The Double Joint-Decision Trap

Europeanisation/German Politics

Outline

Intro/Recap
  Recap
  Intro
German Federalism
  Executive Federalism & Politikverflechtung
  Europeanisation & Reform I
Summary
  Summary
  Your turn
Last week: Bundestag & Europeanisation

- Parliamentary parties as alternative locus of Bundestags's europeanisation?
- Bundestag rather passive on this level, too
- Informal channels
- Many MPs don't want to engage with European integration
  - Incentives
  - Tradition
  - Values
- Bundestag/MPs “a sleeping giant”?
- Today: Federalism

Europeanisation, federalism, and double Politikverflechtung

- Federalism: constitutionally divided sovereignty (not mere de-centralisation)
  - Austria
  - Belgium
  - Germany
- German federalism already seen as problematic in 1970s, more so after unification
- “Politikverflechtung” (joint decision structures)
- Europeanisation brings new pains/problems
Co-operative/executive federalism in Germany

- Basic idea: separate spheres of decision-making & funding
- Problem: political problems cut across horizontal/vertical delineations
- Co-operation vs separation/competition
- German twist: executive federalism
  - Federal administration depends on Länder
  - Great compromise of 1870/71
  - Interdependence, more co-operation, push towards homogeneity
- Specific German brand of federalism, constitutionally enshrined in 1949, re-affirmed in 1967

Marginalisation → compensation

- Initial condition: federal activism requires constitutional/legal mandate
- Federal government used competences extensively, Länder assented
- Länder reduced to legislating on
  - Schooling
  - Police
  - Local government
  - Media
- Länder compensated with co-decision rights (Bundesrat)
Bundesrat (Federal Council)

- Every single piece of *federal* legislation is discussed by members of state governments in Federal Council
- Depending on content and mode of implementation . . .
  - Suspensive veto power (Einspruchsgesetze): Majority of votes required to slow down legislation
  - Absolute veto power (Zustimmungsgesetze): Assent by majority of votes required for legislation to pass
  - Constitutional change requires assent by super majority (2/3 of members in both houses)
- Gridlock/threat of veto likely; difficult to enact major policy change against coalition of veto players

Politikverflechtung (joint decision mechanisms/traps)

- Most decision involve federal, Land and even local actors (bureaucrats/politicians); few top-down decisions (nuclear energy?)
- Abundance of veto players
  - Involves stake-holders, but:
  - Decisions dominated by bargaining (not: problem solving)
  - Lack of transparency
  - Dominance of status quo
- Veto players can also veto change of rules
  - Many unhappy most of the time
  - But want to keep bargaining chips
- Actors stuck in joint decision trap
- Plus European level: “double Politikverflechtung”
Föderalismusreform I (+II)

- Long story, substantial changes to constitution in 2006

1. Federal Council
   - Federation can legislate on administrative rules w/o assent of Federal Council
   - Länder can deviate as they see fit
   - Absolute veto power if new rules imply (substantial) costs for Länder

2. Clearer delineation of legislative powers, framework legislation abolished

3. (Somewhat) clearer delineation of tax/spending powers

4. Further changes to article 23 (more on this soon)

Länder and Europeanisation 1950s-

- Länder acquired rights to be informed and consulted since 1950s
- Extended in 1970s but not binding government
- Single European Act big bang for sovereignty transfer from Länder
- Government asked Federal Council to ratify SEA, Länder/FC were given further rights to be consulted
Maastricht and Amsterdam

- Unification and Maastricht required constitutional change
- New article 23
  - Even more information/participation, depending on policy domain
  - Representation of Germany by Länder ministers in CoM
  - Fast track procedure in Federal Council (Europakammer)
  - Further transfers of sovereignty conditional on two-thirds majority in Federal Council (and 2/3 in Bundestag)
  - Last in a long series of attempts by Länder to gain veto power in European policy making
- Minimal demands at Amsterdam

Constitutional Convention and Reform I

- (Conflict between rich and poor Länder)
- Post-Maastricht, Länder unhappy with developments in EU, rift with commission, more euro-sceptic
- Länder developed agenda for Convention:
  - CoR
  - Subsidiarity
  - Right to take cases to ECJ
- Modest success, so focus shifted back to internal struggle with federal government
- Further amendments to article 23
Conflict between Federal Government and Länder – Art. 23
- Hampering Germany, inefficient, parochial?
- Rarely used, working well?

Two radical positions
1. Federal government independent of Länder preferences at EU level?
2. Länder solely responsible in their domains in EU affairs?

Modest compromise:
- Clarification and extensions of existing rights
- Very little disentangling
- Representation by Länder potentially reduced (schools, culture broadcasting), while rights on federal level extended

More, not less complexity?

Two radical reforms stood no chance against yet another bargain
Joint decision trap at work
Path dependency?
- Moderate deviation from pattern: relatively clear delineation of responsibility
- But: transposition of compensation/participation pattern to European level
Länder massively affected by europeanisation
- German federalism stuck in patterns we can’t get out?
- Länder try to secure relevance through participation
- (Larger Länder also try to influence EU policy directly)
- Still no effective mechanisms for co-ordinated European policy making; decentralisation and fragmentation
- Sustainable in a changing European Union?

Class questions
- What exactly is double Politikverflechtung? Write down a concise explanation (about half a page). Swap your notes with your neighbour and discuss your ideas
- Group discussion: Should Germany abandon federalism? Why (or why not)? (Hint: What is the relationship between Europeanisation and federalism?)