ministers.

A second step of institutional change resulted from the recent constitutional reform of German federalism. The constitutional amendments passed in 2006 included a decentralization of a number of legislative competences, while they hardly brought progress towards curtail interlocking politics between the federal and the *Länder* levels (Benz, 2008). The *Länder* now are responsible for education, including regulating and financing of universities since the federal framework law and the joint tasks were abolished in this matter. Moreover the *Länder* have used their new competences to regulate shop closing times and restaurants. In all these matters, we cannot see cooperation between the *Länder* getting more intense. However, the consequences of different regulations in the *Länder* may increase the need for cross-border cooperation, e.g. if different university fees affect movements of students between universities or if different closing times influence consumer behavior in regions and cause economic imbalance. So far, the *Länder* seem to have been able to manage potential problems by mutual adjustment without increased cooperation.

The next step of the reform of federalism prepared by a joint commission of the *Bundestag* and the *Bundesrat* was started two years ago in order to deal with matters of fiscal federalism. In fact, the commission failed to elaborate proposals on significant issues like taxation and fiscal equalization, while it agreed on a constitutional amendment determined to reduce public dept. Moreover, a number of proposals intend to improve cooperation between federal and *Länder* governments in public administration. In particular standardization in e-administration will be a major issue of cooperation over the next years.

Interestingly, the commission also discussed a new mode of coordination between the *Länder* in public administration based on benchmarking of efficiency and performance. So far, administrative reforms in Germany have been implemented in the *Länder* without visible attempts to comparative evaluation and exchange of experiences. This could change if the *Länder* agree on standards of administrative performance and on a system of evaluation. Such a step could also introduce a way of horizontal coordination and coordination deviating from traditional modes of conferencing and administrative networks. Instead, coordination would be achieved by competition for better performance guided by a framework of procedural rules and standards. However, it is an open question whether individual Land governments will be disposed to participate in these processes or to implement best practices if they are identified in comparative evaluation.

The most important change in German federalism concerns party politics. After German unification the integrated party system dominated by two competing parties dissolved. In the federal and *Länder* election since 2005, five parties won seats in parliaments. The number of possible coalitions increased and so did the number of coalitions supporting federal and *Länder* governments. While until German unification, dualism of the big parties leading governments was the focal principle organizing in *Länder* cooperation, the constellation now has turned out as more complicated. No longer can Land governments effectively prepare decisions in the *Bundesrat* in separate meetings of the so called A- and B-*Länder*, i.e. those supporting and those opposing the federal government, since a majority of the

Länder now falls into a third category of “neutral” governments, which consists of diverse coalitions. Currently, this group includes SPD-Green coalitions and CDU-FDP coalitions which have not very much in common. It is obvious, that under these conditions, issues that give rise to conflicts among political party are difficult to manage.

Given this fragmentation of party politics, the changes in *Länder* conferences mentioned above appear in a different light. The prime ministers’ initiative was determined to make cooperation more efficient and to improve political control of administrative networks. However, in view of the plurality of parties represented by *Länder* ministers, the politicization of negotiations can have the opposite effect. While actors in administrative networks tend to negotiate in the “arguing” mode (Elster, 1998), it is not unlikely that the quality of cooperation has decrease due to political bargaining.

Finally, a trend towards regionalization of politics has also affected informal cooperation among *Länder*. After German unification, prime ministers of the East German *Länder* began to coordinate their positions in negotiation with the federal government and other *Land* governments. Later, the heads of government of Baden-Württemberg, Bavaria and Hesse convened to form a kind of informal coalition of rich *Länder*. They have instigated debates on a reform of fiscal equalization and decentralization of power. These processes indicate that territorial interests have gained in importance and that these conflicts no longer are appropriately manageable in a vertically integrated party system (Detterbeck and Renzsch, 2008). This does not mean that German parties have lost their relevance in linking federal and *Länder* politics. Nevertheless, leaders of regional party levels have become more independent and voters tend to focus more on regional issues when they elect a *Land* parliament (Völkl, Schnapp and Holtmann, 2008).

5. EVALUATION: EFFECTIVENESS AND DEMOCRATIC LEGITIMACY

Since the 1970s, interlocking politics and executive federalism have been matters of dispute in Germany. During the last two decades, critics have complain about inefficient and opaque policy-making due to entangled powers between levels of governments. Cooperative federalism has been blamed for economic stagnation, problems of the welfare state, lack of significant reforms and increasing disenchantment of citizens with governments. However, most of these arguments have been formulated without sufficient empirical evidence. Political scientists have drawn a more differentiated, although ambivalent picture.

Cooperation among governments in Germany is the domain of executives, but it is strongly influenced by party politics. Moreover, parliaments are not completely excluded. Leaders of party groups in parliaments are regularly invited to informal meetings before conferences of ministers take place. Thus intergovernmental and parliamentary arenas are linked. The problem is, that German federalism is characterized by a tight coupling of these arenas with the consequence that party competition strongly influences intergovernmental negotiation (Benz, 2000; Lehbruch, 2000) As a consequence, policy-making was exceedingly difficult when party complexion of the federal government and a majority of *Land* governments differed. This was the case during the 1970s and most of the time after 1990.

However, while the first period was characterized by a duality between Christian and Social Democrats, the second period has brought about an increasing heterogeneity of governments. The early confrontation of two party camps created serious problems for intergovernmental cooperation in legislation and joint decision-making, but it made positions of the governments visible for parliament and citizens. This has changed meanwhile. Agreements are no longer obstructed by confrontation, but require willingness of more different partners to settle a compromise. Whereas in the dualist party system the federal government was able to anticipate conflicts and adjust its initiatives accordingly, decisions depend now a

good deal more on the dynamics of bargaining processes. This is the reason why informal negotiations have gained in importance, with the effect that policy-making is less transparent and accountability turns out as more problematic.

Despite party political conflicts, German federalism has allowed for rather effective decisions. It is true that policy changes have emerged incrementally, but this is typical for consensus democracies (Lijphart, 1999 #117). It is also true that Germany constitutes a particular type of consensus democracy with joint decision-making among governments interfering with party competition of the parliamentary system. However, policy-making in the federal system rarely has ended in deadlocks. One reason for this has been the existence of effective administrative networks of “technocrats” cutting across party political cleavages. These networks have weakened the role of parliaments, but they have contributed to make cooperative federalism work. From this point of view, the attempts of governments to reduce these networks and to reinforce political control require careful evaluation. So far we have no evidence about the effects, which certainly differ between policy fields, depending on the success of consolidation of committees and working groups and the level of political conflicts. But it is not unlikely that intergovernmental cooperation becomes more conflict ridden, and several recent decisions indicate this to be the case.

German federalism also has been criticized due to uniformity of policies. In fact some policies are over-coordinated. Form a comparative point of view, the integration of levels and interlocking politics was praised as a source of stability (Filippov, Ordeshook and Shvetsova, 2004). In so far, recent trends towards regionalization deserve particular attention. In view of increasing economic disparities and the fiscal crisis, it is difficult to uphold the previous extent of uniformity in public goods and services. But confronted with expectations of citizens, governments will be challenged with redistributive conflicts. Certainly, old patterns of multilateral bargaining are all but appropriate to solve these conflicts. However, regionalization of politics and of intergovernmental cooperation can make matters even worse.

6. CONCLUSION

It is a truism that federalism constitutes dynamic political systems. Recent developments in German federalism prove this. Considering incremental policy changes and failures of effective institutional reform, German federalism has often been blamed as static due to the need to find compromises between competing parties and governments. Historical approaches to the study of federalism emphasized path dependence of development (Lehmbruch, 2002 #527). Efforts to reform the federal constitution since 2003 seem to prove this theory. Although one should not underestimate the decentralization of legislative powers resulting from the 2006 constitutional amendment, the institutional framework of cooperative federalism has not been modified.

Nevertheless, a closer look into the reality of German federalism reveals changes in patterns of intergovernmental relations. Below the surface of formal institutions, practice of cooperation is evolving driven by external challenges and actor's strategies. By focusing on these developments, I might have overemphasized dynamics. However, to understand how federalism works it is important to consider the interplay of socio-economic structure of the country, party politics, and the variegated patterns of intergovernmental relations. They all are changing to a more or less significant extent. By concurring in the long run, they might modify the federal system of German cooperative federalism. Yet, the consequences still are not utterly evident.

Comparative studies on federalism should take this dynamics into consideration. As a consequence, we should be careful when searching for designs of a stable, working and democratic federal system. It is the interplay of constitutional principles, executive and parliamentary institutions, party politics, economic and social disparities between regions and intergovernmental relations which make democratic governance in federalism work.

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ANNEX

Table A 1: Proceedings in the Bundesrat

Decision stage	arena
transmission of bills by the Federal Government or the <i>Bundestag</i>	federal
selection of responsible committees	<i>Bundesrat</i>
forwarding of bills to <i>Land</i> governments	<i>Länder</i>
deliberation in <i>Land</i> ministries and cabinets	<i>Länder</i>
negotiations in working groups of the <i>Länder</i> divided along party lines	parties
committee work	<i>Bundesrat</i>
first coordination in party groups of the <i>Länder</i> among experts of ministries among envoys of the <i>Länder</i>	parties
decisions in <i>Land</i> cabinets on votes in the <i>Bundesrat</i>	<i>Länder</i>
meeting of the Permanent Advisory Council of the <i>Bundesrat</i> (civil servants of the <i>Länder</i>); preparation of motions, order of speeches, voting test	<i>Bundesrat</i>
second coordination of party groups of the <i>Länder</i>	parties
fire-chats of prime ministers	<i>Bundesrat</i>
plenary session of <i>Bundesrat</i>	<i>Bundesrat</i>

Table A 2: Conferences among Land governments

<i>Conference (first meeting)</i>	<i>Members</i>	<i>Meetings per year</i>	<i>Decision rule (each Land one vote)</i>
Prime Ministers (1947/1954)	prime ministers of the <i>Länder</i> chiefs of prime minister offices	4 regular meetings, extraordinary meetings if needed	until 2004 unanimity, since then 13 votes (except issues affecting the budget or joint institutions)
Agriculture	Federal and <i>Land</i> ministers	2 regular meetings (de facto 3) extraordinary meetings	unanimity, (abstention not allowed)
European Affairs (1992)	<i>Land</i> ministers	not regular; 41 since 1992	unanimity or 13 votes
Finance	<i>Land</i> ministers	?	unanimity in cases of financing of new projects or budget of joint institutions, otherwise simple majority
Health	<i>Land</i> ministers	1 regular (until 2009 82 meetings)	simple majority
Equality and Gender (1991)	<i>Land</i> ministers	1 regular	unanimity
Interior (1954)	<i>Land</i> ministers	2 regular extraordinary meetings	unanimity
Youth and	<i>Land</i>	1 regular	unanimity, if finances

Family	ministers	extraordinary meetings	are concerned, otherwise 13 votes
Justice	<i>Land</i> ministers	2 regular	simple majority
Education and Cultural Affairs (1948)	<i>Land</i> ministers	2-3 plenary meetings Presidium (5 members) responsible for the day-to-day work meets, as a rule, between plenary meetings.	unanimity, if finances and educational mobility are concerned, otherwise majority
Spatial Planning	Federal and <i>Land</i> ministers	1 regular	simple majority
Sports	<i>Land</i> ministers	1 regular	unanimity
Environment (1973)	Federal and <i>Land</i> ministers	2 regular extraordinary meetings	unanimity of the <i>Land</i> ministers
Consumer Protection (2006)	Federal and <i>Land</i> ministers	1 regular	13 votes of <i>Land</i> ministers and vote of Federal minister
Transport	<i>Land</i> ministers	2 regular	unanimity
Economy	<i>Land</i> ministers	2 regular	unanimity
Housing (1948)	<i>Land</i> ministers	1 regular	unanimity, provided that at least 6 <i>Länder</i> attend