

The German Bundesländer as Laboratories of Democracy

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ABSTRACT

The German commitment to federalism is one of the strongest in the world today. This essay explores the significance of German federalism and its strong subnational legislatures on policy development since the end of World War II, through reunification, and up through the present day. It finds that the German federal government has consistently looked to the Bundesländer for inspiration, with them acting as laboratories of democracy to aid in policy development. This article will also provide a literature review, analyzing the recent works of prominent political scientists to illustrate how subnational legislatures have assisted in producing national policy in the education, climate, and healthcare fields.

Keywords: German federalism, German reunification, laboratories of democracy, policy diffusion, subnational legislatures

Introduction

The development of German democracy in the 20th century was a rather tenuous and challenging process. At the beginning of the century, Germany was an authoritarian imperial power. After World War I, crippling debt and hyperinflation plagued the nation. Eventually, Hitler took power as a dictator until after World War II, when the Americans, British, French, and Soviets forcibly divided Germany into East and West. Against all odds, however, since the second half of the 20th century, Germany has been one of the most stable economies and strong democracies in the entire world.⁵⁴ Many political scientists will cite Britain as the perfect example of a gradual path to democracy, which can be traced back to the 13th century and still evolving.⁵⁵ Germany didn't quite have the luxury of developing its democracy on a gradual path. Germany had to play the catch-up game in creating a democracy in the latter half of the 20th century, with heavy sanctions imposed on them that would compete with other hegemonies on the global stage. Evidently, they were rather successful. A staunch commitment to federalism deserves much credit for these successes. Due to a commitment to federalism, the German Bundesländer can act as “laboratories of democracy” in crafting policies that, if successful, can be implemented by the federal government to bolster German democracy.

Origins of West German Federalism

The Federal Republic of Germany, also known as West Germany, was nearly alone on the global stage in its staunch commitment to federalism in the immediate years following World War

⁵⁴ Gert-Joachim Glassner. *German Democracy: from post-World War II to the Present Day*. Bloomberg Publishing, 2005.

⁵⁵ Daron Acemoglu and James A. Robinson. *Economic origins of dictatorship and democracy*. Cambridge University Press, 2006.

II. After the war, most European countries decided to pivot towards government structure with the vast majority of power concentrated at the national level. As a result, the Keynesian economics model became the predominant school of thought in the West, as federal governments took substantial control over the economy to guide it into recovery.⁵⁶ The national governments of the West also had robust control over domestic policy to crack down on extremist political movements to prevent future conflicts. In the East, the Soviet Bloc absorbed many countries, advising them to adopt a state socialist model.

West Germany, however, engrained the concept of federalism into its constitution with Articles 30 and 70 and the Eternity Clause, inherently devolving more power from the national level to subnational levels.⁵⁷ Article 30 establishes that the exercise of state powers and functions, if not explicitly granted to the federal government, is a matter for the Bundesländer, the largest subnational units in Germany. A subnational unit is a body that holds jurisdiction over a particular region within a larger country. For example, states within the United States act as subnational units. One can imagine Bundesländer as the “states” of Germany. Article 70 explicitly grants these Bundesländer the power to oversee how they run local elections, prisons, and education. The Eternity Clause establishes that federalism is a fundamental principle of how the country functions. As such, it is unconstitutional for the legislature to ever infringe upon this principle. The West German constitution was significantly after the American Constitution in this sense.⁵⁸

While the concept of federalism itself was by no means revolutionary by this time, West Germany was unique in being a European state that attempted to push through and recover from the immense tragedy of World War II by weakening the central government. Arguably the most significant impact of this commitment to federalism was the speed at which the government adopted policies, as they looked to the Bundesländer for inspiration. In this case, the Bundesländer have functioned as laboratories of democracy since the ratification of the West German Constitution.

What is a “Laboratory of Democracy?”

The term “laboratory of democracy” was first coined by United States Supreme Court Justice Louis Brandeis in the case of *New State Ice Company v. Liebmann* (1932) in describing the federal system of the United States. Brandeis stated, “a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”⁵⁹ At the national level, the political process is intentionally slow, but at local levels, it moves quicker. This quickness occurs because members of the legislature in a subnational government represent many similar interests. As such, they are more likely to agree on policies than those at the national level.

⁵⁶ Ivo Maes. *The Spread of Keynesian Economics*. Journal of the History of Economics Thought, 2008.

⁵⁷ David Currie. *The constitution of the Federal Republic of Germany*. University of Chicago Press, 1994.

⁵⁸ Edmund Spevack. *American pressures on the German constitutional tradition*. International Journal of Politics, Culture, and Society, 1997.

⁵⁹ Alan Tarr. *Laboratories of Democracy? Brandeis, Federalism, and Scientific Management*. Publius: The Journal of Federalism, 2001.

For example, lawmakers in Kansas are comparatively more likely to pass state legislation to aid agricultural workers than the United States Congress. This is because each Kansas legislator likely has many constituents that are farmworkers and would benefit from the passing of this legislation. On the other hand, the United States Congress has legislators from areas like Massachusetts, which does not have a committed agricultural interest, making the Massachusetts legislators overall less likely to support this legislation.

Based on this theory, strong regional governments have the power to (and would be doing their country service to) pass innovative policies not yet implemented by the national government. By taking this risk, subnational governments effectively provide a blueprint for the national executive: if the approach at the subnational level works well, the federal government may follow suit, and vice-versa; if the policy fails, then the federal government won't look to implement said policy. As a result, the federal government becomes more efficient and avoids taking massive risks.

German Case Studies

Louis Massicotte at the University of Montreal highlights that the German federal government adopted many features of the Bundestag elections from Länder policies used in local elections. For example, he highlights the double vote, the Hare-Niemeyer Formula, the 5% party threshold, and the concept of Personalized Proportional Representation.⁶⁰

To illustrate the process of a policy moving from being used regionally to nationally, look to the latter. Personalized Proportional Representation (also known as PPR or MMPR, for Mixed-Member Proportional Representation) is a concept wherein voters get two votes: one to decide the representative for their single-seat constituency and one for a political party. Seats in the legislature are filled first by the successful constituency candidates and second by party candidates based on the percentage of nationwide or region-wide votes each party received.

PPR was adopted for the local elections of the Länder of *Nordrhein-Westfalen* and *Niedersachsen* in the late 1940s, as Germany was transforming post-World War II. The results of the ensuing elections in these Länder were favorable, as political scientists concluded that PPR successfully corrected undesirable side effects of first-past-the-post, such as wiping out opposition parties from the legislature or giving a majority to the runner-up party.⁶¹ As such, the federal government approved PPR as a legitimate electoral system that produced promising results and implemented it in the national Bundestag elections. After West Germany implemented PPR in Bundestag elections, other Länder decided to implement PPR in their local elections. As a result, today, every German Bundesland uses or plans to use PPR in their local elections, aside from *Bremen* and *Saarland*, and it is still used in the national Bundestag elections. In this sense, *Nordrhein-Westfalen* and *Niedersachsen* acted as laboratories of democracy, experimenting with a novel electoral system that is now used all across Germany.⁶²

⁶⁰ Louis Massicotte. *To create or to copy? Electoral systems in the German Länder*. Journal of German Politics, 2003.

⁶¹ *Ibid*

⁶² Michael Krennerich. *Germany: the Original Mixed Member Proportional System*. International Institute for Democracy and Electoral Assistance, 1997.

On the other hand, the central government was also able to look at the failures of regional governments to make policy. In the late 1950s and early 1960s, Bundesländer such as *Saarland* became over-reliant on coal for energy production. This overreliance proved problematic for two primary reasons. First, people at the time were developing a negative stigma surrounding coal. Much of the West German population began to worry about the environmentally unsafe properties of coal, which decreased demand for coal to produce energy. Second, this decreased demand meant an overabundance of supply. *Saarland* was faced with an employment crisis when coal supplies eventually became overabundant when compared to demand, resulting in the closing of the majority of the *Saarland*'s coal mines. This plunged much of their population into unemployment. Throughout the 1960s, the West German federal government began allocating millions of Marks to modern energy research and development, leading to the building of nuclear power plants across the country. The main reasons the West German federal government cited for their actions were the *Saarland* crisis and the Cold War, given that they did not want to pivot to natural gas and become over-reliant on trade with the Soviet Union.⁶³

East German Adoption of Federal Concepts

This use of the Bundesländer as laboratories of democracy is not a relic reserved for 20th-century democratic development in Germany. Democracies are constantly evolving and adjusting to citizens' needs as the material conditions of social change. In fact, ever since Germany was officially reunified in 1990, the Bundesländer have arguably had more of an effect on national policy than prior to reunification. When the two countries rejoined, the new German state adopted the former West German political system, meaning that East Germany was now beholden to the laws of West Germany's Constitution, including their commitment to federalism.⁶⁴ Germany had now gained new Bundesländer and, as a result, now had 16 laboratories of democracy to craft new policies that could, if successful, someday apply to every single Bundesland through the passing of national policy. Reunification was a difficult transition, as former East Germany underwent a rapid economic transition that is still affecting them to this day. However, without the concept of federalism, it is easy to argue that this transition could have been even worse. Without looking to experimental local policy, the policymaking process to aid the East during this transition would have been much slower. The West Germans agreed with this logic and thus, with reunification, the federal government immediately moved to devolve more power to the Länder level, through the establishment of the Unification Treaty and the Joint Constitutional Convention.⁶⁵ A larger percent of tax revenue was also given to Bundesland executives to support targeted policymaking efforts

Modern German Federalism

Today, the material conditions of Germany are much different than they were in the mid-20th century. Not only has the country grown in size by also encompassing the German Democratic Republic in the 1990 reunification of the country, but new issues are plaguing Germany and the globe as a whole that many people could not have imagined back in the 1960s. Many of these

⁶³ Yamina Saheb. *The History of Energy in Germany*. Planète Énergies, 2015.

⁶⁴ Jochen Frowein. *The Reunification of Germany*. American Journal of International Law, 1992.

⁶⁵ Arthur B. Gunlicks. *German Federalism after Unification: The Legal/Constitutional Response*. Oxford University Press, 1994.

problems require immediate action to work towards a solution, which is why Germany’s commitment to federalism has stayed so important. In fact, political scientists have observed a trend that since the 1970s, liberal reforms have consistently been observed in every democratic republic in the Global North, meaning that democracies as a whole, especially in Europe and North America, are becoming more and more “federalist” in nature, concentrating more devolved power at the local and subnational levels.⁶⁶

Many of the issues that global democracies, including Germany, are working to address right now can be divided into three categories: education, climate change, and health. In each of these categories, it has been observed that Germany’s central government has looked to Bundesländer policies in order to further craft more precise and effective national policy.

Federalism in Education Policy

Acting as laboratories of democracy, the Bundesländer have helped frame German education policy in modern history. Jennifer Wallner from the Volkswagen Stiftung highlights this process in her article “Laboratories, Coproducers and Venues.”

Wallner discusses in this article that globalization and reunification have left Germany scrambling for new education policies in recent years. There has been a great demand for stronger standardization in curriculum, instruction, and assessment among students. This demand only increased after the disappointing results that ensued after Germany participated in the Programme for International Student Assessment, colloquially referred to as PISA, in the year 2000. PISA is a standardized exam that is mandatory for many students across a variety of European nations. Germany’s participation in PISA was the first participation in large-scale international assessments such as these in many years and the German public was surprised by the results.⁶⁷

Overall, German proficiency scores ranked 21st out of 31 participating OECD countries and they ranked in the bottom quartile for educational equality.⁶⁸ The latter meant that the gap in scores, reflecting quality in German education, between those of different classes and backgrounds was greater than the results in at least 75% of the other countries tested.⁶⁹ As a result, the EU asked Germany to improve its education standards, which included the creation of its own standardized assessments to give to German students regularly, which would ensure that the quality of education was as equalized as possible.

Wallner illustrates that Germany was rather successful at meeting the EU’s standards after just a few years. Germany has one of the best public education systems in the world today. She says that the Bundesländer were crucial in meeting this call to action placed on Germany by the EU. First, Germany formed a connection between their Ministry of Education (the

⁶⁶ Liesbet Hooghe, et al. *Measuring regional authority: A postfunctionalist theory of governance, Volume 1*. Oxford University Press, 2016.

⁶⁷ Jennifer Wallner. *Laboratories, Coproducers and Venues*. *Comparative Education Review*, 2020.

⁶⁸ Wolfgang Ochel. *Results of PISA 2000: The case of Germany*. Ifo Institute for Economic Research, 2002.

⁶⁹ Florian Waldow. *What PISA Did and Did Not Do: Germany After the “PISA Shock”*. *European Education Research Journal*, 2009.

Kultusministerkonferenz, or KMK) and the Upper House of the Bundestag, the Bundesrat (where members represent the Bundesländer) to help create new education-related policies. The KMK offered Bundesländer grant money through this connection to act as laboratories of democracy to craft new policies, instruction criteria, curricula, and statewide standardized testing. The Bundesländer would experiment with new policies and report their successes and failures to the KMK, who would craft national policy based on these guidelines.

An example of how this proved successful is the implementation of the VERA (Vergleichende Arbeitsprüfungen) Exams, the standardized assessments that 3rd and 8th-grade German students take to assess proficiency. These exams started as a policy in the Bundesland of Rheinland-Pfalz, and were adopted by six other Bundesländer before becoming a nationwide exam system. The crafting of the national policy that established the VERA Exams was not only aided by the Bundesländer, but by research institutes and think tanks along the way. The role of the Bundesländer as laboratories of democracy evidently aided Germany in great achievement in the educational sphere, as evidenced by the VERA exams and other policies.⁷⁰

Federalism in Climate Policy

The Bundesländer have also greatly contributed to innovation in climate policy. This concept is highlighted by Dr. Kirstin Jörgenson of the Journal of Integrative Environmental Studies in her article “Multi-level climate governance and the role of the subnational level.”⁷¹

Jörgenson highlights two ways that the Bundesländer have acted as laboratories of democracy in climate policy. First, they have developed new solutions to curb climate change. Second, they also experiment with implementing other innovative climate policies that were already passed by other Bundesländer. She specifically highlights how these policies can diffuse both vertically (from the Bundesländer level to the federal government level), as well as horizontally (from one Bundesland to another Bundesland).⁷² Horizontal diffusion often occurs in areas like climate policy, because climate solutions need to happen as soon as possible. Policymaking at the federal level, which involves getting many political parties to agree on a single often unproven solution can be slow and unreliable. Thus, the Bundesländer are often quicker to take action in this sense as well. This is primarily because regional legislatures tend to be less diverse in party makeup and ideology than the national legislature. For example, *Die Grünen*, the German Green Party, tends to make up a large percentage of the legislature in *Hamburg*, especially compared to their percentage of seats in the Bundestag. The *Hamburg* legislature also tends to have a much smaller percentage of the *CDU*, the dominant Christian Democratic Party in Germany. As a result, climate legislation faces less pushback preventing its passing in Hamburg as opposed to in the Bundestag. Another factor for this phenomenon of less gridlock at the regional level is that regional legislatures often have fewer lawmakers in their body by sheer numbers, which limits the likelihood of additional members disagreeing with potential laws or tacking on amendments to slow down processes and foster gridlock. In fact, Jörgenson finds that German

⁷⁰ Jennifer Wallner. *Laboratories, Coproducers and Venues*. Comparative Education Review, 2020.

⁷¹ Kirsten Jörgenson. *Multi-level climate governance and the role of the subnational level*. Journal of Integrative Environmental Sciences, 2015.

⁷² EM Rogers. *Diffusion of Innovations*. The Free Press: New York, 1962.

Bundesländer such as *Hamburg*, oftentimes at odds with the central government, will push climate policy to be more progressive and ambitious in their goals and implementation.⁷³

Because of Germany’s commitment to federalism and decentralization efforts in recent years, Bundesländer often have a lot of control over local climate policies. Many Bundesländer even have established networks directly with the EU to help frame climate policy. German Bundesländer such as *Schleswig-Holstein*, *Berlin*, and *Baden-Württemberg* are at the forefront of renewable energy promotion, innovation, and production in the world. These Bundesländer have also created policies with regard to conserving energy in construction and housing that have spread not only to the German federal level but to other countries within the EU. Initiatives in these subnational regions have allowed for what Jörgenson calls “bottom-up transformation,” pushing German climate policy at the federal and regional level to be stronger, even if national policy itself develops slower than some of the more forward-thinking regions. This has helped Germany’s transition to become a “Green” state and has established Germany as one of the most sustainable countries in the world today.⁷⁴ Jörgenson concludes that Germany is still not perfect and more central coordination is, in fact, still needed to push Germany to the next level in its green transformation.⁷⁵ However, it is still crucial to acknowledge that this bottom-up transformation has been incredibly beneficial and substantial enough to pass effective policies that have saved lives in Germany and created a path to sustainability and progressive climate action.

Federalism in Health Policy: The Coronavirus Pandemic

Finally, the Coronavirus has also necessitated a rapid policy response. Each of the world’s governments has had to develop policies with regards to border security, lockdowns, and mass testing. Tim Bütke and colleagues from the School of Government at *Technische Universität München* wrote an article for the European Institute of International Relations entitled “Policy Responses to the Coronavirus,” which details how the Bundesländer made this process a lot easier for Germany.⁷⁶

In this article, the authors explain that experts on the topic of federalism have been worried about how quickly and effectively federal states can address urgent problems due to the nature of federalism to promote a lack of cohesion between regional and federal levels of government. In such a decentralized state, how can there be maximally effective, cohesive policy responses that adequately cater to each state’s different needs? With all things considered, Germany has handled the pandemic rather well, especially when compared to nearby European states like the UK.⁷⁷

In Germany’s response plan, the central government once again let the Bundesländer take the lead, acting as democratic laboratories that created domino effects. In February of 2020, when COVID cases were just beginning to emerge, the German federal government was skeptical as to whether a mask mandate would be necessary in public areas. There was a taboo in most of the

⁷³ Kirsten Jörgenson. *Multi-level climate governance and the role of the subnational level*. Journal of Integrative Environmental Sciences, 2015.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ Tim Bütke, et al. *Policy Responses to the Coronavirus*. European Institute of International Relations, 2020.

⁷⁷ *Ibid.*

world that this would be an overreaction to a disease which, at that point, hadn't yet reached epidemic status. However, this taboo soon vanished in Germany once the Bundesländer of *Bayern* and *Sachsen* mandated masks on public transportation. Those Bundesländer had the least number of cases when COVID came to Germany and the central government was able to act quickly and enact a countrywide mask mandate. Within weeks, mask-wearing went from excessively cautious to a civic duty thanks to quick action from the Bundesländer. Other countries that took more national action rather than delegating power to subnational levels faced two results: either they never enacted a mask mandate because they didn't have democratic laboratories in their subnational units, which left their pandemic response much weaker, or they did enact a mandate and still faced massive distrust among the public.⁷⁸ *Bayern* especially had a negative short-term response to their mask mandate, but the long-term benefit and response from the entire country far outweighed this. Looking back on it, the passing of those mandates by *Sachsen* and *Bayern* saved many lives and showed that the Länder were willing to step on the gas when the federal government could not.⁷⁹

Concluding Remarks

After the fallout of World War II, many strong democracies resorted to concentrating more power at the national level. Germany, however, had to build a brand-new democracy from scratch. In that process, they continued to reaffirm their commitment to federalism and strengthen the power of their largest subnational units, the Bundesländer. This has proved rather effective for Germany and is one of the predominant reasons why Germany has an incredibly productive democracy today, as the Bundesländer have acted as laboratories of democracy in the vision of Louis Brandeis. Before reunification, West Germany's democracy continued to be built based on policies passed at the Bundesländer level, which allowed for innovation and evolution in their electoral policies and more. This innovation has continued into the present day, especially in the spheres of education, climate, and healthcare policy.

⁷⁸ Esmée Hanna, et al. *Experiences of face mask use during the COVID-19 pandemic: A qualitative study*. *Sociology of Health & Illness*, 2022.

⁷⁹ Tim Büthe, et al. *Policy Responses to the Coronavirus*. European Institute of International Relations, 2020.

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