

CHAPTER 9 THE POLICY PROCESS

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Quote of Note:

"Laws are like sausages, it is better not to see them being made."

Otto von Bismarck

Demands for public policy action converge on the government from many different sources: the demands of citizens, the appeals of an interest group, the proposal of a political leader, or an initiative from a government official. All of these sources often interact in making public policy. Therefore, it is difficult to trace the true genesis of any specific policy proposal. Once a new policy is proposed, moreover, other political actors come into play in supporting, amending, or opposing the policy.

Eventually a new proposal must enter the formal policy making process in order to be considered as a public policy. The articulation of interests must lead to formal consideration by the institutions of government, because they are responsible for allocating public resources. Depending on the nature and scope of the issue, its resolution might take place at the local, state, federal or even European level. Some cases only involve administrative decisions by a government agency, others can only be addressed by new legislation.

While we may speak of policy-making as a single process, no single model explains how all policies are made. Even if we restrict our attention to policy making at the national level, the pattern of interaction among policy actors varies with time and the nature of the issue. One set of groups focus on issues of industrial relations, for example, utilizing the methods of influence that will be most successful for their cause. In some instances this might involve an appeal to a federal ministry for new legislation, in other cases an interest group may approach sympathetic members of parliament or seek to change policy through the courts. A very different set of interests may assert themselves on defense policy, and possibly use different methods of influence. Even within a single policy area, specific issues can evoke particular constellations of political forces and distinct patterns of decision-making. In various cases the executive branch, the legislature, or the courts may be the authoritative decision-makers. Indeed, one of the most distinctive aspects of the policy process is the dispersion of power and the diversity of institutions involved in the process.⁽¹⁾

Despite this variation in the policy process, the formal governmental framework for implementing public policy is relatively uniform in all policy areas. The Basic Law defines the structure for passing new

legislation and judicial review of this legislation. The standing orders of parliament determine how legislative proposals are evaluated and decided. The rules of procedure guide federal ministries initiating legislative proposals and consulting with relevant interests. Furthermore, the norms of policy behavior, or a what might be called a German policy style, influence the actions of policy makers within this process. This chapter examines this formal and informal framework of policy action in the Federal Republic, describing the various arenas in which policy actors compete, while considering the balance of power between these institutions.

Executive Action

As is the case in most representative democracies, policy initiatives generally enter the process through the executive branch. One reason for the predominance of the executive is that the Cabinet and the ministries manage the affairs of government. They are responsible for formulating the federal budget, proposing necessary administrative procedures, and the other basic activities of government. The government also holds special constitutional responsibilities for formulating legislation dealing with foreign affairs and the budget. The political system of the Federal Republic follows the common pattern in which the executive generally *proposes* legislation and the parliament *disposes*.

The chancellor exercises an influence in policy making greater than any other single political actor. In contrast to the normal parliamentary system of shared cabinet responsibility such as in Britain, the Basic Law makes the chancellor formally responsible for determining the broad outlines of government action. The chancellor is responsible for the organization of government agencies and the appointment of ministers. Ministers are legally subordinate to the authority of the chancellor. The Basic Law further provides that the chancellor can define the broad policy goals for ministerial action through policy directives (*Richtlinien*). These directives are legally binding guidelines and require that the ministries initiate policies consistent with these broad guidelines.

In actuality, the formal powers of the chancellor are restricted by practical political considerations; coalition partners must be satisfied, ministers often represent their own clientele groups, and some policies involve conflicting priorities that are not easily reconciled. In many cases the chancellor represents the balance point between contending forces within the government, rather than acting autonomously. Even under Konrad Adenauer, a politically strong chancellor, the majority of cabinet positions were decided by negotiations within the coalition of governing parties. Official policy directives are also used sparingly, and normally when a consensus on policy already exists within the governing coalition. The formal authority of the chancellor vis-a-vis the cabinet thus lies between the American model of a presidential cabinet and the British system of shared cabinet responsibility.

The chancellor's policy influence also stems from the informal political resources of the office. Standing at the head of the party list at election time, the chancellor-candidate is the primary policy spokesperson for the party and the prospective government. The public's images of the chancellor candidates play a prominent role in federal election campaigns, even though people do not directly vote for the individual candidates. The 2005 election, for instance, focused on the contrast in experiences and political styles of Schroeder and Merkel. Once in government, the chancellor articulates the administration's policy agenda in speeches, interviews, and formal policy declarations. At the start of each parliamentary session the chancellor provides a blueprint for government action through the rest of the term (*Regierungserklärung*). Because the chancellor can speak both as the head of government and leader of the majority of the Bundestag, the public generally equates the chancellor's views with those of the government.

While the chancellor may define the broad course of government policy, much of the actual initiation of policy proposals occurs within the ministries. The 14 Cabinet ministries has its own distinct area of

responsibility (table 10.1). Each ministry's is responsible for developing and reviewing policy proposals. Indeed, the staffs of most ministries are so small that they cannot oversee the administration of policy, and they lack the legal right to supervise the implementation of federal statutes in detail. For instance, the Ministry of Justice and the Ministry of Labor and Social Affairs each employ less than a thousand individuals in their central organizations. By contrast, the U.S. Justice Department employs over 100,000 and the U.S. Labor Department employs 15,000.⁽²⁾ The bulk of ministry activity is devoted to the initiation of legislation necessary to carry out the government's policy objectives.

Table 9.1 The Federal Ministries (2008)
Ministry of Foreign Affairs
Ministry of the Interior
Ministry of Justice
Ministry of Finance
Ministry of Economics and Technology
Ministry of Labor and Social Affairs
Ministry of Food, Agriculture and Consumer Protection
Ministry of Defense
Ministry of Family Affairs, Senior Citizens, Woman and Youth
Ministry of Health
Ministry of Transport, Building and Urban Development
Ministry for Environment, Nature Conservation and Nuclear Safety
Ministry of Education and Research
Ministry of Economic Cooperation and Development
Go to federal ministries online

The ministries are generally organized along a hierarchical structure. Each ministry is divided along functional lines into a number of specific departments; an average ministry might include between five to ten departmental units. The departments are then further divided into smaller sections (*Referate*). These sections consist of small working groups of maybe a dozen people, with specialized policy responsibilities. Department and section heads are formally responsible for the activities of their unit, and every organizational unit protectively guards its area of authority.

The initiation of policy normally emerges from a dialogue between the political leadership of the ministry and the specialized technical expertise of the sections. On major new policy initiatives or on politically controversial proposals, the impetus comes from the minister's or chancellor's office. The minister's office provides directives on specific policy needs and how legislation should be formulated; the relevant sections then draft the necessary legislative proposals. For most routine legislation, however, the section initiates the policy proposals. Based on their professional expertise and the demands of relevant interest groups, the bureaucracy identifies a policy requiring new legislation. Most of these proposals involve changes in existing legislation to improve the administration of existing policy goals. But significant new policy proposals also originate within the bureaucracy. The majority of government legislative proposals are first formalized at the section level and then are reviewed and revised by higher administrative units within the government.

The ministries also act as the focal point for the lobbying activities of many interest groups. Government administrative regulations *require* that a ministry formally consult with organized interests that are directly affected by a legislative proposal, and give the group's representatives sufficient time to formulate a response. Furthermore, the department has the discretion to decide which are the relevant interests for a specific proposal, and the tendency is to establish on-going relationships with the major national interest associations dealing with the general policy responsibilities of the ministry. Interest groups realize the importance of the executive branch, and normally work with the federal ministries -- rather than the parliament -- when they seek new legislation. For example, a study of the official policy memoranda of the Federation of German Industry (BDI) in the 1950s found that over 80 percent of the group's policy correspondence was directed toward the executive branch and less than 10 percent to the legislature;⁽³⁾ a more recent study would likely find a similar distribution of attention.

The large role of the ministry sections in initiating proposals has both advantages and disadvantages for the overall policy process. On the one hand, the sections possess considerable technical and administrative expertise in their area of policy responsibility. This reliance on the bureaucracy presumably makes for more rational and efficient policy by treating problems in "objective" terms. The bureaucracy further provides a continuity in policy experience that transcends changes in administrations and political leadership.

On the other hand, this bureaucratic approach to policy making has distinct limitations. In most government agencies the minister's own office has a very limited staff, which restricts his or her ability to provide political direction to the numerous sections under the minister's control. As a result, political control of section activities is based as much on the sections anticipating the reactions of their superiors as on formal control from the top. In private, most ministers admit that they sometimes feel the bureaucracy is running the ministry.

The rigid hierarchical structure of the bureaucracy affects the policy process by limiting the potential for broad policy planning. Ministry sections are fairly small organizational units with narrow policy responsibilities. The sections consequently are concerned with specific issues and in responding to policy demands coming down from above. Interaction over policy proposals flows vertically through this hierarchical structure, and less horizontally across department or section boundaries. Policy issues are defined so that they fit the organizational structure, rather than developing inter-department task forces that can deal with a policy area in its entirety. Inter-department task forces do exist, but their number is small. This procedure tends to compartmentalize policy making. The major problems of contemporary societies seldom fit into small well-defined policy boxes, however. Ministry sections think small and react to demands, rather than considering large issues and potential issues.

Efforts to develop a more active and planned style of policy making so far have not proven workable. Some ministries experimented with a central planning and coordination department under the minister's direction, but the other departments within the ministry often viewed this as a restriction on their authority and were uncooperative. Now the standard is for each department to have its own planning and analysis effort. This helps coordinate the activities of sections within the department, but still leaves the minister with overall coordination and control problems. Ministers must depend on political appointees to coordinate the activities of the various departments and provide a broader forward-looking view of agency priorities.

Before ministries finalize a legislative proposal it is circulated to other ministries with related policy interests. For example, a bill to deal with drug addiction might be referred to the Youth and Family Ministry, the Justice Ministry, and the Labor and Social Affairs Ministry. These ministerial exchanges attempt to confirm that a consensus exists before the proposal is submitted to the full Cabinet. The

chancellor exercises a crucial part in ensuring this consensus. The chancellor's office coordinates the legislative proposals drafted by the various ministries. If the chancellor feels that a bill conflicts with the government's stated objectives, he may ask that the proposal be withdrawn or returned to the ministry for restudy and redrafting. If a conflict on policy arises between two ministries, the chancellor may mediate the dispute. Alternatively, inter-ministerial negotiations may be used to resolve the difference. Only in extreme cases are the ministries unable to reach an agreement; when this occurs policy conflicts can be referred to the full Cabinet.

The full Cabinet approves legislative proposals before they are sent to the parliament. In addition, the ministers of Interior, Finance and Justice have extraordinary authority to veto proposals that conflict with the authority of these ministries, such as the Finance minister's ability to veto bills that exceed the government's budgetary allowances.⁽⁴⁾ The decision-making process in the Cabinet emphasizes consensual agreement, and few formal votes are taken. Because of its large size and full agenda, the opportunity for extensive discussion and policy formation at the Cabinet level is limited. In most cases the Cabinet members ratify policy proposals that already were worked out in inter-ministerial negotiations or in the policy subcommittees of the Cabinet. In a minority of cases -- though often the most politically important -- the Cabinet is called upon to resolve policy conflicts between contending ministries or the parties in the governing coalition.

The chancellor plays a central role in setting the pattern of Cabinet activity and in directing the outcome. The chancellor balances the conflicting interests of the ministries to reach an agreement that the government as a whole can support. But the chancellor is more than just a fulcrum; a strong chancellor can set the government's policy goals and shape the policy alternatives under consideration by the cabinet. The position as government and party leader gives the chancellor considerable influence in negotiating with Cabinet members. Seldom does a majority of the Cabinet oppose the chancellor.

Each chancellor has exercised his own "Cabinet style" in setting the pattern of Cabinet activity.⁽⁵⁾ Konrad Adenauer (1949-1963) was a forceful leader whose style was described as an example of "chancellor democracy." Adenauer directed the course of government action and ministers were expected to follow the chancellor's policy directives. Even when confronted with opposition from within the government, Adenauer displayed an uncanny ability to adjust his political position and control the policy outcome. Helmut Schmidt (1974-1982) was another strong chancellor. Schmidt approached the office like the chairman of the board for a large corporation. His political influence was derived from the strength of his personality and knowledge accumulated through a series of governmental offices. Schmidt's strong management style developed his reputation of a *Macher* ("doer"), a man who could get things done.

Helmut Kohl (1982-1998) and Gerhard Schroeder (1998-2005) are also regarded as strong chancellors, albeit with different styles. Kohl had a lowkey administrative style that conveyed an impression of indecision and an inability to control the policy process. Yet Kohl also possessed a politician's feel for the use of political power developed over years as the head of the Christian Democratic Union and maintained strict control of the party.⁽⁶⁾ Schroeder viewed himself as a doer, like Helmut Schmidt. He managed the complexity of a SPD-Green government with his strong personality. In addition, he was a master campaigner and voters were attracted by his aura of competence.

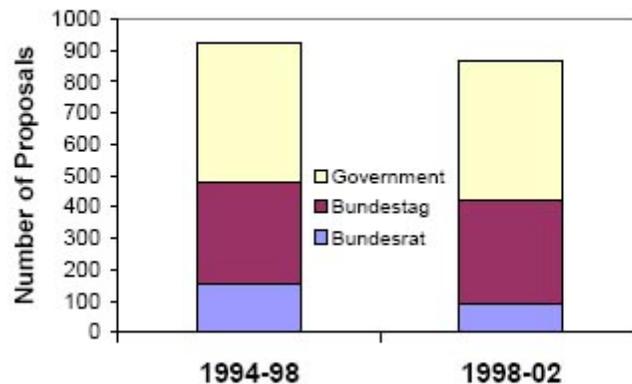
Other chancellors displayed a more open cabinet style. The Grand Coalition, for instance, led to a style of shared cabinet responsibility under Kurt Georg Kiesinger (1966-1969). Willy Brandt's cabinet style (1969-1974) was more eclectic; he was not one for formal detail and strict management procedures. Especially during Brandt's second term in office, cabinet meetings often rambled with little structure or direction from the chancellor. Brandt was a decisive leader on matters of foreign policy, but on domestic issues the cabinet followed a very collegial and unstructured style of decision making.

Angela Merkel (2005-) is described in terms of a lowkey governing style, without the egoism that characterized both Kohl and Schroeder. She tries to govern by consensus, building up support for proposals with quiet discussion instead of public displays. This made the Grand Coalition possible after the 2005 election. Observers often attribute this style to her political experiences growing up in the German Democratic Republic, or her sensitivities because of her gender. This has won her respect in Germany and Europe, although she is also criticized for not being aggressive enough when decision action appears necessary (such as in response to the economic recession that began in late 2008).

Legislating Policy

The Cabinet makes the most legislative proposals to parliament. In the last few parliamentary sessions, the government has introduced about half of all the bills considered by the Bundestag (Figure 10.1). The second most common source of legislation is the Bundestag itself. Thirty members of the Bundestag may jointly introduce a bill. Bundestag proposals have recently accounted for about a third of all bills considered. Besides their smaller numbers, many proposals originating in the Bundestag have limited political significance; they deal with minor matters that are somewhat equivalent to the private member bills in the United States Congress. Other Bundestag proposals are offered by the opposition parties for their public relations value, but have little chance of passage since the sponsoring party is in the minority. In the 1998-2002 parliament, for example, about 13 percent of all proposals came from the CDU/CSU-FDP opposition. The Bundesrat is the third and final source of legislative proposals; a majority of state governments in the Bundesrat can propose legislation. Bundesrat initiatives are infrequent, with barely a tenth of all legislative proposals initiated by the Bundesrat.

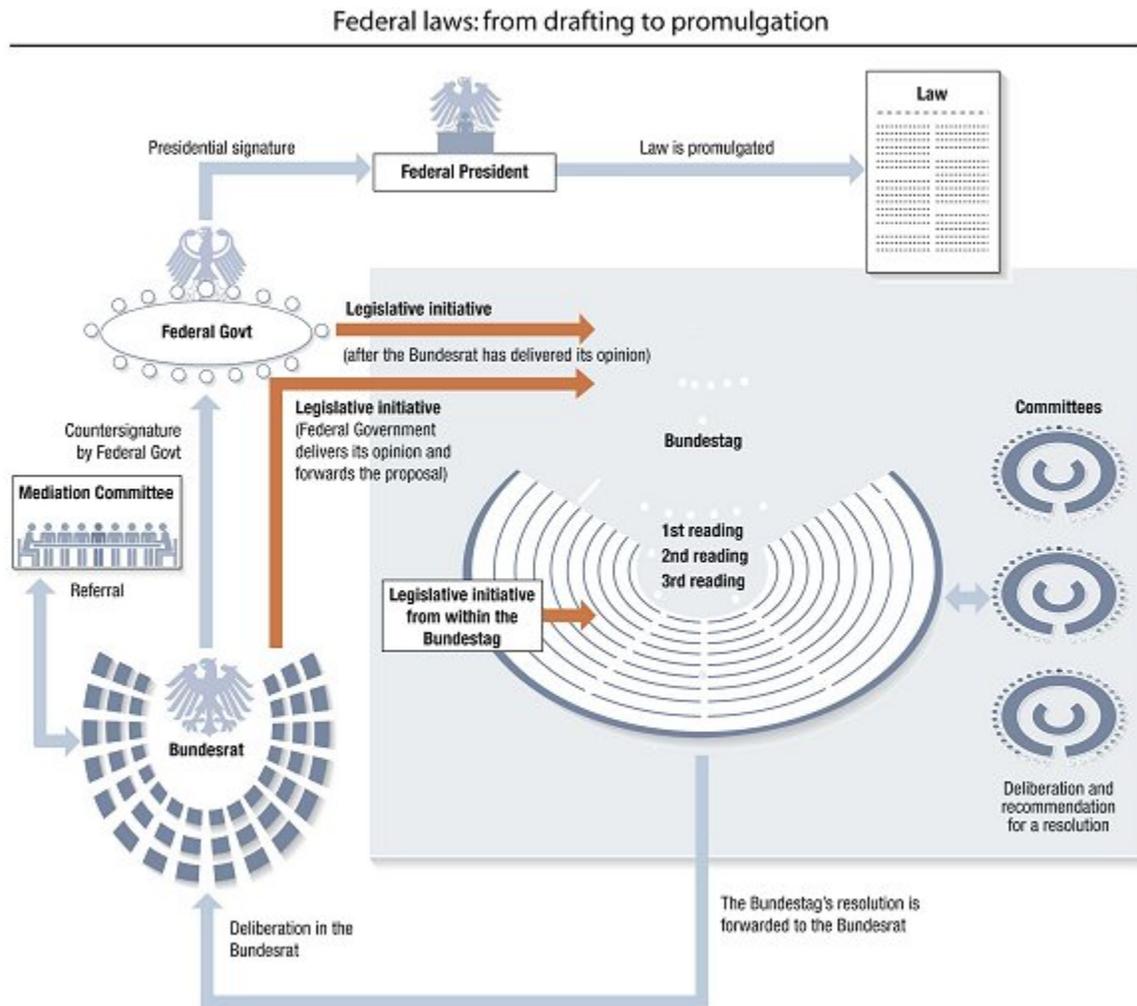
Figure 9.1 Source of Legislation



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Although the legislative process sometimes has the appearance of a maze, it is possible to track the normal course of policy proposals through this process (figure 10.2). Government legislative proposals are first submitted to the Bundesrat for review. The Bundesrat has six weeks to respond to most government proposals unless the government requests urgent consideration. Because of this short time frame, most proposals are examined in committee. This brief review primarily informs the Bundesrat of the government's intentions and provides the states with an opportunity to react. The Bundesrat's comments are transmitted to the Cabinet, which then forwards the proposal to the Bundestag along with these comments and the government's response.

Legislation originating in the Bundesrat is sent to the Cabinet for comment and transmission to the Bundestag. Proposals that originate in the Bundestag can bypass these initial reviews and receive immediate consideration by the chamber. In a few instances of pressing urgency, the government has had its own proposals submitted by a group of Bundestag deputies in order to avoid the delay of Bundesrat review.



Once submitted to the Bundestag, legislative proposals are referred to the Council of Elders. The relevant party working groups almost simultaneously begin to review the bill. Throughout the legislative process party deliberations parallel the formal actions of parliament. The proposal is placed on the legislative calendar for a first reading before the Bundestag. The first reading has gradually become a formality, with most policy discussions and party debate reserved for latter steps in the process. If a majority of the Bundestag supports a proposal, the Council of Elders refers it to the relevant committee or committees.

Much of the real work of the Bundestag takes place in these specialized committees.⁽⁷⁾ The committee structure generally follows the divisions of the federal ministries, such as finance, transportation, budget, labor, or agriculture. In contrast to the United States, the committee chairpersons are proportionally allocated to all parties in the Bundestag, giving the opposition parties the leadership of several major committees. Within each committee, however, the governing parties hold a majority of the membership so that party control of committee chairs is less significant than in the American Congress. The activities of the committees are supported by reasonably sized staffs and the policy research of the party

Fraktionen. The policy resources of these committees give the Bundestag policy expertise to review and amend government proposals.

Most committees meet behind closed doors, but official published reports and informal accounts provide a detailed picture of what transpires in these smoke-filled rooms.⁽⁸⁾ The executive and legislative branch work hand-in-hand within the committees. Indeed, the Basic Law (Article 43) ensures that government representatives have "access to all meetings of the Bundestag and its committees. They must be heard at any time." The ministries frequently send representatives to committee meetings. Usually there is an open interchange between the ministry and committee members. The government official is not a witness but a participant in the process, joining in on committee discussions, explaining the background of legislation, and providing policy expertise. These government-committee ties inevitably strengthen over time, and government officials can virtually become non-voting committee members.

The committees also are an opportunity for interest groups to influence the policy process. Relevant interest groups are generally represented by sympathetic deputies among the committee membership.⁽⁹⁾ Farming interests are understandably overrepresented among members of the food and agriculture committee, just as union and business representatives are concentrated in the labor and social policy committee. Interest groups can also submit written statements or ask to testify before the committee. Public hearings enable some interest groups to continue lobbying that began during preparation of the bill, and broadens policy access to include other interests excluded at the ministerial level. The Bundestag uses its committees for policy input more than is normally done in a parliamentary system.

Committee decision making reflects a mix of partisan considerations and the shared policy interests of committee members. Most legislative proposals involve simple administrative procedures or minor policy issues. On these matters, the committee acts as a group of experts, focusing on the legal formalities of the legislation. They try to ensure that legislation is formally correct and adequate for the intended purpose. Partisan and political considerations play a secondary role, and committee members normally reach a consensus on these proposals.

When policy conflicts appear within committees, they generally follow partisan lines. The parties regularly act as a bloc in presenting viewpoints previously endorsed by the party Fraktion. Occasionally the conflict may transcend party lines, as when dissensus within the Cabinet carries over to parliamentary deliberations or when a parliamentary party differs from its Cabinet leadership. Even in conflictual cases, however, the internal dynamics of most committees encourage cooperation and compromise between contending factions. Rather than following a strategy of fundamental opposition and losing all influence over committee decisions, the minority party frequently proposes amendments that potentially might win majority support. This consensual style is facilitated by the closed-door setting of most committee meetings, and the reliance on informal rules of procedure which encourage consensus-building and unanimity over formal votes and majoritarianism. This pattern of moderate opposition applies both to the SPD and CDU/CSU during their recent experiences in opposition. Most committees are therefore instruments for party action, although some of the prestigious committees -- such as Judiciary, Defense, Foreign Affairs, and Interior -- possess a political stature which enables them to maintain somewhat more independence from the party leadership.

The bills reported out of committee are far along the way to passage. The committees consider the interests of the government and parliament. Government proposals often undergo substantial revision within the committees and relatively few changes occur on the floor of parliament. The advice of committee members normally carries over to party positions in the full Bundestag. By the time a committee is through working, the fate of most legislative proposals has been determined.

When a bill is reported out of committee, it goes before the full Bundestag for a second reading. The proposed legislation is discussed in plenary session and deputies may offer amendments. At this point in the legislative process, political positions already are well established. Leaders in the governing parties participated in the initial formulation of the legislation, and the party Fraktionen in the Bundestag have caucused to determine the official party position. Major revisions during the second reading are infrequent; the government generally is assured of the passage of its proposals as reported out of committee.

Bundestag debate on government proposals is thus mostly symbolic. Eberhard Schuett-Wetschky describes the major parliamentary debates as "political battles" fought with rhetorical weapons in which the parties and political leaders present their views to the public.⁽¹⁰⁾ The successful parties explain the merits of the new legislation and advertise the efforts they made in behalf of their supporters. The opposition parties use the debates to place their objections in the public record and draw public attention to the faults of the government. Although these debates seldom influence the outcome of a vote, they nevertheless comprise an important part of the Bundestag's informational function.

[YouTube video of Bundestag debate on Lisbon treat \(in German with subtitles\) \(2:39min\)](#)

If a bill passes the second reading without amendment, it can immediately be considered for a third reading and final passage. If amendments were added, final consideration is delayed for at least a day to allow deputies and party Fraktionen to review the final proposal. Following the third reading a final vote is taken. Voting on most bills is done by a voice or standing vote for the yeas and nays. In cases of doubt, a formal division of the Bundestag occurs as deputies are counted by the clerk as the yeas and nays file through separate doors, a procedure colorfully known as the sheep roundup (*Hammelsprung*). Fifty deputies can request a roll call in which the name and vote of each Bundestag deputy is publicly recorded. Roll calls are infrequent, however; recent parliaments average only about a couple hundred roll calls during an entire four-year term (compared to several thousand in the American Congress).

The voting decisions of individual deputies generally adhere closely to party lines. The party government model (chapter 8) presumes that party deputies act as a single unit, casting their vote as a bloc. The parties formalize their position in Fraktion meetings that occur before the plenary sessions. Once party decisions are made, deputies closely adhere to their party's voting advice; the fluid voting lines of the United States Congress are a marked contrast to the predictable party voting patterns of the Bundestag. In most cases it would be more accurate to say that Bundestag voting patterns are based on four party blocs, and not the votes of 698 separate deputies.⁽¹¹⁾

While partisan bonds are very strong, the political norms of the Bundestag also encourage cooperation across party lines. Within the committees and in inter-party negotiations legislators attempt to work out compromises that both major parties can accept and support. Cooperation in most cases is simplified because the majority of the parliament's work involves passage of noncontroversial legislation: minor policy proposals or bills aimed at improving the administration of existing policies. In these cases there is little debate in the plenary sessions and the legislation often receives broad partisan support. But even legislation involving major policy concerns are often supported by bipartisan coalitions; social policy, European integration, and foreign affairs furnish many examples of such cooperation.

The extent of partisan cooperation ebbs and flows over time. When the Greens first entered parliament (1983-1990), they generally pursued a course of fundamental opposition to the government's programs.⁽¹²⁾ That role was taken over by the CDU/CSU when the Greens entered the government with the SPD in 1998. Now with a Grand coalition, the opposition represents barely a fifth of the Bundestag

deputies. Amongst them, however, the Greens, FDP and PDS.Linke are vocal critics of the government's actions (albeit for different reasons).

A bill that successfully passes in the Bundestag is transmitted to the Bundesrat which represents the state governments in the federal policy process. As was discussed in chapter 2, the legislative authority of the Bundesrat is equal to that of the Bundestag in policy areas where the states share concurrent powers with the federal government or administer federal policies. In these areas the approval of the Bundesrat is necessary for a bill to become law. In the policy areas that do not involve the states directly, such as defense or foreign affairs, the chamber's approval of legislation is not essential.

This sharing of legislative power between the state and federal governments is a mixed political blessing. The system introduces flexibility into the policy process. Through their influence on policy making and policy administration, state leaders can adapt legislation to local and regional needs. This division of power furnishes another check in the system of checks and balances by limiting the political power by the national government.

The division of power between the two parliamentary bodies also contains some problems. The Bundesrat's voting procedures give disproportionate weight to the smaller states. The five smallest states control more than half the votes in the Bundesrat, even though they represent only a quarter of the population. The Bundesrat thus cannot claim the same popular legitimacy as the proportionately-represented and directly-elected Bundestag. The Bundesrat's voting system also may foster parochialism by the states because each state delegation votes as a bloc. This encourages each state delegation to view policy from the state's perspective rather than the national interest or party positions. The different electoral bases of the Bundestag and Bundesrat make such tensions over policy an inevitable part of the legislative process.

In recent decades there have frequently been periods when one party controlled the Bundestag and another the Bundesrat. As the 1990s began, state election victories for the SPD enabled the party to claim a majority in the Bundesrat, and divided government returned to the Federal Republic. Then in the late 1990s, the CDU/CSU-FDP held a majority in the Bundesrat while the SPD-Green coalition had a majority in the Bundestag. In one sense, this division strengthens the power of the legislature, because the governing parties are forced to negotiate with the opposition parties in the Bundesrat. As Americans know quite well, divided government also makes it more difficult for governments to establish clear policy goals and enact them into law..

As in the Bundestag, much of the Bundesrat's work occurs within specialized committees. State leaders or state civil servants scrutinize bills both for their policy content and their administrative implications for the state governments. After committee review, the bill and the committee's reactions are submitted to the full Bundesrat. If the Bundesrat approves of the measure as passed by the Bundestag, it is transmitted to the chancellor for his signature and promulgation by the federal president.

When the Bundestag and Bundesrat disagree on a legislative proposal, a complex process of negotiation and formal evaluation begins. Representatives of both bodies first meet in a Mediation Committee and attempt to resolve their differences.⁽¹³⁾ Unlike the varying membership of the Joint Conference committees of the United States Congress, the German Mediation Committee has a permanent membership (16 Bundestag deputies and 16 Bundesrat representatives) that considers all legislative disagreements between the two chambers.

If the Mediation Committee reaches a compromise, the revised bill is first sent to Bundestag for approval and then on to Bundesrat. If the committee can not agree on a compromise, the Bundesrat has two weeks

to vote on the bill as originally passed by the Bundestag. On new legislation that involve state responsibilities which constitutionally require Bundesrat approval -- for example, a public health program that will be administered by the state governments -- the Bundesrat may cast an *absolute* veto and the bill cannot become law. In the remaining policy areas, such as a defense policy initiative, the Bundesrat can only cast a *suspensive* veto that the Bundestag may override.

Parliamentary rules contain an unusual procedure whereby the intensity of the Bundesrat's opposition determines the requirements for the Bundestag to override the upper chamber's suspensive veto. If the Bundesrat's suspensive veto was supported by a simple majority, a simple majority of the Bundestag is sufficient to overturn the veto and forward the bill to the chancellor. If two-thirds or more of the Bundesrat opposed the bill, then a two-thirds majority of the Bundestag is also required. The final step in the process is the signing of the law by the chancellor and its promulgation by the federal president.

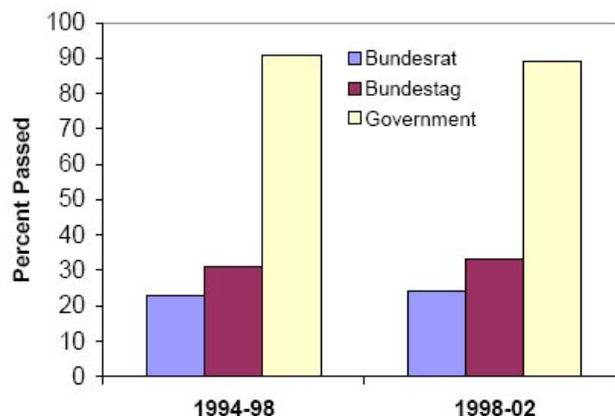
The political stature of the Bundesrat has grown over the years as the chamber has become more assertive in championing states' rights. In the early parliaments barely 10 percent of all legislation required Bundesrat approval, and this grew to 60 percent. In 2006 the principle of Bundesrat review was 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 for the states. The government's goal was to streamline the legislative process, which indirectly reduces the power of the states. This new procedure should significantly reduce the number of bills that require Bundesrat approval in the future.

The political authority of the Bundesrat is not solely based on its absolute veto. Bundesrat members can draw upon the extensive policy and administrative expertise of their state governments, which provides them with important information resources in evaluating and amending legislative proposals. The administrative responsibilities of the states (see below) gives the Bundesrat additional leverage in negotiating with federal policy makers. The Bundesrat also utilizes the Mediation Committee as a vehicle for revising government proposals, and has been fairly successful with this tactic. The Bundesrat ultimately vetoes very few bills.

Throughout the legislative process, the executive branch is omnipresent.⁽¹⁴⁾ After transmitting the government's proposal to the Bundestag, the federal ministries work to support the bill. Ministerial representatives participate in the deliberations of Bundestag and Bundesrat committees. Cabinet ministers are actively involved in lobbying committee members and influential members of the parliament; nearly all ministers are themselves Bundestag deputies. Ministers may propose amendments or negotiate policy compromises to resolve issues that arise during parliamentary consideration. Government representatives also are allowed to attend the meetings of the Mediation Committee; no other nonparliamentary participants are allowed.

Although the parliament may substantially revise the government's proposals or even defeat them, the executive branch has a dominant influence on the policy process. Figure 10.3 displays the proportion of legislative proposals that are actually enacted into law according to their source. Nearly 90 percent of government initiatives in these two parliamentary

Figure 9.3 Success Rate for Legislation



sessions eventual became laws, though many were amended in the process. Roughly a third of the proposals originating in the Bundestag passed, and Bundesrat proposals have an even lower success rate. The vast majority of all successful legislation thus originated in the executive branch.

Policy Administration

Few federal ministries possess the resources necessary to implement and monitor the policies enacted by the federal government. In areas where the federal government has exclusive authority, such as defense and communications, these policies are administered by federal agencies. In other policy areas, federal administrative agencies are responsible for policy administration. For instance, the Federal Labor Agency administers federal labor programs including unemployment insurance. The agency works under the supervision of the Labor ministry but is not formally part of the ministry.

By and large, most domestic administrative responsibilities are assigned to the states. Article 30 of the Basic Law holds that "the exercise of governmental 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." The system of federalism is based on a horizontal division of political responsibilities. The federal government is the prime legislative arena, and the state governments administer policy -- even the majority of the policies enacted at the federal level.[\(15\)](#)

One indicator of the states' central administrative role is the distribution of public employees across the three levels of government. More civil servants are employed by the state governments than by the federal and local governments combined. The federal government thus depends on the state and local bureaucracies for administration of most domestic programs.

In a limited number of policy areas the states act as an agent of the federal government, and therefore are subject to strict federal supervision. Highway construction is one example; federal funds built the autobahnen, but the actual construction work was administered by the Länder as agents of the federal government. In most instances, however, the authority of Article 30 grants the states substantial autonomy in how they administer legislation, free of direct federal supervision.

Because of this delegation of administrative responsibilities, federal legislation is often fairly detailed to ensure that the actual application of a law follows the federal government's intent. Federal agencies may review the actions of state agencies, and in cases of dispute apply sanctions or seek judicial review. Yet most legal attempts to restrict the actions of the states have been rebuffed by the courts; and legislative control of the states requires Bundesrat support, where claims for states' rights receive a sympathetic hearing. The Länder thus retain considerable discretion in applying most federal legislation. This decentralization of political authority provides additional flexibility for the political system.

Judicial Review

As in the United States, legislation in Germany is subject to judicial review. A Constitutional Court has the authority to evaluate the constitutionality of legislation, and to void laws that violate the provisions of the Basic Law.

A distinctive feature of the German judicial system is the multiple access points to the judicial review process. Constitutional issues are normally brought before the court by one of three methods.[\(16\)](#) Most common are constitutional complaints filed by an individual. When citizens feel that their constitutional rights were violated by a government action, they may appeal directly to the court. The alleged action might involve individual rights, those of a business interest, or a corporation. The issues range from

complaints about "unconstitutional" taxes, to petitions claiming that the government violated the individual's basic human rights. For example, the 1983 census was brought before the court by an individual petition, and the court agreed to invalidate parts of the law (and delay the census enumeration) because portions of the law violated the privacy guarantees of the Basic Law. More than 90 percent of the cases presented to the court arise from citizens' complaints, and these cases can be filed without paying court costs and without a lawyer.

What originally began as a modest stream of citizen complaints has grown to a river in recent years. In the early 1950s constitutional complaints numbered a few hundred per year. Between 1951 and 2005, 151,424 constitutional complaints were filed with the court. To handle these complaints the court established subcommittees that review submissions for their constitutional significance and decide whether the case should be considered further. Less than 5 percent of complaints are actually heard by the full court, but this still accounts for the majority of the court's decisions. Only about 2.5% of personal complaints filed between 1951 and 2005 were eventually supported by the court. The Constitutional Court is thus like an ombudsman, assuring the average citizen that the Basic Law and the Courts are protecting his or her fundamental rights.

A second manner in which the Constitutional Court hears cases is by *concrete* judicial review. Concrete review involves actual court cases that raise constitutional issues. Appeal to the Constitutional Court is not automatic, and is not requested by the litigants in a case as happens in the American court system. Instead, the lower court certifies that a case involves significant constitutional issues, it is not even required that the plaintiff or defendant raised the issue in the trial. The case is then forwarded to the Constitutional Court for review. The court case is merely the stimulus for constitutional review of legislation. The Constitutional Court reviews the constitutional issues involved in the case rather than acting as an appeal court for the case itself.

The third way that the Constitutional Court rules on legislation is through *abstract* judicial review. The court can be asked to review the constitutionality of legislation as a general legal principle without reference to a specific court case. The federal government, a state government, or one-third of the Bundestag deputies can request the review of a law. This procedure is most often used by groups that failed to block a bill during the legislative process. For instance, the legislation to send German troops to fight in Afghanistan in 2002 was reviewed by the court before the troops could be sent. Judicial review in the abstract substantially expands the constitutional protection of the Basic Law. At the same time, it directly involves the court in the policy process and at least partially politicizes the court as another agent of policy making.

Abortion law reform provides one example of the court's policy impact. As soon as the Bundestag passed abortion legislation in 1974, an appeal for abstract judicial review was brought before the Constitutional Court by the CDU/CSU-governed Länder and 193 CDU/CSU Bundestag deputies. This appeal kept the law from going into effect until the constitutional issue was decided. In 1975 the Court overturned the reform law as unconstitutional. It decided (5:3) that the right to life provisions of the Basic Law (Article 2) apply to the unborn and the state must protect this right through limitations on abortion. In issuing its finding, the court also declared that abortions would be constitutionally justified within twelve weeks of conception in instances where the condition of the woman is threatened by continuation of the pregnancy. The Bundestag enacted new abortion legislation in 1976, following the guidelines provided by the court. In essence, the Court's interpretation of the Basic Law determined public policy.

Then, after unification a new abortion controversy arose. Access to abortion was unrestricted in the eastern Länder, which was much different from the law in the West. In 1992, the Bundestag attempted to unify abortion policy East and West with a new abortion law that granted a woman the right to an

abortion up to the twelfth week of pregnancy, provided she accepted counseling first. Later that year the Federal Constitutional Court issued an injunction against the parliament's decision and began its review of the law. The following year the Court struck down the law based the Basic Law's explicit protection of the rights of the unborn child. The ruling essentially restated its earlier decision that now applied to both West and East.

In comparative terms, the constitutional importance of the German court may even exceed the influence of the United States Supreme Court. The two courts share the basic responsibilities of concrete judicial review and individual constitutional complaints, but these opportunities for judicial review are applied more broadly in the German system. The German court has the additional responsibility of abstract review, which considerably expands its powers.

The formal impact of the court on policy outcomes is consequently substantial. Between 1951 and 1980 the court declared 107 federal laws invalid and held that portions of 60 others were incompatible with the Basic Law.⁽¹⁷⁾ Furthermore, the invalidation of legislation on constitutional grounds is only one aspect of the court's policy influence. The potential for abstract review also can produce an indirect influence on policy makers as they attempt to anticipate the court's reaction to legislation facing parliament. The court also influences policy outcomes when it interprets a law to ensure compatibility with the Basic Law. In these decisions the court is not restricted by the common law principle of precedent (*stare decisis*). Each case is decided based on present legal understandings and future consequences, not on past decisions. This allows the court to exercise greater latitude in reaching its decisions.

The German Constitutional Court also has more discretion in its handling of sensitive "political" cases. Judicial norms dissuade the American Supreme Court from involving itself in political controversies, such as conflicts between political parties or the internal affairs of government. In contrast, the Basic Law calls on the German Constitutional Court to act as a guardian of the constitutional process, which encourages its involvement in political disputes. On the one hand, this means that the court is more likely to accept jurisdiction on sensitive political issues or matters of political procedure. On the other hand, the judges on the court openly acknowledge that political consequences are relevant to the court's deliberations; this is seen as a legitimate part of the court's role in protecting the political bases of the state.⁽¹⁸⁾

The court's resolution of sensitive political issues, such as abortion reform and the Basic Agreement with East Germany, give the court the image of a policy activist. The leading American specialist on the German court, Donald Kommers, once concluded that by American standards the Constitutional Court exhibits "judicial activism absolutely running wild."⁽¹⁹⁾ At the least, the extent of judicial action makes the Constitutional Court a significant participant in the overall policy process.

Separate from the Constitutional Court, the judicial system contains a large number of administrative courts that influence public policy through their decisions. The decisions of the Federal Social Court, for example, affect the distribution of unemployment compensation, health benefits, and other social services. The Federal Labor Court arbitrates between business and the unions over matters of workers rights and the application of federal labor laws (see chapter 7). Similarly, the administrative courts were a major arena in the policy debate between the nuclear power industry and its critics because the courts have the authority to decide issues involving the safety and technical feasibility of nuclear power plants.⁽²⁰⁾

The Europeanization of Policy

While the policy making process is typically identified with the political institutions of the Federal Republic, the European Union has steadily become a more important participant in this process. This

Europeanization of the policy process occurs in two ways.⁽²¹⁾ First, the European Union, its institutions, and international EU agreements have an increasing impact on what policies can be made by the German government. The EU establishes product standards, sets international standards for EU members, and creates guidelines for the administration of EU treaty provisions. Because of past treaty agreements, EU policy takes precedence over German law in many areas (see Box 9.1). And because the EU has expanded its policy responsibilities through a series of international treaties, this role has grown over time. In addition, the EU institutions, especially the European Court of Justice, have become more active in implementing their policy authority.

In response to this involvement, most of the federal ministries in Berlin now have departments devoted to coordinating EU and German policy relevant to the ministry. Bundestag committees also have to consider whether pending legislation is consistent with EU standards. And if disagreements arise between interests in Germany and other nations, or when Germans feel their rights under EU law have been violated, they can petition the European Court of Justice to adjudicate the case. Hard statistics are difficult to calculate, but it is likely that the EU directly or indirectly affects most of the policies being considered within the German policy process.

What is Beer?

The German beer industry had worked for centuries under the beer purity laws that regulated the contents of beer. Only four ingredients were allowed in beer: water, hops, barley and yeast. International beer producers argued that these laws limited free trade in beer produced in different nations using different standards. Foreign competitors complained to the EU that the German law denied foreign businesses access to profitable German beer markets. In 1987 the European Court of Justice ruled that the German Beer Purity Law created intra-European trade barriers, in direct violation of the Rome Treaty. The Court forced repeal of the German law, which allowed international breweries to sell their beer in Germany. The moral of this story is that if the European Union could define what beer means to Germans, it could also define policies in a wide range of important political topics.

The second aspect of the Europeanization of policy is the transfer of German policy activities to the European level. For example, many of the German Laender have "embassies" in Brussels to lobby EU institutions on policies relevant to their interests. In a meeting with a minister president of a large German Land, he said he spent as much of his timing thinking of what is happening in Brussels as he spent thinking about policymakers in Berlin. The German federal government also actively lobbies the EU to influence their decisions, which can expand German policies to Europeanwide policies. For instance, Germany was an early proponent of stronger environmental policy standards by the European Union. Germany also played a key role in the creation of the European Monetary Union and the formation of the European Central Bank, modeled after the German Bundesbank.

In short, no longer can one think of German policy making as occurring only within the borders of Germany or only in Berlin. German political institutions are part of a European system of multilevel governance where national and European institutions interact. The policy outcomes in Brussels and Berlin are influenced by this conjoined system of governance.

The Process in Review

The policy process in Germany is unusual for a parliamentary democracy. Compared to most other parliamentary systems in Western Europe, the German policy process spreads power to the various institutions of government. The federal structure of government creates important arenas for policy

activity at both the federal and state levels. Even within the federal government, policy influence is distributed among the separate branches of government. In contrast to the normal fusion of executive and legislative branches that occurs in a parliamentary system, the framers of the Basic Law went to great lengths to maintain the autonomy and policy competency of both branches. The Parliament is among the strongest national legislature in Western Europe, because of its bicameral organization and powerful committee structure. The Bundestag and Bundesrat review and revise government proposals, contributing their substantive concerns to the policy process. The U.S. Congress is one of the few democratic legislature that exercises a greater role in the making of public policy.

The innovative feature of the German system is that the strength of the legislature has not come through a limitation of executive power. Within their domain of responsibility, the chancellor and the Cabinet wield more policy influence than is normally the case in a parliamentary system. The chancellor possesses the formal authority to direct the affairs of government and his cabinet, while also representing the majority of the Bundestag. Policies are primarily initiated by the executive branch, which is the major focus for pressure-group activities.

The potential policy influence of the courts is also more extensive than in most other West European democracies. Access to judicial review is more sharply restricted in France, while the supremacy of the British parliament can be challenged in the British courts only to a limited degree. Intentionally or unintentionally, the German courts regularly find themselves involved in affecting public policy.

This dispersion of power is one reason for the emphasis on a consensual style of policy making in the German system.⁽²²⁾ With so many potential arenas for political conflict, in which a hostile minority could attempt to block a policy, cooperation and compromise enable the government to enact their program into law even if it is in modified form. The government tries to reach internal consensus before proposing new legislation, the major parties are willing to negotiate and compromise within the legislature, and the Bundesrat and Bundestag reconcile their difference in the Mediation Committee. In other words, the separation of powers not only balances the rivalry between contending political factions as political theory would suggest, but it also lessens the intensity of the rivalry.

The dispersion of power produces a more open policy process for interest groups that seek to influence public policy, at least in comparison to what normally occurs in parliamentary systems. Not only can lobbying groups contact elected public officials, but federal regulations require that the relevant groups be consulted as new policies are developed by the ministries. This situation is in sharp contrast to the closed nature of the British or French bureaucracy, for example. Yet the highly structured form of interest representation in the Federal Republic also has its drawbacks. Formalized consultations often lead to rigidity and a preference for the status quo; some government officials may equate public input to a consultation process involving only a narrow group of special-interest organizations. A few large, well established national organizations tend to exploit this formal process of interest representation, while other less-established groups find it difficult to gain access to closed ministerial consultations. Indeed, one of the major pressures on the policy process is to further expand access for new interest groups and interests that are not represented by an organized national lobby.

Another consequence of the consensual, bureaucratized style of policy making is the difficulty government has in actively responding to new policy challenges.⁽²³⁾ In a world of rapid technological change and uncertain international conditions, nations need to maximize the problem solving capacity of their political systems. A consensual style of policy making may prove less adaptable to changing political demands. Under uncertain or changing social conditions, consensus may develop only after the opportunity for initiating successful new policies is past. When combined with the lack of coordination and planning that also exist within the policy process, many critics claim that the Federal Republic suffers

from an insufficiency in problem solving capacity. How the political system responds to these current policy demands may determine the nation's future ability to compete with other industrial democracies.

Suggested Readings

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Endnotes

1. Peter Goetz, "Government at the Centre." In Stephen Padgett et al., *Developments in German Politics 3* (New York: Macmillan, 2004); Peter Katzenstein, *Policy and Politics in West Germany* (Philadelphia: Temple University Press, 1987), ch. 1.
2. Total federal employees in 2006 numbered about 4772,000 individuals excluding postal and railway workers; over 2 million people were employed by the state governments and another 1.2 million by local governments.
3. Gerard Braunthal, *The Federal of German Industry in Politics* (Ithaca: Cornell University Press, 1965), p. .
4. In fact, policy making in the areas of finance and defense policy differ in significant ways from the general model elaborated here. See A Hyde-Price, "Defence and Security Policy." In Stephen Padgett et al., *Developments in German Politics 3*.
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5. Stephen Padgett, eds. *The Development of the German Chancellor: Adenauer to Kohl* (London: Hurst, 1994); Ludger Helms, "The Changing Chancellorship: Resources and Constraints," *German Politics* (2002) 10: 155-168.
6. Renate Mayntz, "West Germany," in *Advising the Rulers* (Oxford: Basil Blackwell, 1987), pp. 3-18.
7. Nevil Johnson, "Committees in the West German Bundestag," in *Committees in Legislatures*, ed J. Lees and M. Shaw (Durham: Duke University Press, 1979); Winifried Steffani, "Parties, Parliamentary Groups and Committees in the German Bundestag," in *The Congress and the Bundestag*, ed. Robert Livingston and Uwe Thaysen (Boulder: Westview, 1988).

8. For an interesting comparison of legislative norms by a West German working in the US Congress see Werner Jann, "The Internal Workings of Congress and the Bundestag," *PS* 42 (Fall 1984): 901-906.
9. Ferdinand Müller-Rommel, "Interest Group Representatives in the German Bundestag," in *Congress and the Bundestag*, ed. R. Livingston and U. Thaysen.
10. Eberhard Schuett-Wetschky, *Grundtypen parlamentarischer Demokratie* (Munich: Karl Alber Verlag, 1984), pp. 68ff.
11. Thomas Saalfeld, "Professionalization of parliamentary roles in Germany." In Wolfgang Mueller and Thomas Saalfeld, eds. *Members of Parliament Western Europe* (London: Frank Cass, 1997).
12. E. Gene Frankland, "The Role of the Greens in West German Parliamentary Politics," *Review of Politics* 50 (Winter 1988).
13. If the bill involves state constitutional rights and therefore requires Bundesrat passage, the Bundestag or government can call for a meeting of the Mediation Committee. Otherwise, the bill could not become a law. If the bill does not involve state rights, the Bundesrat has the option to request review by the Mediation Committee.
14. The Basic Law grants the executive even more extensive formal powers in the area of fiscal policy. Parliament cannot revise the spending or taxation levels contained in legislation proposed by the Cabinet. The parliament cannot even reallocate expenditures in the budget without the approval of the finance minister and the Cabinet.
15. Arthur Gunlicks, *The Laender and German Federalism* (Manchester: University of Manchester Press, 2003).
16. The court also hears a fourth class of cases dealing with constitutional disagreements between units of government; for example, a state challenging the actions of the chancellor or the Cabinet.
17. Christine Landfried, "The Impact of the German Federal Court on Politics and Policy Output," *Government and Opposition* (1986): 522-541.
18. Donald Kommers, *Judicial Politics in West Germany* (Beverly Hills, CA: Sage Publications, 1975), p. 184.
19. Donald Kommers, "The Federal Constitutional Court in the West German Political System," in *Frontiers of Judicial Research*, ed. J. Grossman and J. Tannenhaus (New York: Wiley, 1969), p. 113; also see Landfried, "The Impact of the German Federal Constitutional Court on Politics and Policy Output."
20. Dorothy Nelkin and Michael Pollak, *The Atom Besieged* (Cambridge: MIT Press, 1981).
21. Kenneth Dyson, "The Europeanisation of German Governance." In Stephen Padgett et al., *Developments in German Politics 3*.
22. Kenneth Dyson, "West Germany: The Search for a Rationalist Consensus," in *Policy Styles in Western Europe*, ed. Jeremy Richardson (London: Allen and Unwin, 1982).
23. Thomas Zittel and Dieter Fuchs, eds. *Participatory Democracy and Political Participation: Can Participatory Engineering Bring Citizens Back In* (London: Routledge, 2007)

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