

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

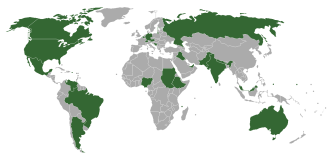


By campsmum / Patrick Jayne and Thomas [CC-BY-2.0
(<http://creativecommons.org/licenses/by/2.0>)], via
Wikimedia Commons

Last week: Bundestag & Europeanisation

- ▶ Parliamentary parties as alternative locus of Bundestag'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

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

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

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)

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?)

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

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

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 Länders 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

Status quo reloaded

- ▶ 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?

Status quo reloaded

- ▶ 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?

Why?

- ▶ 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

Summary

- ▶ 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?)