

CHAPTER 2

THE INSTITUTIONS OF GOVERNANCE

Outline

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Quote of Note:

"History is the sum total of things that could have been avoided."

Konrad Adenauer

The Federal Republic of Germany had an uncertain beginning in 1949. The *New York Times* description of the first session of the Bundestag described this tentative start:

"Germany made a fresh start yesterday with the opening of the Parliament of the Federal Republic. The Pedagogical Institute, one of the few whole buildings left of the shattered University of Bonn, was enlarged almost overnight to serve as the capitol of a people's government that comes to life again after sixteen years of dictatorship, war and military occupation. The seat of the new government is provisional. Its scope is strictly limited by the Occupation Statute. For a long time to come the major policies of the new state will be subject to the veto of the Western Powers and to the crippling effect of the partition of the country." (*New York Times*, September 8, 1949, p. 28).

The opening of Parliament also began under rainy skies, with few citizens there to celebrate the new beginning.

The [Basic Law](#) of 1949 also displayed this provisional condition. It was intended to create a political system that could temporarily serve the Federal Republic until both halves of Germany were reunited. The preamble stated the intention "to give a new order to political life for a transitional period." Article 146, the final article of the Basic Law, looked forward to the eventual reunification of Germany under a new political system: "this Basic Law shall cease to be in force on the day on which a constitution adopted by a free decision of the German people comes into force."[\(1\)](#)

Ironically, the Federal Republic celebrated the fortieth anniversary of the Basic Law in the summer of 1989 with a recognition of how this temporary document had achieved some permanence. The political institutions that originally were meant to last just a few years had functioned effectively for over a generation. Although it was a system created to avoid the failures of the past, the institutions of the Federal Republic served the present with a record of stable and efficient government.

Similarly, as the German Democratic Republic (GDR) celebrated its fortieth anniversary in 1989, few politicians in the East foresaw what lay immediately over the horizon. Political reforms in Poland and Hungary emboldened opposition groups in the GDR. At first, there were prayer services in churches, where people discussed their desire for freedom and the end of the communist regime. This led to the collapse of the GDR and its rapid unification with the West as described in the previous chapter. Furthermore, the formal integration of the new eastern states into the legal, economic and social systems of the FRG means that the system of government essentially follows the framework designed by the Basic Law of 1949.

This chapter describes these structures of government, and how they function. In addition, we briefly describe how unification and the process of European unification may affect the structure of government in contemporary Germany.

Designing the Political System

The Federal Republic represents a classic example of political engineering. Political institutions did not simply evolve into their present forms, as they have in Britain or the United States. Instead, they were designed with specific goals in mind. The framers of the Basic Law attempted to address the structural weaknesses of the Weimar Republic and the Third Reich. The content of the Basic Law thus follows directly from the German historical experiences that were discussed in the previous chapter. In addition, the authors of the Basic Law had to satisfy the Allied occupation authorities who held veto powers over the final document. The Basic Law thus reflects the convergence of several forces affecting the political development of postwar West Germany. [\(2\)](#)

- First, the authors of the Basic Law wanted to design a political system that would avoid the structural weaknesses that contributed to the collapse of the Weimar Republic. The Basic Law needed to establish clearer lines of political authority and responsibility.
- Second, the new political system should contain more extensive checks and balances to avoid the usurpation of power that occurred in the Third Reich. An obvious need also existed for institutional limits on extremist and anti-system forces that might attempt to destabilize and subvert the democratic political order.
- Third, they wanted to maintain some historical continuity in political institutions so people would be familiar with the new system. The starting point was a parliamentary system of democracy, similar to that used in the Weimar Republic. Most Germans were familiar with the workings of a parliamentary system, as were the British and French authorities.
- Fourth, a general consensus supported a federal system of government. Both the Second Empire and the Weimar Republic had contained federal structures. The Allies further saw federalism as a means of preventing the emergence of a strong centralized German government that again might marshal the power of Hitler's Reich.
- Finally, the framers were concerned about the public's commitment to democratic values and the processes of democratic governance. Many West German elites displayed an open disdain for the average citizen that was well rooted in German political tradition. Peter Merkl wrote that "the framers of the Basic Law were motivated by a deep distrust of the common man, who, in their opinion, by his support of Hitler had convincingly demonstrated his inability to control his own affairs."[\(3\)](#) This harsh view of the public conveniently overlooked the role of political elites in orchestrating Weimar's collapse, but it was a view shared by the Allies. The Basic Law would therefore stress institutional structures that would restrain the excesses of the popular will and mediate the direct influence of the public on politics.

[Online copy of the Basic Law \(the first 20 Articles are the German Bill of Rights\)](#)

In sum, the political system of the Federal Republic is a direct extension of the historical experiences described in Chapter 1. It was designed primarily to address the political and institutional problems inherited from prewar Germany. Over the past forty years this structure has undergone some minor modifications, and some additional changes accompanied German union.⁽⁴⁾ Now this system designed for the past will be tested by the problems of a unified Germany in the future.

Institutions and Structure of Government

The style of the Basic Law reflects a fundamental characteristic of the political culture. German political norms emphasize strong respect for legal principles and a taste for legal details. Political relations presumably require clearly delineate rules of law in order for the system to function smoothly. Legal precepts also possess special legitimacy (a *Rechtsstaat* orientation). To guarantee basic human rights, they are defined as legal entitlements in the first twenty articles of the Basic Law. To strengthen the authority of the state, the Basic Law defines the workings of the political system with unusual precision. Consequently, despite its supposedly provisional nature, the articles of the Basic Law carefully designed the political institutions of the Federal Republic.

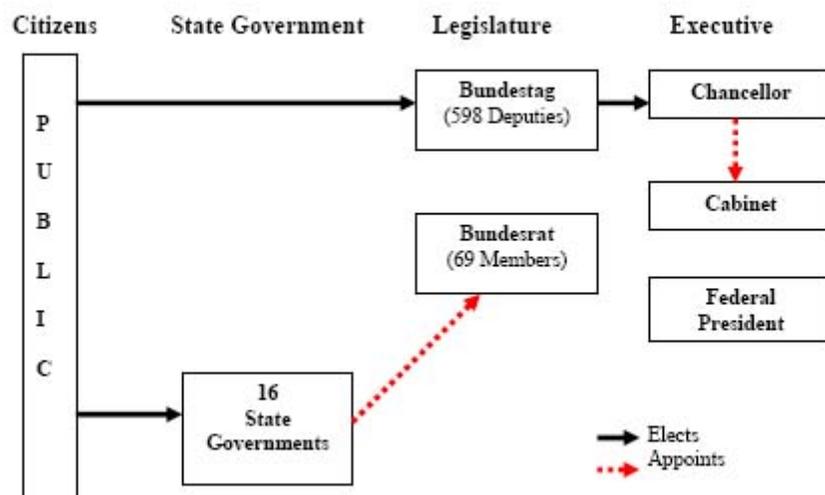
A Federal System

Germany has a strong tradition of regional government, and one of the first steps of political reconstruction by the Allied occupation forces was to create state (*Länder*) governments. A few of the states maintained their historical tradition as prewar regions. However, in most instances the new states were constructed by the occupation forces to facilitate the administration of postwar Germany. After further consolidation, the Federal Republic is now organized into 16 *Länder*.⁽⁵⁾ Ten states came from the former West Germany, five from the former East Germany, and West and East Berlin were merged into the final state. Although the Federal Republic is a relatively small-sized nation by American standards, the states vary considerably in their cultural, economic, and political tendencies (see chapter 3).

The Basic Law created a federal system of government which divides political power between the federal government (*Bund*) and the state governments (see figure 2.1). The structure of state governments is based on a parliamentary system modeled after the national government.

Most states have a unicameral legislature, normally called a *Landtag*, that is directly elected by popular vote.⁽⁶⁾ The party, or coalition of parties, that controls the legislature selects a *minister president* to head the state government. The minister president appoints a cabinet to administer the state agencies and perform the executive functions of the state government.

Figure 2.1 The Structure of Government



Dalton, Politics in Germany, chapter 2

The minister presidents are important national figures in German politics. The federal system of government enables them to wield influence at both the state and national levels. The office also serves as a stepping stone to national office. Four of last five chancellors were former heads of state government. The offices of minister president thus constitute some of the most powerful political positions in the Federal Republic.

Even though the political system is structured along federal lines, the nature of this federal arrangement is substantially different from the American form of federalism. The separation of powers assigns greater legislative responsibility to the federal government and greater administrative responsibility to the state governments. This continues a pattern of policy making inherited from prior German political systems. German federalism is thus based on functional division of legislative and administrative responsibility as well as exclusive policy domains.

The Basic Law seemingly gives primary political authority to the Länder. Article 30, for instance, maintains that "the exercise of government powers and the discharge of governmental functions shall be incumbent on the Länder in so far as this Basic Law does not otherwise prescribe or permit." In another section the states are given "the right to legislate so far as this Basic Law does not confer legislative power on the federation." In both cases, however, the operative clause involves the conditions tied to Länder power, because in other articles the federal government is specified as the principal legislative authority.

The legislative mandate of the federal government is divided into three categories:

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

The federal government possesses exclusive legislative responsibility in matters that concern the national security or require policy coordination on a national level. Defense, foreign trade, immigration, transportation, communications, and currency standards are the types of policies that are workable only on a national scale and therefore are exclusive powers of the Bund. In several other policy areas the states and federal government share concurrent powers, although federal law takes priority in case of conflict. About two dozen areas of concurrent powers are now specified by the Basic Law, such as civil law, refugee and expellee matters, public welfare, land management, consumer protection, public health, nuclear energy, and traffic regulations. In their concern for detail, the framers of the Basic Law even specified the protection of forest seedlings, plants, and animals as a concurrent power justifying constitutional treatment.

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

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

Despite a concerted effort to specify the relationship between Bund and Länder in clear terms in the Basic Law, there is continuing conflict and competition between the two levels of government. On the one hand, the federal government often finds itself confronted with important issues of national scope that it feels are not being adequately met by the states. On the other hand, the Länder governments jealously protect the principles of states' rights elaborated in the Basic Law. The Federal Republic, like many other Western democracies, is following a trend toward the nationalization of political issues and political decision making that is slowly eroding the influence of the states.

While the federal government is the major force in the legislation of policy, the states hold primary responsibility for the implementation and administration of policy. The states enforce their own regulations and most of the domestic legislation enacted by the federal government. The Länder governments also oversee the operation of the local governments within their respective control. As one indicator of the states' central administrative role, more civil servants are employed by the state governments than by the federal and local governments combined.

This delegation of administrative responsibility substantially increases the bargaining power of the states in making and implementing policy, even if legislation is initiated by the federal government. A federal law setting general policy guidelines must be implemented by legislation at the state level and then is administered by state officials. The states' ability to use this division of responsibility to maintain their autonomy appears in education policy. Despite the drafting of federal education guidelines, the individual states vary significantly in how rapidly and extensively these reforms have been implemented. The administrative strength of the states thus partially counterbalances their legislative limitations.

The political powers of the state governments extend beyond their legislative and administrative roles at the state levels. One house of the federal legislature, the *Bundesrat* (see below), is comprised solely of representatives appointed by the state governments. Länder officials also comprise half the members of the Federal Council which meets every five years to elect a federal president, and the state governments participate in selecting justices of the major federal courts.

In addition to these formal constitutional arrangements, extensive informal channels for policy consultation exist between state and federal officials. Intergovernmental committees and planning groups coordinate the different interests of federal and state governments. The growth of these coordinating committees is described as a third level of the federal system, bridging the gap between the Länder and the Bund. These organizations practice a style of "cooperative federalism" whereby Länder governments can coordinate their activities at a regional level or work together with federal officials.⁽⁷⁾ Elite surveys find that state and federal officials are in frequent personal contact.⁽⁸⁾ Informally, at least, considerable overlap exists between the federal and state governments.

Parliamentary Government

Germany has had a parliament since national unification, but the tradition of parliamentary authority was still weakly developed in 1949. Under the Second Empire, parliament often was little more than a political club disdained by the real holders of power, the Kaiser and his chancellor. Through suppression and manipulation, the government could escape most legislative control. The Kaiser and chancellor left no doubts that they felt Germany would be better off without politicians and the parliament.

The experience of parliamentary government during the Weimar Republic was also deficient. Weimar had a parliamentary system: a popularly elected parliament selected the chancellor and held substantial legislative powers. And yet, the Weimar parliament often ignored its responsibilities and became a forum

Dalton, Politics in Germany, chapter 2

for partisan bickering and conflict. The inability of the parliamentary system to produce a stable governing majority severely sapped the strength of the Weimar Republic in its later years.

Despite these negative experiences, the framers of the Basic Law favored a parliamentary system for the Federal Republic. Most citizens were familiar with the mechanics of parliamentary democracy. A parliamentary system would also fulfill the military governors' guidelines for the new government. And while past experiences with national parliaments were largely negative, parliaments at the state level had earned a better record.

The Basic Law thus creates a parliamentary democracy for the Federal Republic. The central institution of the federal government is a bicameral Parliament consisting of the *Bundestag* and *Bundesrat*. It passes legislation, elects the federal chancellor, debates government policies, and oversees the activities of the federal ministries. To avoid the problems of the past, however, the parliamentary system has an extensive set of checks and balances to both strengthen and control government action.

THE BUNDESTAG. The [Bundestag](#), or Federal Diet, is the primary legislative body of the Parliament, comparable to the American House of Representatives or the British House of Commons. Its members are the only national government officials who are directly elected by the German public, its support is required for the passage of all laws, and its members select the chief executive of the government.

[YouTube video of young comedian visiting the Bundestag \(in German\) \(2:51 min\)](#)

Despite these lofty responsibilities, the Bundestag began from very humble beginnings. For nearly the first four decades of its existence, its meetings took place in the remodeled auditorium of the University of Bonn. It was a setting devoid of the monumental status of the U.S. Congress or the political history of Britain's Westminster. Early parliamentarians worked in spartan conditions, with limited staff and resources.

As the Bundestag has grown in status and political responsibility, so too has its resources. The original parliament was finally replaced in 1989. Then, after unification the government returned to the historic capital in Berlin, and the Bundestag occupies the historic home of the German Reichstag.

[Visit the German Bundestag's official website](#)

The Bundestag is composed of 598 deputies who represent the voters of the Federal Republic. The deputies are selected in national elections every four years, unless the Bundestag is dissolved prematurely. In order to avoid the political intransigence and narrow-sightedness of parliaments in past regimes, the formal norms of the Bundestag encourage deputies to evaluate issues from a national perspective. The Basic Law even states that deputies serve as representatives of the whole people, subject only to their conscience. These norms are a sharp break from many other parliamentary systems where legislators are often expected to represent only the voters in their district or the parties. In practice, however, the behavior of German deputies also reflects their group ties.



German Bundestag

The leadership of the Bundestag and the party representatives coordinate their activities through the *Council of Elders*. The council is the steering committee of the Bundestag; it is responsible for scheduling of debates, setting the legislative agenda, and making committee assignments. Many of the negotiations among parties occur in this forum, as party leaders press the position of their party on pending legislation and the procedural matters of the Bundestag. The council is headed by the Bundestag president, who also presides over legislative sessions. This is normally an honorific position for an elder deputy who is expected to keep above party politics. The Bundestag president and vice-presidents also constitute a second executive body, the *Praesidium*, which is responsible for the routine administrative matters of the parliament.

A unique aspect of the German parliament is the heavy reliance on a system of specialized committees, much like the American Congress but unlike other parliamentary systems such as the British House of Commons or the French National Assembly. Most of the formal work of the Bundestag takes place in these committees.⁽⁹⁾ The committee structure generally follows the divisions of the federal ministries, such as transportation, defense, labor, or agriculture. The sixteen Bundestag (2005-) has twenty-two such committees. Committee members normally possess a special expertise or interest in the subject matter of the committee. Committee assignments are divided among the party groups in proportion to their sizes. In addition, the positions of committee chair are also distributed proportionately between the parties. In the twenty-second Bundestag the committee chairs are drawn from all the major parties (CDU/CSU, SPD, Greens, FDP and Linke). This means that a large number of legislative committees are directed by representatives of the opposition parties, another example of a system built on extensive checks and balances.

Most of the Bundestag's activity is directed toward its legislative function, which deputies feel is their most important task.⁽¹⁰⁾ The initiative for most legislation, though, lies in the executive branch. The bulk of the bills considered by the legislature are proposed by the executive (see chapter 10). Like most modern parliaments, the Bundestag focuses on evaluating and amending the government's legislative program. Much of this work occurs in committee, where deputies study the government's proposal and suggest amendments.

Another function of the Bundestag is to provide a forum for public debate. The plenary sessions of the Parliament consider the legislation before the chamber. Debating time is allocated to all party groups according to their size; both party leaders and back benchers normally participate. Because party members already have caucused and agreed on their voting positions, these plenary sessions primarily serve as a means of publicly expressing the party's views. These sessions command the greatest share of a deputy's work week, though attendance is normally sparse unless important issues are under consideration. The Bundestag now televises important plenary sessions, thus expanding the public audience for these policy debates. The increasing importance attributed to this education function is also seen in the growing use of public hearings by the Bundestag committees. These hearings provide the committees with an opportunity to obtain testimony from experts in the field and focus public attention on an issue.

The Bundestag also carries responsibility for the selection of the government. In parliamentary democracies the head of the executive branch is elected by the parliament; it is as if the American president were elected by the House of Representatives. The party coalition that controls the Bundestag at the beginning of a new legislative session can elect the chancellor. This makes Bundestag elections nearly a winner-takes-all contest; the party coalition that wins controls of the legislature also heads the executive branch. Bundestag deputies also constitute half of Federal Convention (the other half is drawn from the state governments) which elects the Federal President every five years.

As well as selecting the executive, the Bundestag scrutinizes the actions of the executive branch on both policy and administrative issues. Next to the passage of legislation, deputies consider this the Bundestag's second most important function. The most commonly used method of government oversight is the question hour (*Fragestunde*) adopted from the British House of Commons. An individual deputy can submit a written question to a government minister; questions range from broad policy issues to the specific needs of one constituent. These queries are answered by government representatives during the question hour, and deputies can raise supplementary questions at that time. The use of the question hour has grown almost steadily since; more than eighteen thousand oral questions were posed during the 1994-98 term of the Bundestag, and the vast majority came from the opposition parties.

Another method of government oversight is a written question (*Grosse Anfragen* or *Kleinen Anfragen*) submitted to the government that requires a more formal written or oral reply. Several deputies must sign such requests, and 400 to 500 questions are submitted during a Bundestag term. In addition to submitting questions to the government, a group of deputies can petition for a special debate on a contemporary policy problem (*Aktuelle Stunde*). These policy debates tend to be more genuine than the plenary sessions, perhaps because debate is not limited to a specific legislative proposal. Over the last decade the topics have varied from discussions of human rights, to NATO defense policies, and biodiversity in the European Union. Finally, the individual committees of the Bundestag conduct public information hearings or investigative meetings to shed light on policy issues within their area of specialization.

The opposition parties normally make greatest use of the question and oversight activities of the Bundestag since these methods provide an opportunity to cross examine government representatives and expose the errors of government actions. Typically the vast majority of the inquiries during question hour are posed by members of the opposition parties.

Probably the greatest area of functional difference between the Bundestag and American Congress is in constituency service. Because of the structure of the electoral system (see chapter 8), half of the deputies do not represent a specific geographic constituency. Moreover, political norms on the part of the public and deputies do not stress constituency service as part of the legislator's role. In comparative terms, relatively few German voters know the name of their deputy or are likely to contact the deputy about a political problem. On the other side, the personal staff of individual deputies is very modest and the tradition of American constituency branch offices or British surgeries is underdeveloped in the Federal Republic. The emphasis of the Bundestag is on political representation through party representation, rather than through the intercession of individual deputies.

When all of these various functions are taken into account, the Bundestag wields considerable political power, especially for a legislature in a parliamentary system. Although it is mainly a body that reacts to government proposals rather than taking the legislative initiative, the Bundestag's review and amendment process often produces substantive changes in legislation. At the same time, the oversight activities of the Bundestag display an unusual parliamentary autonomy from the executive branch. The Bundestag is often described as a body that blends the independent policy role of the American Congress with the debating function of the British House of Commons. The organizational structure of the Bundestag—especially the political structure of party *Fraktionen* and institutional structure of committees—is a key factor in its independence. More than just organizational structure is involved, however. The Basic Law intended to create an institution that possessed more autonomy than Weimar's parliament, and which could serve as a check on the excesses of the government. The evolution of the Bundestag has developed along these lines because these norms are identified as part of the institution.

THE BUNDESRAT. The second chamber of the Parliament, the [Bundesrat](#), or Federal Council, is a clear example of Germany's federal system of government. Its 69 members are appointed by the state

governments to represent their interests in Bonn. Bundesrat seats are allocated to each state roughly proportionate to the state's population. The Länder with the largest populations receive six seats, and those with the smallest receive three. Since delegations represent the Land as a whole, the votes of each state delegation are cast in a block according to the instructions of the state government.

[Visit the German Bundesrat online \(only in German\)](#)

The Bundesrat is substantially smaller than the Bundestag and therefore lacks much of the formal organizational structure that accompanies larger legislative bodies. The Bundesrat normally schedules only about a dozen plenary sessions in a year, in comparison to roughly 50 plenary sessions for the average Bundestag. Most of the Bundesrat's legislative activity takes place in committees; an even higher proportion than in the Bundestag.

The state governments regularly appoint members of the state cabinet to serve jointly in the Bundesrat. This has led some observers to ask whether the Bundesrat should be considered a house of parliament or a permanent conference of minister presidents. In fact, the Bundesrat's role in popular representation and government oversight is fairly modest. At the same time, however, the Bundesrat plays a vital role in the federal system.

The Bundesrat is directly involved in the passage of federal legislation, though its legislative authority is secondary to the Bundestag. The federal government is required to submit all legislative proposals to the Bundesrat before forwarding them to the Bundestag. Bundesrat approval of legislation is required in policy areas where the Basic Law grants the states concurrent powers or where the states will administer federal regulations. The political role of the Bundesrat was one of the most hotly contested issues in the drafting of the Basic Law. The Social Democrats favored a strong national government while many conservative politicians preferred granting more power to the states. The status of the Bundesrat has changed over time but this debate continues. Because the states administer the vast majority of federal laws, Bundesrat approval conceivably could be required on nearly all legislation. In spite of this possible jurisdiction, the Bundesrat initially chose to narrow its scope of action during the early years of the Federal Republic.

Beginning in the 1960s, the Bundesrat broadened its definition of state-related policy. More and more often, too, the chamber's deliberations are guided by political considerations rather than administrative details. This expansion of the Bundesrat's involvement means that about two-thirds of legislative proposals now require Bundesrat approval. This was especially true when different party majorities control the Bundestag and Bundesrat. For instance, following Schröder's re-election in 2002, the SPD/Greens controlled the Bundestag and the CDU/CSU and FDP had a majority in the Bundesrat. Only the constitutional limits on the Bundesrat's authority and the consensual norms of German policy makers avoid a debilitating deadlock between the two legislative chambers in such cases. However, in 2006 the principle of Bundesrat review was changed as part of a federalism reform package. The Bundesrat's role in reviewing legislation that simply modifies existing laws was reduced in exchange for new tax benefits and additional policy competencies for the states. This should markedly reduce the percentage of bills that require Bundesrat approval in the future.

Despite its secondary role to the Bundestag in most legislative functions, the Bundesrat is still a vital part of the German political system. The formal representation of the states in the federal government provides an important opportunity for closer policy coordination between the Bund and Länder. Furthermore, the gradual nationalization of political issues has increased the role of the Bundesrat as a representative of the states at the national level. The Bundesrat serves as a national forum for state government officials and their points of views. When all of these activities are considered, the Bundesrat wields more political

influence that than most second chambers in other parliamentary systems, such as the French Senate or British House of Lords.

The Federal Chancellor and Cabinet

The German tradition of executive power presented an unclear model for the authors of the Basic Law. The prior political systems which had been based on a strong executive; the Second Empire and Third Reich were authoritarian regimes. Alternatively, the Weimar Republic divided executive authority between the president and chancellor. This fragmentation of executive power contributed to the ineffectiveness of government and the ultimate collapse of democracy. As in many other cases, the ghosts of Weimar were more visible in the Parliamentary Council.

The Basic Law concentrates executive authority in the office of the [federal chancellor](#) (*Bundeskanzler*). Moreover, in practice the incumbents of this office have dominated the political process and symbolized the federal government by the force of their personalities. The chancellor plays such a central role in the political system that some observers describe the German system as a "chancellor democracy."

A parliamentary system implies a fusion of the executive and legislative branches of government, and this is generally true for the Federal Republic. After nomination by the federal president, the chancellor is elected by a majority of the Bundestag. The first chancellor, Konrad Adenauer, was elected by a single vote (his own!). However, most chancellors can depend on a solid majority from their party or a coalition of parties. Chancellors normally retain their seat as a Bundestag deputy. In addition, the chancellor usually is the national leader of his party, directing party strategy and leading the party at elections. This situation grants the chancellor substantial authority as head of the executive and leader of a majority in the Bundestag. Instead of the separation of powers that is central to the American political system, control of the legislative and executive branches generally go together.

The German parliamentary system is unique, however, in the limits it places on the degree of legislative and executive fusion. One set of factors increases the autonomy of the legislature vis-a-vis the executive branch. For example, the Bundestag and Bundesrat possess an unusual ability to criticize government actions and revise government legislative proposals. The Bundesrat's independent power base as a representative of the state governments further strengthens the autonomy of the legislature. The chancellor also lacks the discretionary authority to dissolve the legislature and call for new elections, something that is normally found in parliamentary systems.

[Visit the German Federal Government online](#)

The chancellor is the head of the executive branch, but the Basic Law defines the "federal government" (*Regierung*) as the chancellor and his Cabinet. There were 14 federal departments at the start of Merkel's term in 2005, each headed by a federal minister. The cabinet ministers are formally appointed, or dismissed, by the federal president on the recommendation of the chancellor -- Bundestag approval is not necessary. The Basic Law grants the chancellor the power to decide on the number of Cabinet ministers and their duties.

The functioning of the federal government follows three principles laid out in Article 65 of the Basic Law. First, the *chancellor principle* holds that the chancellor alone is responsible for the policies of the Federal government. The Basic Law states that the formal policy guidelines issued by the chancellor (*Richtlinienkompetenz*) must be followed by the Cabinet ministers; these are legally binding directives. Ministers are expected to suggest and implement specific policies that are consistent with the chancellor's broad guidelines. The chancellor is aided in these activities by the large staff of the Chancellor's Office

(*Bundeskanzleramt*), which supervises the actions of the ministries and formulates the government's broad policy goals. Thus, in contrast to the British system of shared cabinet responsibility, the German cabinet is formally subordinate to the Chancellor in policy making.

The second principle of *ministerial autonomy* (*Ressortprinzip*) grants each minister the autonomy to conduct the internal workings of the department without Cabinet intervention, as long as these policies conform to the government's broad guidelines. Ministers are responsible for supervising the department's policy planning, the preparation of legislative initiatives, and overseeing the administration of policy. These duties involve the activities of the federal government, as well as monitoring the implementation and administration of federal laws by the state bureaucracies.

The third provision of Article 65 is the *cabinet principle*. When conflicts arise between departments over jurisdictional or budgetary disputes, the Basic Law calls for them to be resolved by the Cabinet.

The actual working of the federal government tends to be more fluid than the formal procedures spelled out by the Basic Law. There are, of course, political limitations on the formal powers of the chancellor. In a coalition government, the number and choice of ministries to be held by each party is a major issue in building the coalition. Similarly, intraparty tensions may necessitate certain Cabinet assignments in the interest of party unity. Cabinet members also display considerable independence on policy despite the formal restrictions of the Basic Law. Ministers are normally appointed because they possess expertise or interest in a policy area. In practice, they identify more with their roles as department heads than with their roles as agents of the chancellor. Ministers become spokespersons and advocates for their departments; their political success is judged by their representation of department interests.

The Cabinet thus serves as a clearing house for the business of the federal government. Specific ministers present policy proposals originating in their departments in the hope of gaining government endorsement. In practice, the chancellor seldom relies on formal policy instructions to guide the actions of the government. The chancellor defines a government program that reflects the consensus of the Cabinet, and relies on negotiations and compromise within the Cabinet to maintain this consensus.

The personal style of the chancellor has a large influence on how this process actually functions. The first chancellor, Konrad Adenauer (table 2.1), virtually dominated the other institutions of government by the force of his personality and the magnitude of his popular support. He was the mayor of Cologne during the Weimar Republic and had retired from politics after Hitler came to power. He rapidly rose to a position of prominence in postwar Germany as head of the Christian Democratic Union, chair of the Parliamentary Council that drafted the Basic Law, and a sort of father figure to the nation. As a simple example of his influence, the tale is often told that Bonn was chosen as the capital of the Federal Republic because it was within easy commuting distance of Adenauer's home! Adenauer liberally interpreted the formal powers of the chancellorship in his favor, and was not hesitant to exercise this authority. Moreover, his leadership as the Federal Republic rebuilt its economy and



recovered its sovereignty endowed on him a heroic image for many citizens. It is not far off to say that the Federal Republic was created according to his blueprints.

Table 2.1 Governments of the Federal Republic

Date of Change	Source of Change	Coalition	Chancellor
September 1949	Election	CDU/CSU, FDP, DP	Adenauer (CDU)
October 1953	Election	CDU/CSU, FDP, DP, G	Adenauer (CDU)
October 1957	Election	CDU/CSU, DP	Adenauer (CDU)
November 1961	Election	CDU/CSU, FDP	Adenauer (CDU)
October 1963	Chancellor retirement	CDU/CSU, FDP	Erhard (CDU)
October 1965	Election	CDU/CSU, FDP	Erhard (CDU)
December 1966	Coalition change	CDU/CSU, SPD	Kiesinger (CDU)
October 1969	Election	SPD, FDP	Brandt (SPD)
December 1972	Election	SPD, FDP	Brandt (SPD)
May 1974	Chancellor retirement	SPD, FDP	Schmidt (SPD)
December 1976	Election	SPD, FDP	Schmidt (SPD)
November 1980	Election	SPD, FDP	Schmidt (SPD)
October 1982	Constructive no-confidence	CDU/CSU, FDP	Kohl (CDU)
March 1983	Election	CDU/CSU, FDP	Kohl (CDU)
January 1987	Election	CDU/CSU, FDP	Kohl (CDU)
December 1990	Election	CDU/CSU, FDP	Kohl (CDU)
October 1994	Election	CDU/CSU, FDP	Kohl (CDU)
September 1998	Election	SPD, Greens	Schröder (SPD)
September 2002	Election	SPD, Greens	Schröder (SPD)
September 2005	Election	CDU/CSU, SPD	Merkel (CDU)

a. DP is the German party; G is the All-German Bloc/Federation of Expellees and Displaced Persons.

Subsequent chancellors (table 2.1) have never matched Adenauer's influence. Neither Ludwig Erhard nor Kurt Kiesinger were strong leaders. Erhard's tenure as chancellor suffered in the shadow of Adenauer's larger-than-life image, and never commanded the same authority or respect within his party. Kiesinger was chancellor during the Grand Coalition, when political authority was divided with the vice chancellor, Willy Brandt. Brandt brought a new sense of vision to the chancellor's office in 1969, opening an era of far reaching domestic and foreign policy reforms. Brandt's most dramatic new policies came in foreign policy, where he personally directed a new foreign policy (*Ostpolitik*) of reconciliation with the nations of Eastern Europe and the establishment of formal ties with East Germany. In 1971 he received the Nobel

Peace prize for his actions, an achievement with special significance for a German political leader. Helmut Schmidt was another strong chancellor. He entered the government with the reputation of a man of action, someone who could deal with difficult problems. Yet, even he was forced from office by a constructive no-confidence vote in 1982. Helmut Kohl served for 16 years, and oversaw the historic unification of Germany. But the mounting costs of unification cost Kohl his job, and Gerhard Schröder was elected chancellor in 1998 and re-elected in 2002. Schröder similarly battled with the challenges of Germany's new post-unification situation, and lost the chancellorship in 2005 to Angela Merkel. Merkel marks a dramatic new change for Germany, an Easterner, a PhD in chemistry with modest political experience prior to 1989, and a woman. She has brought a more conciliatory and bargaining style to the chancellorship.

[YouTube video of Angela Merkel on the economy \(in German\) \(2:19min\)](#)

Federal President

During the Weimar Republic, executive authority was divided between two offices—the chancellor and the president. The office of president was intended to provide a symbol of national identity, an *Ersatzkaiser*, with relatively modest political influence. One of the greatest structural weaknesses of the Weimar constitution was the transfer of political authority to the president, through the infamous Article 48, when parliament became deadlocked.

The Basic Law retains the office of [federal president](#) (*Bundespräsident*). But most executive authority was transferred to the chancellor, leaving the presidency as a largely ceremonial post. The president's official duties involve greeting visiting heads of state, attending official government functions, visiting foreign nations, and similar tasks.

The federal president is removed from the competition of electoral politics. Because the president of the Weimar Republic was directly elected, this inevitably transformed the position into a partisan office as rival candidates competed for popular support. Furthermore, because both the president and parliament were popularly elected, both claimed to represent the national interest, even when they expressed differing views. The president of the Federal Republic is now selected by a *Federal Convention* (*Bundesversammlung*) composed of all Bundestag deputies and an equal number of representatives chosen by the state legislatures. The term of office is five years, and the incumbent can only be reelected once. The norms of the office also downplay the remaining partisan aspects of the position. Even though the federal president is usually selected from among the senior leaders of the largest party in the Bundestag, he is expected to remain above partisan politics. The present officeholder, Christian Wulff, is a CDU partisan who served as Minister President of Lower Saxony until elected president in 2010. On assuming office in 2004 he formally separated himself from the party.

This reduction in the president's formal political role does not mean that an incumbent is entirely uninvolved in the political process. The Basic Law assigns several ceremonial political functions to the president, who appoints government and military officials, signs treaties and laws, and possesses the power of pardon. In these instances, though, the president is merely carrying out the will of the government, and these actions must be countersigned by the chancellor. The president also nominates a chancellor to the Bundestag and dissolves Parliament if a government legislative proposal loses a no-confidence vote. Yet in both instances, the Basic Law restricts the president's ability to act independently. The emergency law reforms of 1968 identified the president as a mediator in times of national crisis who can declare a state of emergency. In contrast to Weimar, however, political authority would then pass to the Parliament and not the president.

A potentially more significant source of presidential power is the constitutional ambiguity over whether the president *must* honor requests from the government or can he refuse these requests. The president may possess the constitutional right to veto legislation by refusing to sign it. At least a half dozen pieces of legislation have been involved in such controversies since the founding of the Federal Republic. Similarly, the president may be able to refuse the chancellor's recommendation for Cabinet appointments or even a request to dissolve the Bundestag. In 1982, for instance, there was great public speculation about whether Chancellor Kohl's request for a dissolution of the Bundestag would be granted (it was). These constitutional questions have not been tested by past presidents, and thus the extent of these powers has not been resolved by the courts. Most analysts see these ambiguities as another safety valve built into the Basic Law's elaborate system of checks and balances.

[Visit the German Federal President online](#)

The political significance of the federal president is also derived from factors that go beyond the articles of the Basic Law. The first incumbent, Theodor Heuss, envisioned the office as serving an integrative function for the nation. The president is someone who can stand above politics; someone who can speak frankly and morally about current issues. As a liberal who had suffered under the Third Reich, he used his office to nurture the development of democracy and humanitarianism in postwar Germany. His popular appeal and willingness to deal with the sensitive issue of Germany's past helped create a climate in which meaningful political change could occur.

Heuss's performance during two terms as president (1949-59) set the standards by which the position is still judged. Most later presidents have tried to meet these standards.⁽¹¹⁾ For instance, Richard von Weizsäcker (1984-2004) represented the best traditions of the office. During his tenure he demonstrated his leadership ability and his broader view of the president's political role. On the 40th anniversary of the end of World War II in Europe, von Weizsäcker implored Germans to admit their complicity in the actions of the Third Reich as a necessary step in moving beyond this legacy. This was a courageous act for someone who comes from an aristocratic background and whose father worked in Hitler's foreign service.

It is difficult to summarize the importance of the federal president in simple terms because of the ambiguity of the office. The formal powers of the presidency are limited, and the founders of the Federal Republic consciously sought to isolate the president from everyday political issues. At the same time, however, the potential application of the president's latent powers makes the office an important safety valve in case of extreme political crisis. Moreover, the informal role of the president is often underestimated. An active, dynamic president, such as Theodor Heuss and Richard von Weizsäcker, can exert a major influence in shaping the political climate of the nation and extending the nation's vision beyond the concerns of everyday politics.

The Judicial System

A central concept in German legal theory is the *Rechtsstaat*, a government founded on law whereby government action is restrained to its legal limits and the equality of the citizens legally guaranteed.⁽¹²⁾ Liberal reformers in German history considered such a system of legal constraints on the Kaiser as the key to political modernization and reform. The rule of law was the individual's protector against the authoritarian state.

This confidence in the *Rechtsstaat* was shattered by the events of the Third Reich. The legal protections of the Weimar Republic did little to restrain Hitler's accession to office and his abuses of power. Moreover, the judiciary was a somewhat willing accomplice in many of these actions. Since the law was supreme

and the courts could not overturn legal statutes passed by the government, even if that government was the illegal Nazi state, activities that violated basic human rights were held to be legal if they followed the appropriate government statutes. This narrow view of law focused on procedures and ignored the content of government action.

Judicial reform was therefore a high priority for the authors of the Basic Law. The German courts vary from the federal structure of the rest of government. The courts are integrated into a unitary system with six major branches of the judiciary.[\(13\)](#)

Federal law specifies the basic structure of the judicial system, but state law regulates the administration of most courts. The lower levels of the court system are managed by the states and only the highest appellate courts function at the federal level. The federal guidelines and federal appeal courts ensure that the laws are applied uniformly throughout the nation, while the states' administration of the courts ensures their independence from the national government.

The largest branch of the judiciary is the system of ordinary courts that are responsible for both civil and criminal cases. Over five hundred local courts (*Amtsgerichte*) hear cases dealing with minor criminal offenses and small civil suits, as well as perform many routine legal functions such as probating wills and land registry). The next level of the judiciary are the nearly one hundred district or state courts (*Landgerichte*). Above the level of the local courts, the higher courts are split into two sections, one deals with major civil cases and the other with criminal cases. The district courts function both as courts of appeal for cases originally tried in the local courts and as a court of first instance for major civil or criminal cases. The twenty state appellate courts (*Oberlandesgerichte*) review points of law raised on appeal from the lower courts. The Federal Court of Justice, (*Bundesgerichtshof*), can review the procedural and legal aspects of cases referred from the lower courts.

Other branches of the judicial system deal with cases in specialized areas. The administrative court hears complaints against government agencies, such as a citizen objecting to a planned highway or government licensing activities. For instance, much of the legal struggle over the location and safety standards for nuclear power stations has occurred in the administrative courts. The social court handles matters of social insurance, unemployment compensation, medical insurance, and similar programs. Labor-management disputes and protection of worker rights are judged by the labor court. The fiscal court is probably the least liked, it decides on disputes over personal income taxes and other fiscal matters. Like the rest of the judicial system, these specialized courts are vertically integrated into separate systems of state courts, each topped by a federal appeals court.

The major structural innovation of the judicial system is the independent [Constitutional Court](#).[\(14\)](#) The Western Allies insisted that the Basic Law provide for independent judicial review of legislation. This marked a break from German legal tradition because it places one law, the Basic Law, above all others; it also implies limits on the decision-making power of the Parliament and the judicial interpretation of lower court judges. The Constitutional Court possesses the authority to review the constitutionality of legislation, mediate disputes between levels of government, and protect the constitution and the democratic order. The court is divided into two senates; each has its own panel of eight judges, its own administrative staff, and its own chief justice. The first senate is responsible for the protection of civil liberties and judicial review of legislation. The second senate primarily deals with constitutional disputes between government agencies and the regulation of the political process.

In contrast to United States Supreme Court, the German Constitutional Court does not act as court of last appeals; this is the function of the Federal Court of Justice. The Basic Law limits the Constitutional Court's jurisdiction to constitutional issues; it can only hear cases involving questions of constitutional

significance. By the mid-1980s over half of the articles in the Basic Law had been subjected to judicial review and hundreds of cases tested the constitutionality of federal and state legislation. Early court decisions, such as the 1951 Southwest case and 1961 Federal Television case, defined the distribution of power between the Bund and state governments. Other cases have involved the court in major legislative debates such as Ostpolitik, abortion, and anti-terrorist policies. The court has also displayed a willingness to involve itself in the "political" conflicts which the American Supreme Court evades, such as reviewing party campaign financing legislation. The court is thus both a vital mechanism for conflict resolution within the German system and an active protector of the system.

One of the most noticeably changes in the judicial system of the Federal Republic concerns the norms of judicial action. Members of the court reject the neutral judicial role of German legal tradition.⁽¹⁵⁾ In contrast to the Weimar Republic, the justices view themselves as defenders of democracy and protectors of the basic human rights guaranteed by the Basic Law. Because of the importance of the Constitutional Court, its members are selected in equal numbers by the Bundestag and Bundesrat. Justices can be removed from office only for abuse of their position.



Constitutional Court

The operation of the entire judicial system is based upon Roman law principles that are fundamentally different from the Anglo-American system of justice.⁽¹⁶⁾ Rather than relying on precedents from prior cases, the legal process is based on an extensive system of legal codes. The codes define legal principles in the abstract, and specific cases are measured against these standards. Because the legal codes attempt to anticipate all the issues that might confront a court, they are quite complex and lengthy. In short, the system is based on a rationalist philosophy that justice can be served by following the letter of the law.

The legal system also emphasizes society's rights and the efficient administration of justice in comparison to the individual rights of a defendant. For example, equal weight is given to the evidence of the prosecution and the defense. Similarly, the rules of evidence are not as restrictive as in American courts. In deciding a case a unanimous decision is not even required; a majority is sufficient for many types of cases.

These basic legal principles affect the operation of the judicial process in several ways. Reliance on complex legal codes means that judges must have extensive legal training. They are not simply selected from the ranks of practicing lawyers; the two careers are distinct. Law students must pass a state exam at the end of their university training, which is followed by several years of applied training in various sectors of the legal system. This apprenticeship period is followed by a second state exam to qualify the individual to practice law; upon successful completion of the exam the candidates must decide whether they want to be lawyers or enter the judiciary. A candidate for the judiciary then faces several more years of training and examination before being accepted into the profession.

The emphasis on judicial expertise also means that less reliance is placed in decision making by lay jurors as is done in Britain and the United States. In the local courts, for example, most cases are decided by a single judge. The district courts are headed by a panel of three judges assisted by several "lay judges"

chosen from among the local citizens. In the higher courts, lay judges are not even used. Furthermore, the judge (or panel of judges) normally votes along with the lay judges in deciding a case. Naturally, the judge's opinion can easily sway the votes of the lay public. Justice is to be rational, fair, and expeditious; presumably this goal requires the expertise that only judges possess.

Because the German judicial system aims to uncover the truth within a complex web of legal codes, the judge pursues an activist role in the court. Cross examining witnesses, determining what is acceptable as evidence, and generally directing the course of the trial number among a judge's courtroom duties. By Anglo-American standards, the inquisitorial system of German justice might seem harsh, but it is a system shared by most other Western European democracies. Furthermore, the traditional definition of the Rechtsstaat is now tempered by a greater concern for the content of the law and an awareness of a higher standard of justice. The transformation of the judicial system has been one of the great political successes of the Federal Republic.

A System of Checks and Balances

The structure of the German political system is undeniably complex, and simple comparisons to other parliamentary systems are difficult to make. There is, however, a logic to this complexity. Because of the Weimar experience, the Basic Law created a political system based on extensive checks and balances. The working guidelines sought to distribute political power among the institutions of government and to create external limits on the power of each institution. Each branch of government is granted considerable authority to exercise its prescribed functions, but there are also checks on this authority and limits on the ability of any one branch to dominate the entire government. These principles hold the key to understanding the operation of the German political system.

When one looks, for example, at the details of the federal system of government, the pattern of checks and balances is clearly evident. The structure of the Weimar system enabled Hitler to control the nation by controlling the national government. The Basic Law strengthens the power of the states as a check on the power of the federal government. The states' control of the police, the courts, and the administration of law better enables the Länder to resist attempts at coercion by the federal government. The autonomy of the state governments and the legislative importance of the Bundesrat also create competing bases of political support. One single national election cannot yield total control of the political process to the victor.

The German federal government also deviates from the normal pattern of parliamentary democracy. Both the legislative and executive branches possess extensive powers in their areas of primary responsibility. The legislative independence and oversight activities of the Bundestag and Bundesrat clearly exceed those of the British Parliament or French National Assembly. A similar concentration of executive authority is granted to the chancellor. What had been presidential powers under the Weimar Republic were transferred to the chancellor. Moreover, the Basic Law makes the chancellor formally responsible for government policy. The chancellor is much more than the "first among equals" in the cabinet, as is normal in a parliamentary system. In these terms, the German chancellor is stronger than the prime minister in most other European parliamentary systems.

Other provisions of the Basic Law limit the legislature's control over the chancellor and his Cabinet. Most parliamentary legislatures possess the authority to remove a chief executive who it initially elected through a procedure known as a "no-confidence vote." During the Weimar Republic, however, extremist parties used this device to destabilize the democratic system by opposing incumbent chancellors. The Basic Law sought to prevent such nihilist alliances. This procedure of legislative control was modified to produce a [constructive no-confidence vote](#) (*konstruktives Misstrauensvotum*). In order for the Bundestag

to remove a chancellor, it simultaneously must agree on a successor. This ensures a continuity in political leadership and an initial majority in support of a new chancellor. It also makes removing an incumbent more difficult; opponents cannot simply disagree with the government—a consensus must exist on an alternative. The constructive no-confidence vote has undoubtedly contributed to the political stability of the Federal Republic.

The constructive no-confidence vote has been attempted only twice in the history of the Federal Republic—and succeeded only once. In the early 1980s the governing parties (SPD and FDP) found themselves divided on how to deal with the Federal Republic's worsening economic problems. These policy differences eventually moved the economically conservative FDP closer to the CDU/CSU. In late 1982 the Christian Democrats enticed the FDP to break with the Socialists and form a new government with the CDU/CSU. A successful constructive no-confidence vote replaced Chancellor Helmut Schmidt with the CDU party leader, Helmut Kohl.

The German system also contains a second type of no-confidence vote that is used by the chancellor to mobilize legislative support within the Bundestag. The chancellor may attach a simple no-confidence provision to a government legislative proposal. If the Bundestag defeats this proposal, the chancellor may ask the federal president to dissolve the Parliament and call for new Bundestag elections. This no-confidence procedure is used infrequently, but it provides the chancellor with the means either to test the government's voting support or to increase the incentive for the Bundestag to pass legislation that is crucial to the government. The simple no-confidence motion also has been used by incumbent governments in 1972, 1982 and 2005 to arrange early Bundestag elections. The framers of the Basic Law had not intended to give the government discretionary power to dissolve the Parliament, but the no-confidence motion was accepted by the courts as a method of circumventing this limitation. This system of no-confidence votes provides additional checks and balance between the two branches of government.

By creating two strong political institutions -- Parliament and the chancellor -- the Basic Law intends to balance the political authority of the legislative and executive branches. At the same time, it limits the ability of one institution to dominate the other. The Bundestag lacks the normal parliamentary power to remove the executive from office through a simple no-confidence vote; the innovation of the constructive no-confidence vote partially insulates the executive from legislative dominance. Conversely, the chancellor lacks the authority to dissolve the parliament at the government's discretion, another power normally associated with parliamentary governments. Rather than a fusion of legislative and executive branches, the political system of the Federal Republic emphasizes a greater separation of powers (though not as great as in the United States). The German pattern of legislative-executive relations lies somewhere between the British parliamentary system and the American presidential system. The British prime minister has less authority within the government than the German chancellor, but the British executive wields greater influence over the House of Commons. Alternatively, the German chancellor has less autonomy than an American president, but the chancellor generally can depend on a supportive majority within the parliament.

The introduction of judicial review is another innovative feature of the Basic Law. Traditionally the legislative supremacy of the German parliament could not be challenged by the courts. The judiciary became subservient to the leaders of the Third Reich. The Basic Law created a higher standard of law by which the actions of government should be judged. The Constitutional Court has powers of judicial review that are broader than the U.S. Supreme Court, providing a strong check against government excess.

Other constitutional provisions seek to curb the partisan extremism that handicapped Weimar democracy. For instance, parties must win at least 5 percent of the votes to share in the proportional distribution of

legislative seats; this weakens the potential for small extremist parties to win Bundestag representation. At the same time, parties must also abide by the democratic principles of the Basic Law. Under these provisions the Constitutional Court banned a neo-Nazi party in 1952 and the Communist party (KPD) in 1956.

Finally, the Basic Law goes to unusual lengths to protect rights of individual citizens. The list of basic rights enumerated in the first seventeen articles are even more extensive than the American Bill of Rights. In addition, the Basic Law must be one of the few constitutions that explicitly states that all citizens have the right to resist any person seeking to abolish the constitutional order. Moreover, these protections of individual liberties are inviolable, that is, they cannot be limited by constitutional amendment. The Federal Republic was intended to be a Rechtsstaat, where citizens could depend on the protection of law.

The Basic Law is thus an exceptional example of political engineering -- the construction of a political system to achieve specific goals. The authors of the Basic Law designed a parliamentary democracy that would involve the public, encourage responsibility among political elites, disperse political power, and limit the possibility that extremists might cripple the state or illegally grasp political power.

Institutional Change

Although we think of institutions as constants, they also can change and evolve over time. One force for institutional change has been German unification. To expedite the unification process, Helmut Kohl and the FRG government decided to unify Germany using Article 23 of the Basic Law that simply added the eastern Länder to the structure of the Federal Republic. (The alternative was to hold a constitutional convention, which would have been a longer and less predictable course.) Using Article 23 simplified the task of unification by merely extending eastward the institutions of the West. But of course, the integration of two contrasting political systems is really not so simple.



Berlin Wall Opens

Unification meant redrawing district boundaries for elections, and adding a new political party--the PDS--to the party system. Unification has also led to a series of constitutional reforms to the political system. The principal of equality of living standards across the Länder has been modified. The relationship between the federal government and the states has also changed as a result of the addition of six new Länder. This also changes to composition and the dynamics of politics within the Bundesrat.

German union also created a host of structural and institutional issues that were not resolved by the unification treaty. German federalism is based on a complex series of agreements between the federal and state governments that required revision as a result of unification. The addition of five new Länder to the Federal Republic also requires the creation of new political, administrative, and judicial structures in these states. Even if they had already agreed on using blueprints imported from the West, these structures still needed to be built. Imagine if the state and local governments in one third of the U.S. states had to be created from scratch and staffed by new administrators!

Citizens of the German Democratic Republic are also adjusting to their new political system. They grew up under a set of political institutions that were different from the FRG in fundamental ways, and these experiences will color their expectations about politics and their political behavior. At the most basic

level, unification meant that eastern Germans were incorporated into the political institutions of the Federal Republic. The more difficult challenge for Easterners was to understand and then involve themselves in the political processes of the Federal Republic. The novelty of the democratic experience clearly showed during the GDR's first democratic elections of 1990; East Germans were both intrigued and perplexed by Western-style campaigns. Similarly, Easterners had to learn how interest groups, political parties, and the other institutions of political representation function within a democratic system. In short, the residents of the former GDR got a crash course in "FRG Political Science 101."

Even features of everyday life were reshaped by unification. Although they have not changed residences, Easterners faced the problems of anyone who moves to a new nation. They had to learn about their entitlements under FRG law, where to go for social benefits, where to find legal aid, how to register their car, what to do when a government pension check is late, how to register the birth of a child or obtain a marriage license. Not only were there these formal procedures to learn, but also the informal norms of the FRG bureaucracy that are essential in making the system work for the individual (and not the reverse).

A second source of institutional change is the expansion of the European Union. Treaty agreements have altered the role and influence of institutions of German government. For instance, the Constitutional Court's power is now secondary to the European Court of Justice, and with increasing regularity German legislation must be evaluated not in terms of the Basic Law but in terms of European Union standards. The autonomous Bundesbank that played a major role in the German economy and economic planning now is subsidiary to the European Central Bank. The Bundestag and Bundesrat now share their legislative role with the European Parliament and the other institutions of the European Union. Even interest groups are finding it useful to maintain a lobbying presence in Brussels as well as Berlin. Germany is still a sovereign state, but its institutions and actions are constrained by its commitments within the European Union.

In summary, the institutions of the Federal Republic furnish a framework for addressing the problems face the nation. Unification provided a means for problem solving, even if the problems themselves were not solved by the unification treaty. The process of European integration has similar potential to address Germany's political needs. If the nation is fortunate, these institutions will be as successful in addressing this challenge as they were during the initial formation of the Federal Republic.

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Endnotes

1. The unification treaty deleted the provisions of Article 23 after October 3, 1990. Article 146 was also revised to end with a passage stating that the Basic Law "shall be applicable for the entire German people upon completion of the unity and freedom of Germany."
2. See Peter Merkl's account of these events, *The Origin of the West German Republic*. New York: Oxford University Press, 1963. On the history of the political system in East Germany see Henry Krisch, *The German Democratic Republic*. Boulder: Westview Press, 1985.
3. Merkl, *The Origins of the West German Republic*, p. 178.
4. For instance, the Basic Law (Article 107) calls for a "unity of living standards" between the states. This provision was implemented by complex set of laws that transfer certain tax revenues horizontally from the rich states to the poorer and other revenues vertically from the federal government to the poorer states (*Länderfinanzausgleich*). The wide gap in living standards between East and West made past arrangements of financial equalization infeasible in the present situation. The unification treaty allowed for a temporary exemption to Article 107 and new legislation was passed to restructure revenue sharing between the old and new Länder. This legislation was struck down by the Constitutional Court in 1999 as violating Article 107, and a new agreement was forged in 2001.
5. In 1952 three smaller states consolidated to form the Land of Baden- Württemberg, and the annexation of the Saarland in 1957 created the tenth Land.
6. Bavaria is the only Land with a bicameral legislature; one house is popularly elected and the second (the *Senat*) is composed of representatives of major social and economic groups.
7. Philip Blair, *Federalism and Judicial Review in West Germany*. Oxford: Oxford University Press. University Press, 1981), chap. 8.
8. Wilhelm Buerklin, et al. *Eliten in Deutschland: Rekrutierung und Integration*. Leske and Budrich, 1997; Ursula Hoffmann-Lange, Helga Neumann, and Bärbel Steinkemper, *Konsens und Konflikt zwischen Führungsgruppen in der Bundesrepublik Deutschland*. Frankfurt: Peter Lang, 1980;
9. Winfried Steffani, "Parties, Parliamentary Groups and Committees in the German Bundestag," In Robert Livingston et al. *The Congress and the Bundestag*. Boulder: Westview Press, 1988.
10. Emil Huebner, *Die Beziehungen zwischen Bundestag und Bundesregierung im Selbstverständnis der Abgeordneten des V. Deutschen Bundestages*. Munich: publisher, 1980.
11. Ludger Helms, "Keeping Weimar at Bay: The German Federal Presidency since 1949," *German Politics and Society* 16 (Summer 1998): 50-68. 12. Donald Kommers, *Judicial Politics in West Germany*. Beverly Hills, CA: Sage, ch. 2.
13. The patent courts might be considered a seventh branch, although the Federal Court of Justice acts as the appellate court in these matters.
14. Georg Vanberg, *The Politics of Constitutional Review in Germany*. New York: Cambridge University Press, 2005; Alec Stone Sweet, *Governing with Judges*. Oxford: Oxford University Press, 2002.
15. Kommers, *Judicial Politics in West Germany*, chapter 5.
16. Stone Sweet, *Governing with Judges*.
17. TThe 1968 revision formalized the socialist basis of the East German state and removed some of the trappings of democracy from the 1949 constitution. The 1974 revisions formalized the government's policy of demarcation from the West by defining the GDR as a separate state and removing all references to a common German identity. See David Childs, *The GDR: Moscow's German Ally*, 2nd ed. London: Hyman, 1988.

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