Unitary Federalism–Germany Ignores the Original Spirit of its Constitution

Roland Sturm
Professor of Political Science at the Friedrich-Alexander-University Erlangen-Nuremburg

ABSTRACT Contrary to a federalism based on the subsidiarity principle, German federalism is now unitary in nature. Three reforms of federalism have contributed to undermining *Länder* self-rule (2006, 2009, and 2017). The governments on the federal and regional level dominate political decision-making. Parliaments suffer from neglect. Executive bargaining knows no limits. Even core competences of the *Länder*, such as their budgetary autonomy or education, have experienced federal intrusion. *Länder* initiatives, just as the federal government's interventions, are not guided by a federal vision. What counts is political control and the expected efficiency of national solutions for policy problems (especially from the perspective of the federal government), improved policy outputs (especially as seen by the *Länder*), and electoral success, an aim of all parties on all political levels. What has no place in decision-making in Germany is proximity to the promise federalism makes, namely more regional autonomy, bringing politics closer to the people, regional participation, accountability and transparency.

KEYWORDS coalitions; parties; financial equalization; unitary federalism; competences; constitution; autonomy; self-rule.

The type of federalism we find in Germany is unitary. It developed from co-operative federalism in the post-war years to the joint policy-making of the federal level and the *Länder* levels in the late 1960s, and became ever more unitary in nature with the last two federalism reforms of 2009 and 2017. The short-lived counter-movement of the 2006 federalism reform that tried to give *Länder* autonomy a (limited) chance, soon lost momentum. Ultimately, it did not make much difference.

This contribution is based on the text of the 1949 constitution that clearly stresses the subsidiarity principle. We find both a weak constitutional role

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of federal politics and in practical terms an influential role of the *Länder*, which came into existence before the federation. In 1949, the *Länder* decided on the existence of the Federal Republic of Germany and its constitution. With regard to federalism, this constitution was not changed significantly until the late 1960s. Other factors, such as the development of the "mass society" and the growth of the "welfare state" were responsible for the loss of societal support for the subsidiarity principle and a general preference for equality over diversity.[1] The federal spirit had disappeared before constitutional change set in.

The most interesting recent developments are the three federalism reforms of 2006, 2009 and 2017 that changed the German constitution profoundly with the most far-reaching revisions to date and finally anchored unitary federalism in the constitution. These reforms will be analyzed in detail. The argument made here is not that constitutional engineering defines the realities of German federalism. The formal degree of autonomy for the *Länder* was certainly reduced by these reforms, but there was hardly any resistance by the *Länder*. No extensive use of *Länder* powers was made to block federal intrusion. In most cases, the limited possibilities for diversity in German federalism that the constitution allows were ignored by regional decision-makers, as one would expect in a federal country without federalists. The lack of resistance against uniformity in German federalism also has to do with access to political power for regional executives. Constitutional change meant a severe loss of autonomy for the *Länder* parliaments, but it empowered regional executives, and gave them more political influence, for example, via the *Bundesrat* (second chamber in national legislation). *Länder* governments (not parliaments) are now more than ever involved in national politics, even at the early stage of national coalition talks. *Länder* prime ministers can have opinions on every policy on the national level. They do not distinguish between policies that fall into *Länder* jurisdictions and national policies. Their approach is unitary for reasons of the dominance of national party competition that defines the relevant political arena and the role of *Länder* prime ministers in national legislation, i.e. they act as if federal autonomy had a very limited role in German politics. For *Länder* prime ministers policy coordination with the federal executive is much more the rule than policy coordination in regional parliaments that have

1. Hesse, "Unitarischer Bundesstaat".

hardly any autonomy, when it comes to the right to decide as opposed to policy implementation, the right to act.[2]

1. The subsidiarity principle in the German constitution and in German society

Federalism is a cornerstone of Germany's constitution. Article 79 even prohibits any kind of constitutional engineering that leads to the end of federalism. Only a new constitution could bury federalism. The principle of subsidiarity has inspired the Parliamentary Council, which decided on the draft of the Basic Law, the German Constitution, in 1949. Article 30 of the Constitution gives all competences of the state to the *Länder* (the regions), as long as there are no exceptions made for this rule by the Constitution. The same goes for legislative powers (Article 70). In other words, the centre needs a special justification for its political role in decision-making. This summary of constitutional provisions sounds like a strong guarantee for a wealth of autonomy rights of the *Länder*—but currently the truth could not be further removed from such expectations.

From the outset there was less autonomy and more co-operation in German federalism than these articles of the German Constitution might imply. From its very beginnings German federalism was devised as cooperative federalism based on federal-state interest intermediation. Over time, the German Constitution of 1949 was interpreted in a manner that today allocates the lion's share of legislative competences to the federal government (often as shared competences with the *Länder*). Shared competences have the additional effect of tending to constitute a permanent system of State-*Länder* co-operation. The resulting interlocking federalism lacks transparency and accountability. It benefits decision-makers (the executives) and handicaps those that are not at the negotiation table, the people and parliaments. The *Länder* have most of their competences when it comes to the administration of law (including federal law). On the *Länder* level, only a few competences of the *Länder* parliaments are left, and none of these competences can be used by the *Länder* completely without a certain federal influence. The remaining fields of *Länder* autonomy cover the regulation of

2. For this distinction see for example, Keman, "Federalism and Policy Performance".

the media, support for small and medium-sized enterprises, and the politics of culture, police and education.

German civil society often organizes interests with reference to the country's territorial units, the *Länder*. This is, however not an expression of a wish for regional autonomy. It simply reflects the administrative divisions of Germany. Empirical research[3] has shown time and again that Germany is a federal country without federalists. When asked which of the following political levels, the European, the national, the regional (*Länder*), and the local, commands their loyalty, respondents identify least with the *Länder* level. With regard to the centralization or decentralization of policy-making, for example, 91 per cent of those interviewed wanted equal standards for nursery schools, schools, and universities all over Germany. Opinion polls show a general aversion to diversity in policy outputs and an implicit orientation that gives preference to equality of living conditions all over Germany. This is a federalism paradox, because Germans do not advocate an end to federalism, but when it comes to problem-solving, they trust, above all, the national government (or do not know the distribution of competences in their federal state).

Germany is a country without a federal culture. It lacks strong regionalist movements that could have fought for a different form of federalism. Still, in recent decades, we have witnessed far-reaching reforms of German federalism. These reforms included constitutional change for which two-third majorities in the *Bundestag* and the *Bundesrat* (in both legislative chambers) are necessary. Why should one "modernize" German federalism when the electorate is not interested in reforms of federalism, and does not care about who does what in German politics?[4] The answer is, to solve management problems political decision-makers have. Federalism reform has degenerated into an elite effort of administrative adjustment, an observation that is hardly understandable if one bears in mind the original idea of German federalism as an expression of democratic participation not filtered by other considerations. Federalism reform in Germany has been "functional", not responsive to democratic pressures; it has been top down, not bottom up.

3. Bertelsmann-Stiftung, *Bürger und Föderalismus*; Oberhofer, *et al*., "Citizenship im unitarischen Bundesstaat".

4. Oberhofer, *et al*., *Regional Citizenship*.

Recently, federalism in Germany has gone through three steps of constitutional adaptation to political challenges: the reforms of 2006, 2009 and 2017. The background to all these reforms consisted of three topics: (1) the division of responsibilities between the *Länder* and the federal government and the role of the *Bundesrat* in decision-making, (2) finance, including financial equalization arrangements between the *Länder* and surprisingly, because it is not a federalism question, but the result of the European fiscal pact, balanced budget requirements on the federal and the *Länder* level, and (3) a redefining of *Länder* boundaries. None of the three federalism reforms mentioned above touched upon the latter problem, although it was on the political agenda of influential politicians.[5] The idea to reduce the number of the *Länder*, to merge some of them for reasons of efficiency, is deeply unpopular with the *Länder* electorates that would potentially be affected, and therefore the political incentives to get involved in reform efforts in this field are weak.

2. 2006: So far, the last conflict between supporters of more regional autonomy and the power pragmatists

The Commission of the *Bundestag* and the *Bundesrat* that prepared the 2006 federalism reform approached its task in a relatively open-minded way.[6] The political advice of scientists was supposed to play a prominent role, and it was hoped that the Commission's deliberations would produce a greater responsiveness of German federalism. The federal government did not expect much of the Commission's work. It was above all interested in a reduction of the veto powers of the *Bundesrat* in federal legislation. On the side of the West German *Länder*, and here, above all, the more affluent *Länder*, some *Länder* representatives saw the Commission as a golden opportunity to strengthen regional autonomy. From the outset, however, pragmatists among the politicians had a decisive role. They preferred political compromises, and bargaining, and had no deep longing to strengthen self-rule in German federalism, not least because self-rule could imply greater financial responsibilities for most of the *Länder*. When political bargaining in the

5. Hrbek, "Neugliederung".

6. Scharpf, *Föderalismusreform*; Schneider, *Der neue deutsche Bundesstaat*; Sturm, "More courageous". These publications cover all the details of the 2006 reform discussed here.

Commission started, scientists no longer played a role. Their advice was seen as too principled when it came to decision-making. Only very few *Länder* prime ministers agreed that *Länder* parliaments needed more meaningful tasks. Most *Länder* representatives saw their role to be the reduction of (financial) obligations for their *Länder*. This explains the decision to postpone deliberations on the financial equalization arrangements between the *Länder* and between the *Länder* and the federal level at a later date, although everybody in German politics saw the need for reform. But it was also obvious that a reform of the financial equalization formula would create winners and losers.

There was consensus that the 2006 federalism reform had to have six major aims:

1. The separation and reallocation of a considerable number of joint competences of the federal level and the *Länder* level.

2. Greater transparency of political decision-making and of constitutional rules in order to increase the legitimacy of federalism and to make its institutions more popular.

3. The *Länder* Parliaments were supposed to become more autonomous.

4. The centralized tax system should to some degree be reformed to give the *Länder* greater responsibilities for raising taxes. The provisions for joint financial responsibilities of the federal level and the *Länder* should be reduced to make the *Länder* less dependent on federal subsidies.

5. A political majority for opposition parties in the *Bundesrat* should in the future have fewer opportunities to stop federal legislation.

6. German federalism should be made fitter for the challenges of European integration.

What happened to this consensus, and how stable were the solutions for the six federalism problems the Commission identified?

2.1. Joint competences

A first step to separate federal and *Länder* competences was to eliminate a special type of legislation in the constitution—the so-called framework legislation. This type of legislation worked like an EU directive. The federal parliament legislated a policy framework, and it was up to the *Länder* to find *Länder* solutions in the context of this predefined set of rules. The problem with framework legislation was, however, that federal legislation tended to define the set of rules for the *Länder* so narrowly that no policy options were left open to them. For example, a federal framework law was passed that made student fees illegal. Obviously, this left no alternative options for the *Länder* parliaments. The Federal Constitutional Court, by the way, ruled that this federal framework law was for this very reason unconstitutional. The role of federal judges is an important aspect of federalism reform. This ruling and others of the Federal Constitutional Court provided strong incentives for political decision-makers to invest in federalism reform.

In the past, framework legislation covered a certain area of legislative competences defined by the German Constitution. After the reform, these competences were not given exclusively to the federal or the *Länder* level, a decision that would have been in the spirit of disentanglement of competences or possibly greater *Länder* autonomy. Instead, joint decision-making was strengthened by moving competences to the category of joint federal-*Länder* legislation. This type of mixed responsibility legislation is based on the assumption that if the constitution does not explicitly list a certain competence as belonging exclusively to the federal level, this competence is a *Länder* competence. There is a list of competences in the German constitution for which this is the case, but with a major restriction. Whenever the federal parliament, in order to secure the social, legal and economic unity of the state, wants to legislate for a *Länder* competence on the list, the federal parliament is entitled to do so. This kind of intervention of the federal level in *Länder* affairs, however, did not remain the exception, as the subsidiarity principle would demand; it has become the rule. In other words, all the competences listed in the constitution to which the federal government has access when arguing that this serves the common good have by now become de facto federal competences. Instead of creating more transparency in the legislative process by regrouping competences and separating federal from *Länder* competences, the 2006 federalism reform, by creating more formal joint decision-making, in fact strengthened the centre.

Before the 2006 federalism reform, the decision of the federal parliament to legislate in policy fields originally reserved for the *Länder* meant, however, that a majority of the *Bundesrat*, where the *Länder* executives sit, was required to pass this kind of legislation. This potential control was lost to some extent. After federalism reform some competences were exempted from *Bundesrat* approval (the reduction of the veto power of the *Bundesrat* was an important aim for the federal government), while others remained under this rule. A third category of legislation was created in this context, a kind of opt-out legislation. What does this mean? It means that with regard to six competences concerning legislation on environmental issues and some issues connected with university education, the federal level may claim its competence and pass a law. Each of the *Länder* , however, thus has the right to pass its own legislation that can differ from federal law. This was in principle an enormous innovation, which could have strengthened the autonomy of the *Länder*, especially if it had covered a wide range of policies, which it did not. *Länder* law took legal precedence over federal law. The consequences of this innovation were, however, minimal, because of the limited number of policies affected and the unwillingness of most of the *Länder* to use their newly available, but very marginal independence. Constitutional change was relevant for only six policy fields of mostly minor importance (for legislation concerning hunting, for example), or which are not exclusively under national control, because of EU competences (as is the case with environmental policies). *Länder* opt-outs were not in a category the German public would even notice, and certainly not of a quality to revitalise the subsidiarity principle. The *Länder* that decide to opt out have their own rules; for the others the federal law is binding. The federal level is entitled to legislate again in the same policy field where a *Land* has chosen to deviate. The federal law is then binding for the whole country. If a *Land* wants to opt out again, it can pass a new law. The last law passed in a certain policy field marked in the constitution for opt-outs is binding for a *Land*, be it the federal or the *Länder* law (*lex posterior* rule).

2.2. The reform of the *Bundesrat*

More important with regard to the separation of competences of the federal level and the *Länder* were the new rules for Germany's institutional federalism framework. The *Bundesrat* often had a veto on federal legislation (though it rarely used it), because of the responsibility of the *Länder* for public

administration. The *Bundesrat* worked on the assumption that whenever the *Länder* were involved in the administration of a law, their consent to federal legislation in the *Bundesrat* was necessary. This was even assumed when the part on administration in a revised bill remained the same, and changes to the bill were only made in its policy part, and the policy part referred to an exclusive competence of the federal parliament (*Bundestag*).

The 2006 federalism reform intended to separate more precisely federal and *Länder* responsibilities with regard to the administration of federal laws. Now, only in exceptional cases the federal level, when making laws, also makes rules for the organization of the execution of this law. This reduces the role of the *Länder* in federal legislation. The *Länder* have become more autonomous in the organization of their public administration. The price they pay is: they have less influence on federal legislation, because they lose their voice in the *Bundesrat*. Should the federal level still decide to make laws that infringe on the autonomy of the *Länder* when executing federal law, the *Länder* are entitled to opt out and make their own rules. This is a device that works in parallel to the opt-out legislation described above, and which includes the *lex posterior* rule.

2.3. A short-term loosening of federal financial steering

A long-standing complaint of the supporters of regional autonomy has been the indirect policy control of *Länder* affairs by the federal government. This was organized in the context of a political abuse of financial instruments (subsidies/co-financing) by the federal government. After 2006, it was forbidden for the federal government to co-finance policies that are in the exclusive competence of the *Länder* (the so-called no co-operation rule. The enemies of this rule dubbed it: the disallowance of political co-operation rule). Why was federal- *Länder* co-operation a problem? In the past the federal level had used financial incentives even in policy fields were it had no competences to steer *Länder* policies and thereby reduced Länder autonomy even further. The new rule became a mixed blessing for the *Länder*. They gained some formal autonomy, but because of their budgetary problems and the lack of federal funds, new policy problems (such as the maintenance of schools) developed. From the outset, much criticism was directed against a separation of *Länder* and federal responsibilities. Those wanting better policy results did not see

any benefit in keeping the federal money out of local and regional affairs. They campaigned for an end to the no co-operation rule.

The democratic credentials of federalism, such as self-rule, did not bear much weight in their eyes. After all, another strategy to end the underfinancing of the *Länder* has always been available: give them fewer tasks or, much better: give them more money. The general public remained uninterested in who does what in German federalism. No German politician tried to connect the 2006 reforms with the idea of bringing democracy closer to the people via the *Länder*. Though the Bavarian Prime Minister, Edmund Stoiber, who spoke for the Conservatives, called the 2006 reforms the "mother of all reforms", the result of the reforms remained modest, if one remembers the original demands: more *Länder* autonomy and a clear separation of responsibilities of the federal government and the *Länder*. The 2006 reform was a typical political compromise with package deals that look ugly from the outside, but are seen as political works of art by insiders. Just how seriously the German political elite took the reform project as a step to more democracy was best illustrated by the fact that the reform went through Parliament when the whole of Germany was enjoying the 2006 soccer world cup in Germany—a good time to bury news rather than spread it.

2.4. Meagre results[7]

Not only was the communication of the 2006 reform characterized by a lack of transparency, there was also a great amount of distrust between the political parties involved in the reform process, especially with regard to the financial consequences of the reform. The result was that even agreements on limited payments whenever federal-*Länder* co-financing was to be phased out were given constitutional status. They were written into the constitution so that no government with a majority in parliament and *Bundesrat* could alter them. Changes of the constitution need a two-thirds majority in both institutions, which in this case guarantees the status quo. The victim of this

7. By the self-defined standards of the federalism reformers who had announced the "mother of all reforms" and by the standard of greater diversity of policy outputs and more autonomy of the *Länder* parliaments.

kind of search for safeguards is the constitution. Its article 143 now looks like a collection of left-overs.

Länder parliaments were probably most disappointed by the 2006 federalism reform. The political executives (in the case of the *Länder*, the *Bundesrat*) achieved greater influence. The new legislative powers of the *Länder* were marginal and the decisive question of their autonomy was hardly dealt with. Some of the new *Länder* competences are highly visible, but visibility is not the same as importance. These new competences include the rights to decide on shop closing hours, the administration of prisons, legislation concerning meetings in public, homes for old age pensioners and other social groups, restaurants (including no-smoking rules), gambling halls, fairs, exhibitions, markets, some aspects of housing policies, the purchase of agricultural land and land lease, "social" noise of children, sports events etc., the salaries of *Länder* civil servants and their career patterns, university law and the building of universities, and laws concerning journalism.

For a short period of time Germany went through hot public debates concerning no-smoking rules and shop closing hours. For budgetary reasons the autonomy that the *Länder* now have with regard to the salaries and pensions of their civil servants is of major importance to them. Unsurprisingly in a federal country without federalists, the first reaction of the *Länder* governments and *Länder* parliaments, when they got their new competences, was a preference for uniformity. They seriously asked the question, should we not co-ordinate our legislation with that of the other *Länder* to avoid differences between the *Länder*. Diversity, the very essence of federalism, was seen as a threat. Though at present different no-smoking rules in the *Länder* exist, most Germans believe that this is a bad thing, and that there should be the same rules for the whole of Germany. One could even hear the argument that visitors to Germany could get confused by too much diversity of non-smoking rules.[8] Competition of policy-making in a federal state is seen as violating the norms of unitary federalism. There was a public outcry when the *Land* of Hesse offered better salaries than the neighbouring *Länder* to attract teachers whose supply was short everywhere.

8. See for example, Wiesel, *Nichtraucherschutz*.

2.5. No increased financial autonomy for the *Länder*

At the heart of political autonomy in federalism is financial autonomy. The German *Länder* were (until 2009) free in their spending decisions, but have never been able to control their income. In Germany, tax laws are almost exclusively made on the federal level. About 75 per cent of all tax income is created by taxes jointly administered by the federal and the *Länder* level (income tax, corporate tax and VAT). This tax income is then shared by the federal government and the *Länder* according to certain formulas laid down in the constitution. The system as such, as well as the details of this system, are virtually unknown to ordinary citizens. If it wanted to achieve more *Länder* autonomy, the 2006 reform would have needed to allocate tax income to the *Länder*, or at least to define independent resources for *Länder* taxes.

The 2006 reformers tried to avoid this difficult question. The poorer *Länder* have no incentives to shoulder responsibility for their income, because they need federal co-financing in any case. Some minor adjustments of symbolic value that overburdened the poorer *Länder* were still made by the 2006 reform. It has been agreed that after federalism reform and a long waiting period until 2019, the co-financing of the construction of universities and university hospitals and the building of local streets, out of the federal budget, will end, and that the federal government will no longer provide incentives for the building of council houses. After 2019 the *Länder* will shoulder these new financial responsibilities, but without a corresponding sum of money provided by the federal budget. A more profound fiscal reform was postponed to the next reform of federalism, de facto to 2009. What the reform clarified was the problem of unfunded mandates, i.e. the fact that the federal level legislates and then local government has to cover the cost of legislation. The federal level is now no longer allowed to create mandates with financial consequences for local government.

2.6. Less veto power for the *Bundesrat*?

For the federal government the most important incentive for the 2006 federalism reform and for compromises with the *Länder* was the chance to reform the *Bundesrat* and to reduce its veto power. Federal governments want to govern with their parliamentary majorities, and do not want to take an opposition

majority of *Länder* executives in the *Bundesrat* into account. As mentioned above, one important device the reform used to come closer to this goal was to allow an autonomous administration of federal law by the *Länder*. This was supposed to reduce the number of bills for which the *Länder* could claim a role for the *Bundesrat* in federal decision-making. Whether this reform reached its quantitative goal, i.e. to reduce the share of bills for which the *Bundesrat* has a veto from about 60% to about 30%, is—when we look at the data we have for the years after the reform—not exactly clear. A quantitative reduction of the number of bills that need the consent of the *Bundesrat* is, however, undisputed.[9]

But does this matter? The answer is no, because a quantitative reduction of bills that need the consent of the *Bundesrat* is of secondary importance. Such bills include many policies or changes of law of minor importance or policies that are uncontroversial. What really matters is that because of interlocking policy-making in Germany, very important policy fields with a high political profile, such as health policies or tax policies, still need the consent of the *Bundesrat*. With regard to the aim of a diminished role of the *Bundesrat* in federal legislation, however, the 2006 reform also had adverse effects. It widened the field for a *Bundesrat* veto, because now the *Bundesrat* has to agree to federal legislation when federal legislation implies the transfer of money or money equivalents, including services, to a third party. Most laws have such financial consequences. All in all, the 2006 reform took only tentative steps in the direction of a separation and disentanglement of central government and *Länder* competences. Joint decision-making in the *Bundesrat* remained the rule. The federal government was in part successful in improving top down, "efficient" government, because it reduced the number of bills for which the consent of the *Bundesrat* was needed.

2.7. Fit for Europe?

The federal government can also be seen as the winner with regard to the decisions of the 2006 federalism reform that concerned European integration. One of its aims was to solve the "German question", a question that seems to have been invented by the federal government, because it sees the *Länder* as unwelcome competitors in Brussels. Germany confuses its partners and

9. See for example, Risse, "Zur Entwicklung der Zustimmungsbedürftigkeit".

the EU institutions by speaking with too many voices in Brussels, the government argued. From the government's perspective federalism reform was supposed to reduce the role of the *Länder* in Brussels. The *Länder* had, however, hoped that federalism reform would provide a chance to improve their influence. Their justification was the principle of subsidiarity. The *Länder* argued that much needed to be done. But even today the German *Länder* are still not part of the permanent representation of Germany in Brussels. They have their own offices, which they regard as quasi-embassies, and which the federal government sees more as information offices. The *Länder* compete with one another and the federal government for the attention of EU institutions. German federalism remains uncoordinated in Brussels, and the *Länder* have not found a way to stop the transfer of their powers to Brussels. Whether subsidiarity control and/or legal proceedings at the European Court, as guaranteed by the Lisbon Treaty, will bring some relief here, is disputable. In many cases, for example with regard to the media competence of the *Länder*, the Lisbon Treaty comes much too late.

The 2006 federalism reform was crystal clear, when it came to new financial consequences of Germany's EU-membership for the *Länder*. The *Länder* now have to share the financial burden, if Germany is punished by the EU for violating the Maastricht criteria, or if the European Court fines Germany for non-compliance with a directive or an order. Federalism reform was also explicit with regard to the few occasions when the *Länder* have the right to speak for Germany in the EU Council of Ministers. The role of the *Länder* was diminished. Instead of being able to claim a European role whenever *Länder* competences are on the European agenda, as the old paragraph in the German constitution read, the *Länder* now have a more restricted role. The new paragraph in the German constitution is precise and allows a representation of Germany by the *Länder* only when the following policy fields are on the agenda of the EU Council of Ministers: education in schools, culture, and the media. The reform Commission did not produce the fresh approach for German multi-level government in the EU the *Länder* had hoped for.

2.8. Where did German federalism stand after 2006?

The 2006 federalism reform was certainly not a very bold step to transform Germany's federalism. It adjusted some minor rules of federal- *Länder*

co-operation and had the new idea of a very limited possible policy opt-out for the *Länder* with regard to federal legislation. The reform changed very little with regard to the unitary nature of German federalism. What started as a promise to re-federalize German federalism ended in marginal reforms that found neither political nor societal support. The *Länder* took what they could get, because some changes looked as if they were advantageous. What they did not do—though some of them paid lip service to this idea—was to open a debate on the original spirit of the constitution. Some were content that they can now vary tax rates for the purchase of real estate. The rate was two per cent before 2006 for all the *Länder*, and it was raised by most *Länder* governments (especially the left-wing governments) to up to 6.5 per cent in 2017.[10]

Underlying the 2006 reform process, there was always the question: why should politicians invest political capital in a reform the population was not interested in, and which does not win them elections? Federalism reform was in its essence and methodologically a top-down reform organized by the political executives of the national and *Länder* governments, although officially negotiations were held between the federal parliament and the *Länder* executives. In the end, two civil servants, as ghost writers of the leading politicians of the two major political camps, the Conservatives and the Social Democrats, which were about to form a grand coalition, wrote down the compromises found for the reforms.[11] More than the wish to reform federalism the intention to form a grand coalition made the reform possible, because only the grand coalition could guarantee the necessary two-third majorities in the *Bundesrat* and in parliament. Before it was decided that the grand coalition would be formed, an education issue was brought forward by the Social Democrats to justify their opposition to any reform.

The belief among segments of the political elite that the 2006 reform was supposed to be a turning point for German federalism soon lost the weak support it had. The idea that a more pronounced vertical separation of powers would be good for federalism, that it would increase democratic responsiveness and would give the *Länder* parliaments new strength, was confronted with the most serious obstacle of all, the lack of financial resources on the

10. *Frankfurter Allgemeine Zeitung*, September 21, 16.

11. Holtschneider and Schön, *Die Reform*.

Länder level. There are several examples for this problem and parallel to the Commission's work on federalism reform, the federal government and the *Länder* executives negotiated new policies co-financed by the *Länder* and the federal government.[12] This is proof that the decision-makers themselves took the separation of competences of the *Länder* and the federal level, which they praised as a tool for a new era of German federalism, not very seriously.

The political guarantee of access to nursery schools for all children in Germany is one example of business as usual when the Commission debated the disentanglement of federal and regional tasks. Nursery schools are the responsibility of local governments. As the 2006 reform no longer allowed unfunded mandates, in theory the federal parliament could not make a law that forces local government to provide funds for nursery schools. Again in theory, the federal parliament was also unable to make such a law for another reason: it infringes on *Länder* competences. But all political parties wanted such a guarantee of general access to nursery schools for German children. Both the *Länder* and local governments were, however, unable to cover the costs this decision was to cause. The federal level was willing to pay, but federalism reform no longer allowed federal intervention.

Instead of a new initiative to revise the 2006 constitutional reform and its principles, the political decision-makers found a way around the very reform they had just agreed upon. Pragmatism was more important than the strengthening of the *Länder* autonomy. How was the constitution sidestepped? Step 1: the federal government creates a special budget for public investments. The *Länder* can apply for subsidies to invest in buildings. When the *Länder* receive this money, they pass it on to their local governments that now have the resources to build nursery schools. Step 2: School buildings without staff are nonsense. One has to find a way to pay the staff's salaries. So, the federal government transfers VAT income to the fiscal equalization fund that provides financial resources for the *Länder*. In theory and from a legal point-of-view, the *Länder* were free to do whatever they wanted with a greater share of federal tax income as part of the fiscal equalization process. To prevent the *Länder* from using this freedom, an administrative agreement between the federal government and the *Länder* was signed that forces the latter to use the new money for the salaries of the nursery school staff. This

12. Scharpf, *Föderalismusreform*.

agreement was, of course, in a legal sense, void, but as all parties involved accepted it, it will not be challenged in the Federal Administrative Court. After all, everybody involved knew that the only purpose of this whole procedure was to break constitutional law.

The example shows that for politicians (and the population) in Germany only policy outputs count. The input side of politics, the questions of political participation, *Länder* autonomy, regional democracy or an adequate role of the *Länder* parliaments in German democracy, is not on anybody's agenda anymore. The dominant role of the federal government and the strengthening of unitary federalism is accepted without political opposition. The few voices that in 2006 could still be heard in favour of a more decentralized federalism are no longer of any importance.

3. 2009: A federalism reform with almost no federal content[13]

The great hope with regard to the 2009 federalism reform was that it would add the separation of financial powers to the separation of competences aimed at with the 2006 federalism reform. In 2009, federalism reform was also initiated to settle financial equalization disputes between the *Länder* and the federal government and among the *Länder*. The horizontal equalization model used so far created no positive incentives for fiscal prudence of a single *Land*. The *Länder* that were successful, had to transfer the lion's share of their above average income to the poorer ones, and if the poorer *Länder* made no efforts to improve their lot, the other *Länder* and the federal government ensured that at the end of the day they had just as many resources and in some cases even more resources than the economically more successful *Länder*. Plans were also made for a new system with regard to the beneficiary (*Länder* or federal level) of tax receipts.

As there was a general fear in each of the *Länder* (and especially in the poorer ones) that it could be one of the losers if the problems just mentioned came to the conference table, in 2009 the reform of the horizontal financial equalization model was (again) postponed. Instead—inspired by pressures from

13. Sturm, "Föderalismusreform II"; Sturm, "Verfassungsrechtliche Schuldenbremsen".

Brussels—the idea of a mechanism to avoid annual budget deficits moved into the reformers' focus of attention. This is, of course, at least at first sight, no federalism issue. The only federal aspect deficit controls have is that *Länder* deficits matter. In Germany the public deficit in the Eurostat definition is made up of the federal deficit, the *Länder* and local government deficits and the deficits of all types of social insurance.

It is telling that this time the Commission that prepared the reform from the outset worked with no outside expertise. Political decision-makers did not want to involve "outsiders" when their most important interest, their financial resources, were discussed. A lesson from the 2006 reform effort was—at least for the politicians involved—that non-politicians only create obstacles in their deliberations and lack a proper understanding of how the game of politics is played.[14] The result of the Commission's work was a balanced budget proposal for both the federal and all *Länder* budgets. This was written into the federal constitution with two-third majorities of the federal parliament and the *Bundesrat*.

There was no outcry from the *Länder* parliaments. This tells us a lot about Germany's unitary interpretation of federalism. In other countries with federal constitutions and balanced budget rules on the state/provincial level, such as the US or Canada, the respective state or provincial parliament decides on a balanced budget rule for the state/province. In federalism, regions have budgetary autonomy, they are sovereign in this respect, and the same goes, of course, for the German *Länder*. Political decision-makers in Germany turned federalism upside-down and decided on the national level to limit regional budgetary autonomy without the consent of any regional parliament, but with the support of regional executives in the *Bundesrat*. This goes against constitutional provisions on the *Länder* level and violates the principle of a separation of powers. Regional executives cannot come together and restrict the autonomy of *Länder* legislatives. Not all the *Länder* parliaments, but most of them, just a few years later (shamefully) changed their *Länder* constitutions and included a balanced budget requirement. The German public did not even take notice of this obvious attack on the spirit of federalism. Unitary solutions in themselves seemed convincing, the disregard of *Länder* constitutions did not matter.

14. Sturm, *Wie funktioniert Politik?*

With the 2009 federalism reform, German politicians invented a device that was supposed to help them overcome their own inability to balance the annual budget without creating new debt. It is based on Keynesian assumptions and relies heavily on mathematical models of economists. From the perspective of German federalism four aspects of the 2009 reform are important:

1. There is an imbalance regarding the right to go into debt when the federal level and the *Länder* are compared.

2. A permanent subsidy for those *Länder* too poor to balance their budgets on time is possible.

3. The amount of joint policy-making of the federal and the *Länder* governments increased again.

4. No convincing mechanism to enforce the deficit rules exists.

The 2009 federalism reform assumes that a budget is balanced when it is balanced over the economic cycle. However, for the federal budget, by definition, a balance is already achieved when the budget decision produces a moderate deficit of 0.35% of the GDP. The argument is that the federal government needs to be able to start new political initiatives for which public debt may be a suitable instrument, and for this reason it should be allowed to declare an imbalanced budget as balanced. The *Länder* are not seen in the same category. They, as well as the federal government, may ignore the balanced budget rule, if a downturn of the economic cycle forces them to do so, but in principle they have the obligation of a zero deficit. The richer *Länder* had made the point that *Länder* already in debt today should not have the right to go into deeper debt (however limited the size of new financial obligations may be), because finally the richer *Länder* will have to bail out the poorer ones via the horizontal financial equalization mechanism. The federal government had to balance its budget by 2016, the *Länder* have to do so by 2020, if no catastrophic circumstances or natural disasters beyond their control arise that force them to make an exception to this rule.

Four *Länder*: Saarland, Berlin, Sachsen-Anhalt and Schleswig-Holstein, receive 800 Million Euro annually from the other *Länder* and the federal government to enable them to balance their budgets by 2020. This aid will be monitored annually by a Stability Council. The Council can sanction any

of the four *Länder* if they do not make use of their resources according to the rules. Sanctions include the repayment of money received. The newly invented Stability Council, a joint federal- *Länder* institution, is exactly the opposite of an institution that would be based on a separation of competences. It strengthens the unitary character of Germany's federalism. The Council consists of the Federal Finance Minister, the *Länder* Finance Ministers and the Federal Economics Minister. It is jointly chaired by the Federal Finance Minister and the current chairperson of the assembly of *Länder* Finance Ministers. Instead of making progress with a separation of political responsibilities, we are back in the mainstream of German joint policy-making. After 2016 or 2020 the Stability Council may criticize the *Länder* or even the federal government when they produce budget deficits, but it has less power of enforcement than the European Stability and Growth Pact on which it was modelled. It can ask for reports and multiyear budget plans, it can decide that a *Länder* is breaking the rules, but ultimately it can only ask the respective *Länder* to do better in the future. In other words, it can raise its voice, but nothing spectacular happens if no one listens.

So far, the Stability Council (an important federal institution, but unknown to the general public) has taken the control of the four *Länder* singled out for special treatment seriously. There are, however, severe doubts whether all the *Länder* will be able to balance their budgets by 2020. The 2009 federalism reform did not make the *Länder* better off. But it certainly further reduced their autonomy. As mentioned, the *Länder* do not control (most of) their income, and now—without the right to go into debt, and still underfinanced—their capacity to decide on expenditure was severely restricted. If *Länder* are in financial need, there is only one way to go: ask for federal money, and if necessary give up more *Länder* competences in exchange.

4. The 2017 reform: the *Länder* sell out[15]

The 2009 reform did not provide a solution for the most pressing problem of Germany's federalism: the imminent end of three co-financing agreements between the federal government and the *Länder*. In 2019 the financial equal-

15. Renzsch, "Vom 'brüderlichen' zum 'väterlichen' Föderalismus"; Hennecke, "Auf der Intensivstation", 6.

ization formula will come to its legal conclusion. The same will be true for transfers to the East German *Länder* in the framework of the so-called Solidarity Pact and for the federal subsidies regarding the tasks that became exclusive *Länder* competences after the 2006 federalism reform and were still co-financed by the federal budget for a limited time to facilitate the necessary adjustments in the *Länder*.

In contrast to 2009, the *Länder* prime ministers got together and found a solution in December 2015 that—not surprisingly—was based on a formula that demanded more money from the federal government. In 2016 the federal government entered into negotiations, but with the precondition that the *Länder* had to trade autonomy and competences for the financial aid they expected. Only a handful of politicians took part in the negotiations, the federal parliament was not substantially involved, although its budget committee organized some hearings that did not change, however, the compromise reached. In June 2017 parliament and the *Bundesrat* accepted thirteen changes of the constitution and additional legislation—the most profound revision of German federalism in the history of the post-war German constitution.

The 2017 reform ended the horizontal equalization arrangements between the *Länder*. It is hoped that this limits budgetary conflicts between richer and poorer *Länder*. Horizontal equalization, though in the past not the most important source of income for the poorer *Länder*, was always defended as an essential feature of German federalism. It was seen as a symbol of federal solidarity and had a quasi-ideological status. Overnight the *Länder* buried this ideology, because they believed there was a better way to organize financial resources. The federal government will increase the *Länder* share of the VAT income as of 2020. Richer *Länder* will get less than their share from this enlarged pool of resources, poorer ones will get more. At least this was the plan. A forecast by KPMG showed, however, that the redistributive effect expected has limits. All in all the richer *Länder* get richer and most of the poorer ones get poorer.[16] This may create new conflicts. But what is more important, most of the *Länder* now fully depend on the goodwill of the federal government to secure the financial resources they need. The federal government takes control. It even offers money for policy failures. Those

16. Results published in *Der Spiegel*, December 3, 2016, 37.

Länder with weak research performance in their universities, for example, can expect special federal aid.

The new federal architecture is further illustrated by the considerable price the *Länder* had to pay for the federal government's financial largesse. Article 104b of the Constitution now gives the federal government a say in those *Länder* policies it co-finances. This is exactly the opposite of the intention of the 2006 federalism reform that wanted to keep the federal level out of *Länder* decisions. The new Article 104c even allows the federal government a role in local affairs when it comes to local educational infrastructure. And the federal government can provide local governments with adequate financial means, if their respective *Land* does not make the financial provisions it should. There seems to be no limit for federal influence any more as long as the federal government is able to provide the necessary financial resources. An all-party consensus concluded (the Bavarian Conservatives of the CSU, and two independent-minded *Länder* prime ministers,[17] Armin Laschet (Conservative, North Rhine-Westphalia) and Winfried Kretschmann (Greens, Baden-Württemberg) seem to be the only ones that still hesitate) that we soon need a revision of the 2006 constitutional reform and an end to the no co-operation rule that prohibits federal interventions in *Länder* affairs. The 2017 reform also contradicts the 2009 reform, because it assumes that two *Länder* will not be able to balance their budgets as planned. Bremen and the Saarland are guaranteed an additional sum of 400 million Euro of federal money annually to help them balance their budgets. This kind of subsidization may go on forever, because no time limit is mentioned in the constitution.

The federal government also asked for the transfer of other *Länder* competences to the federal level. The *Länder* agreed to a federal control for the administration of taxes. The federal government assumes that richer *Länder* treat their taxpayers with more caution to attract investors. It hopes to avoid differences in the quality of regional supervision. The federal government widened its competences with the 2017 reform. There is, for example, a federal responsibility for motorways and long-distance roads, but the task of keeping this infrastructure in good shape was administered by the *Länder*

17. Kretschmann, Winfried and Armin Laschet, "Der Bund soll die Länder angemessen ausstatten", 8.

(obviously because of their proximity to infrastructure problems). The *Länder* had to give up this task. The federal government will take over in 2020 and has already announced that it will privatize road infrastructure maintenance. Privatization is seen as a convenient way to keep the costs of infrastructure maintenance off the books to avoid them making it more difficult to balance the federal budget. The specifics of privatization led to a conflict between the anti-market Social Democrats and the pro-market Conservatives in the federal government. The compromise found allows public-private partnerships for specific parts of the motorways and limits the ability of the new company to raise money on the markets.

The new financial arrangements of German federalism will come into force in 2020. A most peculiar article (143f) was added to the Constitution. It allows the federal government or three *Länder* governments to demand a renegotiation of the 2017 reform as of January 2031. If in five years (after 2031) no compromise is found, the 2020 arrangements must come to an end. This is a piece of unconstitutional law in the constitution. The legislator (the parliament(s)) does not decide upon legislative and even constitutional change, but governments (the executive should have no role in law-making). Germany's federalism is increasingly dominated by the arrangements of political executives. A comparable problem is the fact that the new arrangement for the administration of the motorways that was given constitutional status can be changed by routine Bundestag legislation. Without a revision of the constitution, where the responsibility is given to the federal level, and the necessary two-thirds majorities in the Bundestag and in the *Bundesrat* for constitutional change, administrative tasks in this field can be re-transferred to a *Land*. When he signed the 2017 reform bill into law, the Federal President—though he accepted the bill as a whole—remarked in a letter to Chancellor Angela Merkel and to the President of the Federal Parliament (*Bundestag*) that in his view this provision is breaking the constitution. Nothing has followed, so far, from the President's advice. The 2017 reform not only strengthened unitary federalism in Germany, but also executive federalism. The driving force behind the reform were the *Länder* prime ministers who acted as super pragmatists, even disregarding constitutional rules, as long as they could secure additional income for their *Länder*.

With regard to its dependence on federal financial largesse, Berlin is in a special position. As a *Land* it is poor, and it profited in the past from the solidarity of the other *Länder*. The new financial equalization agreement

broadens its financial base. In addition, Berlin gets special federal aid for being the German capital. This aid is legitimized by a special treaty with the federal government. The current arrangement started in 2018 and will be in force till 2027. Berlin receives 50 million Euro annually, a total of two billion Euro.[18]

5. Executive federalism

As the experience of the three most recent reforms of federalism in Germany shows, the decisions on the future of Germany's federalism were made by executive bargaining processes. Executive dominance sidelined regional parliaments. Executives of all political levels took on the role of legislators who dictated the future role of subnational governments via national constitutional change. With few exceptions, federalism reform was, surprisingly, not a topic that had a high profile in regional parliamentary debates, especially regarding the 2006 reform.

What explains the dominant role of political executives in German federalism? At least three interpretations can be offered: (1) the party political colonization of political institutions. The bargaining position with regard to federalism reforms was less dependent on regional preferences than on the logic of national party politics. Both the representatives of the federal level and the *Länder* representatives often put party discipline first. The most telling example is the 2006 federalism reform that only came into existence because the formation of a grand coalition after the 2005 national election allowed a political compromise between the Conservatives and the Social Democrats.[19] (2) The German coalition state. Coalitions on all levels of government can only work if parliaments guarantee majority support. They themselves are no longer the place where political compromises are hammered out. Bargaining in coalitions and between coalitions of different color puts political executives in the driver's seat when decisions are made. (3) The office-seeking logic. Political executives seek re-election. German political parties define their priorities with an eye on impending elections, even if this means a disregard for the constitutional order of competences. *Länder*

18. *Frankfurter Allgemeine Zeitung*, May 9, 2017, 6.

19. Sturm, "Die Föderalismusreform".

executives, thanks to their party political majority in the *Länder* parliaments, are able to silence regional parliaments; sometimes they do not bother to involve them in decision-making. One should not forget that the loss of regional autonomy of parliaments and the increase of federal- *Länder* joint decisions is only a disadvantage for *Länder* parliaments, not *Länder* governments, which increase their influence in national politics via the *Bundesrat* in this process.

In addition to the *Bundesrat*, the conferences of regional ministers and heads of regional governments are coordinating regional executives, mostly with their federal counterparts. One of the last strongholds of *Länder* autonomy is education. All political parties agree that the future of education is essential for Germany's future. In 2006, some *Länder* executives still thought they could defend their regional autonomy by making education an exclusive core competence of the *Länder*. Twelve years later, during the negotiations of the political parties for a national coalition in 2018, education was dealt with by federal decision-makers of all parties, although this topic is still formally *ultra vires* for them. Whatever the constitutional status of a policy field, national decision-makers (with the consent of regional heads of state that were for example involved in the negotiations to form a national coalition in Germany) do not hesitate to intervene.

6. Output orientation of German politics

German political discourse has a strong output orientation that works in favor of unitary federalism. The yardstick for a successful output orientation of German politics nowadays is social justice (mostly understood as additional social expenditure). The German constitution characterizes Germany as a social federal state (*sozialer Bundesstaat*). Political decision-makers often see this constitutional precondition of German politics as justification for the welfare state in Germany. A problem with German federalism may arise, however, if the respect for the welfare state leads to a contempt for diversity. It is quite understandable that welfare provisions should be similar or equal all over Germany (although federalism in theory allows diversity here), but it is a misconception of the opportunities federal states have if each expression of federal diversity of social policies is seen as problematic. Political executives, trapped in the logic of a very broad-based coalition state, tend to look for consensus in German politics, even if this means opting for the lowest

common denominator. So, it has become hard to defend diversity of political outputs in the German political context. Still, as public administration relies on the *Länder*, there remains a federal element—reduced, however, primarily to political decision-making procedures. For this reason, unitary federalism in Germany is often seen in policy-making as an over-complicated way to make simple decisions. Complexity, so the argument goes, can be reduced by a national solution; in other words, more unitary federalism.

7. The case of Bavaria: A party tries to play the autonomy card[20]

The case of Bavaria demonstrates the contradictions unitary federalism produces. On the one hand, Bavarian political executives fight hard for a leading role in national politics and accept a reduction in regional autonomy as the price to be paid. On the other hand, whenever this seems politically useful, the Bavarian government claims that it has the right to act on its own. For this Bavarian strategy, unitary federalism has now set up major obstacles, however. Nevertheless, regional decision-makers tend to communicate a regional ability to act.

Bavaria is a special case in German politics. The *Land* has developed a strong regional identity. And this regional identity finds its political expression not only on the *Land* level, but also on the federal level. There is a widespread misunderstanding that what the governing Conservatives of the CSU want is more autonomy for Bavaria or a greater decentralization of state powers in Germany. This misunderstanding is nurtured by the party itself and its self-styled role as champion of federalism. The CSU as political party is, indeed, a separate political entity, but its purpose is to play a role in national politics. To secure such a role it uses its regional base. Here it needs to be successful. No matter what the CSU's allies in its conservative sister party CDU outside Bavaria want, the CSU will always have only one priority: an absolute majority of seats in the Bavarian parliament. This makes the CSU an awkward partner for the Conservatives in the rest of Germany, at least as long as the Bavarian electorate has preferences different from those of Germany as a whole. Symbolic gestures of anti-Berlin politics may help to

20. Sturm, "Counter-Secessionism".

close the regional ranks, but should not be misunderstood as an expression of autonomist politics. The overarching aim of the CSU is not to strengthen the separate political existence of a Bavarian polity.

In 2018, in the context of an impending Bavarian election, the CSU felt forced to test the limits of the remaining autonomy of the German *Länder*. It started its own initiative to deal with asylum-seekers and refugees, a topic of decisive influence on the 2018 election in Bavaria. The "Bavarian" plan included among other ideas, the hiring of smaller planes to fly illegal immigrants, accompanied by Bavarian police, back home (and not to wait for a bigger national flight organized by the national border police), to support asylum-seekers with non-monetary aid instead of cash, and to work with the federal government in the preparation of centres for incoming refugees. Here, fast decisions are supposed to be made as to whether refugees get the permission to stay or whether they have to go back to their home countries. The federal home secretary is the chairman of the CSU, which facilitates Bavarian-federal co-operation. But, even under these favourable circumstances the intention of the Bavarian government to opt for its own strategy in the politically contested refugee question does not create many opportunities. Unitary federalism does not leave much room for regional autonomy. It is an open legal question as to whether Bavarian police should be allowed to go abroad. In fact, everything the Bavarian state can do is limited to the field of public administration. Bavaria invented some new procedures to implement federal law, but immigration law is national and international law. Whatever the further-reaching intentions of the Bavarian government may imply, nothing more than executing national law is possible.

8. Conclusion

In recent decades, Germany's federalism has become more unitary. Simple models of path dependency do not suffice to explain the profound constitutional change we are witnessing. The nearest thing to a convincing explanation is a political culture argument that refers to the mindset of German policy-makers and their priorities. Very rarely do they prioritize participation and democracy. Most of the time they think about efficiency, results, and electoral success. Now and then there is a policy window that allows the re-federalization of German politics, as parts of the 2006 federalism reform

did. And one can never predict when the *Länder* prime ministers will get together to protest against the intrusion of the federal government, as they did in January 2017, for example, when the Federal Home Secretary wanted to centralize the internal security apparatus, or, when the Federal Minister of Economy started to subsidize regional electricity grids for green electric power, in the same month.

Just like the federal government's interventions, the political initiatives of the *Länder* are not guided by a federal vision. What counts is political control and the expected efficiency of national solutions for policy problems (especially from the perspective of the federal government), improved policy outputs (especially in the view of the *Länder*), and electoral success, an aim of all parties on all political levels. What has no influence on decision-making in Germany is proximity to the promise federalism makes, namely more regional autonomy, bringing politics closer to the people, regional participation, accountability and transparency. German federalism may at first sight not look like a unitary state; in day-to-day politics it has developed many political equivalents. With the almost complete loss of control over their budgets, the *Länder* developed into administrative units of the nation-state. This is not the end of conflicts between the national and the federal level. As the Bavarian effort to develop a regional refugee policy demonstrates, such conflict may have a high profile, but in essence, it can only be about the administration of a policy.

The 2017 federal coalition treaty (a coalition of Conservatives and Social Democrats) announced a National Council with the task of planning education. This is in line with executive federalism, and the assumption that more unitary federalism is the solution for policy problems. The aim of the coalition partners is to create an institution that streamlines the *Länder* educational systems and raises their standards. A higher quality and a comparable level of educational achievement all over Germany is the goal. Typically, the debate on how to set up such a National Council that looks after a core competence of the *Länder* did not focus either on education or on the democratic implications of centralizing education policies. The decisive question seems to be who is in control, the federal government that wants to shape *Länder* policies or the representatives of the *Länder* who try to defend at least some autonomy in this field.

Federalism is the battleground of political executives on the *Länder* and the national level. The federal government is in the best position, because it has the financial means that win arguments. Increasingly, shared rule means de facto not equality of partners but the dominance of the federal level. Self-rule has been sidelined. Germany's federalism, not least because the Germans do not mind, has become a prime example of unitary federalism.

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