German Federalism -
An interview study on past, present and future developments

Silvia Koppenhagen
# TABLE OF CONTENT

1. GERMANY AND THE FEDERAL SYSTEM  1

1.1. Research questions  3
1.2. Methodology  3
1.3. Material  5
1.4. Critique  6
1.5. Delineation  6
1.6. Content  6

2. THEORY  7

2.1. Hierarchic systems  7
2.2. Party systems  8
2.3. Negotiation systems  8
2.4. Basic elements of federalism  9
2.5. Confederation and federation  10
2.6. Inter- and intra-state federalism  11
2.7. Asymmetric and symmetric federalism  11
2.8. Cooperative and dual federalism  12
2.9. Coming-together and holding-together federalism  12
2.10. History of federalism theories  13
2.11. State theories  16
2.11.1. Public choice theories  16
2.11.2. Institutional design theories  18

3. THE DEVELOPMENT OF THE GERMAN STATE  19

4. TODAY’S SYSTEM  22

5. PRESENTATION OF THE INTERVIEWS  27

5.1. The method and phases  27
5.1.1. First phase  27
5.1.2. Second phase  28
5.2. Interviewees  28
5.3. The results of the interviews  32
5.3.1. The characteristics of federalism  32
5.3.2. The origins of German federalism  33
5.3.3. Advantages of federalism  34
5.3.4. Disadvantages of federalism  35
1. GERMANY AND THE FEDERAL SYSTEM

Germany is the biggest country in the European Union (EU) and number three economic power in the world after the USA and Japan. These are facts most people know. But what else do you know about Germany? Germany is connected with two World Wars that devastated large areas of Europe. On the other hand Germany is known for great scientists, artists and poets. Goethe's Faust is known by many in the world, as is Beethoven's music. Today Germany is the country where you can eat good sausages, drink fine beer and drive undisturbed fast on the Autobahn. But there is more to know about Germany. To be able to understand Germany in the international context you have to know its inner structure. What do you about how Germany is organised?

There are 16 states within Germany, each having state quality, meaning its own constitution, government and laws. They are the constituent parts of the Federal Republic of Germany and called Länder. Together they share the legislative and administrative tasks in the Federal Republic of Germany making Germany a federal country like the USA. There are heated discussions about federal structures in the world nowadays. It seems to be a popular and successful project, just have a look at the EU where the name Federal State of Europe is heard from time to time as idea for the future. This organisation principle has its own story in Germany. It is characteristic for the German state but nevertheless it is under discussion, especially the internal organisation of the state and the exact form federalism should take in Germany.

To mirror the development of discussion and the actual positions I give an overview from newspaper articles. When you look at German newspapers from the last four years you will find many articles dealing with federalism. The newspaper DIE ZEIT published the following article on December 9, 2004. Gleichgewicht der Macht (Balance of Power) reports the conflicts between the Länder and the German central state, which concern most of the time the financial system. Taxes are the main issue of the discussion. The author states that the balance between central state and Länder must be re-erected in legislation, financing and responsibility. The Berliner Blockade (Berlin Blockade) is another article. DIE ZEIT published it on October 21, 2004. It describes that the problem that it does not really matter which majority rules in the central state parliament, because even when parliament agrees on a law the Länder politicians will most likely block it. The participation of the Länder is absolutely volitional but nowadays it has gone so far that it is hindering the legislative process. Today there is intertwining of central state and Länder issues, everybody interferes with everybody’s business. Schluss mit Diskursquatsch (End of Discourse Nonsense) requests DIE ZEIT on November 11, 2004. Federalism is generally seen as the root of all problems in the German state, but the author Günter

Hofmann does not agree. The SPD (Social Democrats) is willing to give more legislative competences to the Länder if this revitalises federalism in Germany and makes the central state more capable of governing. Members of the parliament complain that the population is not interested because the topic federalism is regarded as too political. The theme legislative blockade is topical but no one really discusses it seriously. The German newspaper BERLINER ZEITUNG titled *Wozu noch Bundesländer? (Why still Länder?)* on May 6th, 2006. The author Gerd Seidel, professor for Public, European and International Law at the Humboldt-Universität in Berlin, writes about the German federal system and its ‘illness’. He states that in the world of globalisation and European integration a slim state is needed, one that can react fast to new conditions. The long and tiresome negotiations between the 16 Länder and the central state make Germany non-competitive and immobile. He suggests that a transformation to a Unitarian state would be much more appropriate than the latest plans of revitalising the federal system. This type is more efficient; there are faster and more transparent decision processes and less administrative effort and thus fewer costs. On the other hand the federal system leads to low mobility and law fragmentation. DIE ZEIT published an article on June 22, 2006 requesting *Mehr Zentralismus! (More Centralism)*. The article looks into the old question of the role of the Länder: do they prevent effective government or do they bring citizens closer to democracy? The Länder decide more and more incomprehensibly. The Länder have been famous for blocking or delaying important reforms and laws. The author sees it as a bad point that the solution is to give more power to Länder, those that deformed the system so much and made it immobile. Federalism is a system for obstructionism, pomposity and vanity. The Länder's participation strengthens the prime ministers of the Länder and not their parliaments. These are only a few of the many voices and positions heard in the German press. As you have now learned there are manifold positions and possible solutions.

This ten-point thesis is about German federalism, which seems to be up-to-date in the changing world. Even within the globalisation the focus goes to regions and away from nation states. It is Silicon Valley that is known for computer technology and only then the USA. Regions become more and more important. In federal states there is a given regional division so it needs not to be created. Maybe this is an advantage to centrally organised states that have to find a way to deal with the new demand for regional organisation. Federal states are, some may say, one step ahead. A lot of questions arise with federalism and this thesis is meant to answer some of them.

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4 Gerd Seidel (06.05.2006) *Wozu noch Bundesländer?*, Berliner Zeitung.
5 Bernd Ulrich (22.06.2006) *Mehr Zentralismus!*, Die Zeit.
1.1. Research questions

In this paper I research German federalism. During this work I explore the foundations of German federalism and its characteristics. Only after understanding this I can continue to discuss the future of federalism in Germany. Many in Germany say the system is maraud and has to be changed drastically to be one that guarantees Germany a successful future. In this paper I try to collect some of the critique and suggestions. My research questions are:

• What is special about German federalism?
• Why is Germany a federal state?
• Are there differences in the attitude towards federalism between the federal level and the Länder level and between the different Länder?
• Are there differences along the party lines and within the parties concerning the attitude towards federalism dependent on the level of state or the Land they work in?
• What are major problematic issues in the German federal system?
• In which way should German federalism develop? Are changes necessary?
• Should there be a territorial reform within Germany?

1.2. Methodology

This thesis is based on qualitative research, including interviews with politicians and experts. Mayer writes that in the context of qualitative research the social reality is conditioned communicatively. The reality is constructed by the versions and perspectives the people make of their world, on the other hand this construction influences reality in the process of communication. People create the societal structure anew continuously. They also do interpret the situation with help of their pre-knowledge. Thus it makes no sense to look for structures and laws.\(^6\) The analysis of qualitative data is never fixed. There are always different possibilities to interpret an interview. The differences between quantitative and qualitative research are explained as follows. Qualitative research starts from a dialogue-consensus theoretical truth and reality comprehension. There are no standardised data collection methods and interpretative methods for analysis. The interpretation looks into single cases and not into generalisations. In quantitative research there is a division of the discovery, explanation and usage contexts. The process character of research is underlined. All three steps have to be conducted in the correct order and phase.\(^7\)

If the process and the context of experiences are in the focus then a narrative interview is best, but when concrete statements about a certain topic are the aim then a semi-structured interview is better. A catalogue with open questions is developed that the interviewed can answer freely. Through the use of the catalogue the comparability is higher and the data win structure. It guarantees that all important aspects are discussed during the interview. The questions need not be answered in the

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correct order, also the interviewer can decide if he or she wants to go deeper into a detail or if he or she stops too far-stretching statements of the interviewee. A special form is the expert interview. The expert is not seen as person but seen in his or her function as expert for certain topics or themes. This always relates to a clear-cut defined part of the reality. The expert is not a single case but a representative of his or her group. The catalogue has a higher functionality here; the expert should be questioned about the topics of his or her expert knowledge only.\(^8\) An advantage with interviewing is that interviews are direct and more personal. Another point is that the respondents often feel more secure; there is a relationship between interviewer and interviewee, which makes it possible to extract more sensitive information. Respondents oftentimes feel more comfortable and start speaking more openly. There is always a possibility to dive deeper into a certain interesting aspect of a question or explain details to the respondent. A disadvantage with interviews is that is quite difficult to compare the different stories one gets to hear as interviewer. Also one has to be aware of the effect oneself has on the respondent. Some start making up events or engorge their own roll in processes and events.\(^9\) Concerning the interview effect Kim England made useful observations. She makes a point when claiming that research is a dialogue process where both the researcher and the researched are structuring the situation. This leads to two results: 1. The research may be transformed by the input of the researcher 2. The researcher is visible and an integral part of the research. England speaks of a continuum that exists between researcher and the researched that is actually researched. This means there is no research of the un-mediated world of the researched but only of the by the researched already interpreted world. She demands that researchers should be more open about the partiality of research and the limitations.\(^10\) Gordon L. Clark goes back to the fact that a researcher should always be careful with the integrity of information and admits that he does not believe in absolute truths or profound factual claims deriving from close dialogue. In general, methods like close dialogue open up for ethical issues but in finances the situation between researchers and researched is often at least equal if not upside-down with the interviewee having a higher status and more power.\(^11\) This is similar in politics so that the points that Clark makes can be valid when interviewing politicians as well. The politician is in the higher status situation and has more power than me. According to Clark a different approach is needed in finances. There are three reasons why finance industry informants are willing to talk to researchers: 1. For some this is the affirmation of their status, an external

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validation of their importance. 2. The knowledge and experience of the interviewer can be decisive too. 3. There is sometimes the hope that the interviewer will pass on interviewees’ versions of events and circumstances, the significance of his or her firm and related information to other respondents. In politics there are similar motives to talk to researchers as well. In my study the second aspect can be ignored as I am a university student. Still maybe the name of the institution Uppsala University may have contributed to access sometimes. A foreign university may count as prestige factor. The other two aspects though are absolutely valid concerning politicians and my research.

With the analysis of qualitative material specific problems arise. For the interpretation of the conducted interviews I followed the scheme of Meuser and Nagel. A base is the paraphrasing of the interviews and the theme orientated structuring.

- The first step is paraphrasing the material to make it denser. The content of the discussions are rewritten with own words.
- The next step is to sort the paragraphs under different headlines. The semi-structured interview usually already has a structure/certain headlines, but the interviewees may have made statements to one theme under different headlines. So all statements that concern one topic are sorted together under one headline.
- Now the mutual passages from the different interviews are put together and sorted under headlines, so that all information concerning one aspect from all interviews is gathered in one paragraph.
- Now the abstraction rate (the distance from the interviewee’s words) is raised. Agreements and disagreements are formulated in a scientific language. Still only the content of the interviews is used.
- The last step is to incorporate theories and analyse the material.

1.3. Material

The applied sources are on the one hand the interviews, that I have conducted myself via telephone, email or face-to-face. Some of the respondents delivered written sources from their work such as law initiatives, party programmes or speeches. On the other hand there are books about federalism, German history and the German state and its organisation. I also used newspaper articles to show the width of the discussion of the topic.

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1.4. Critique

Problematic is the low response rate. This response rate does not harm the results though. The question of my study is to find differences and similarities in the attitudes towards and perspectives of federalism between the central state and the Länder and between the different types of Länder. The aim was never to perform an all-covering study including each single Land in the German federal system. The aim of qualitative studies is to understand the situation of researched case. A higher number of interviews do not automatically lead to more knowledge and information. After a certain amount of interviews the responses started to be alike others before, so I could not get more input by conducting more interviews. To see the structures and development lines was possible with the material I had gathered during the interviews so far. More interviews would also have made it impossible for me to analyse all answers.

With literature I tried to concentrate on up-to-date sources. As a lot of changes happened in Germany during 2005 and early 2006 it is necessary to base information on books published during or after that time. Most of my sources are from these years or later. With the sources for basic information about German history and the state’s organisation I relied on older books as well.

1.5. Delineation

The people of Germany are for sure important for the development of the German state but not part of the paper. Federalism is about to change and therefore I find it most important to examine what the German parties intend to do in the near and longer future. As they are the ones who create the law it is the best starting point to work with them. Additionally this paper covers only Germany. There is no general depiction of federal systems and no comparative aspect. Finally financial aspects have to be mentioned here though they are not a main part of my paper. On the one hand I lack the economic knowledge to deal with this aspect properly and on the other hand my interest lies in a different field. The relations between the federal and the Länder level and between the Länder are the topic of the study. The focus of this paper is on geographical aspects of the German federal systems. One important aspect is if there should be a territorial reorganisation of Germany. Another if there are differences between certain types of Länder or based on there geographical position. Of course financial aspects are most important as well for the German political system. In the reform in 2006 they were left out though. Until the year 2019 the financial system (taxes, equalisation transfers) is not going to be changed in Germany. That is another reason why it is not a big part of this study.

1.6. Content

First I present a short overview of German history with a special emphasis on state organisation. The following chapter deals with the nowadays German state system. Here I mention the basic rules from the Grundgesetz (Basic Law) which s the
German constitution, and organs of the German state. Of course the focus is again on those that are important for federalism. After that I turn to the presentation of my interview study itself. I group the interviews and present the main statements and facts from them. The analysis follows in the chapter after. To link the statements of politicians to the theory and compare it with other authors’ explanations will be the core of this chapter. The next chapter deals with the question of territorially reorganising the German Länder. I present different suggestions for the new German map and as well discuss if it is necessary to territorially reorganise Germany. In the final chapter I go back to my research questions, answer them and give a personal view on the topic of German federalism.

2. THEORY

In our general understanding political systems are Unitarian, hierarchical and majoritarian, there is a basic agreement of all participants and the persons concerned. Decisions are made by the through elections legitimated parliamentary majority that supports the administration. The legislative and tax competences and state coercion can be used in all regions of the state to enforce its decisions. In modern political systems there is a second branch of policy modus though where decisions are split up between manifold entities. This system is based on general agreement not on the majority so that decisions cannot be state forced. It is also called consensus modus, proportion or consociation democracy. Actually it is agreed on that most political systems are closer to consensus democracy than to the actual majority system.\(^\text{14}\)

According to Lehmbruch\(^\text{15}\) political systems have three different methods how to solve conflicts, each system having a certain set of rules. His three different modes are the following:

- Hierarchic system with authoritarian conflict decision,
- Party competition systems with timely limited power exertion with majority principle as a basic rule, and
- Negotiation systems.

2.1. Hierarchic systems

The first system has its roots in enlightened absolutism and in the ideas of Jean Bodin who founded the theory of the sovereign state in the 16\(^{th}\) century. State authority is responsible for conflict solution and has the hierarchic state apparatus as a means. Lorenz von Stein spoke about the kingship of social reform that was to representative of the sovereign state that towered over the typical class division in society and so balanced the differences in society.


2.2. Party systems

The second system is the party system with majority decisions. These have been legitimate means of decision making since the Middle Ages and the party system had its break through in 18th century England. Parties have access to power only for a limited time period and they have to compete for the power. The balance of interest is only achieved if the competition between parties is intense enough, meaning the opportunities to reach power are equally distributed between the competitors. The pursuit of power forces the majority to take the minority’s wishes into consideration too.

2.3. Negotiation systems

The third system comes in where conflicts cannot be solved by majority decisions, for example when there are groups with different confessions or ethnicities. Those minorities usually do not have a fair chance to compete for power so that the negotiated compromise is the only valid solution. This is found in concordance/negotiation democracies where even political positions are distributed following ethnic quotas. The party competition and majority systems loose their importance against the solution finding through bargaining. Big coalitions, situations where no stable and capable majorities can be formed or where the economic policy of the government is strongly challenged by organised interest groups are typical; here concerted action is the typical conflict solution mechanism.\textsuperscript{16} When decisions are not made on the higher level, but can only be made by the upper unit with consent of the lower ones or the horizontal agreement of the lower units negotiations and agreements are to be found instead of majority and hierarchy. The balance between the units has to be found somehow and there are different ideas how to solve this problem. The Pareto optimum of economic theory is one way; it says that the distribution of scarce resources is best when there is no further redistribution possible that improves the situation of one unit without deteriorating the conditions of another unit at the same time. Another method is the Kaldor criterion, which says that every means that creates higher common advantages than individual disadvantages are to be seen positively.\textsuperscript{17} Both the hierarchical and the consensus systems reach the Kaldor optimum but consensus systems need package deals (combination of different issues) and compensation to reach it.\textsuperscript{18} Offentimes the focus in consensus systems is on the rational-egoistic participant who only sees the own advantage, which leads to high transaction costs. The public choice theories and new economic institutional theories find that the only way to restrain the actors is through control and incitement mechanisms as well as through the institutionalism of the party competition. There

\textsuperscript{17} Nicholas Kaldor (1939) Welfare Propositions of Economics and Inter-Personal Comparisons of Utility, in: Economic Journal 49, pp. 549-552.
\textsuperscript{18} Arthur Benz, Fritz W. Scharpf and Reinhard Zintl (1992) Horizontale Politikverflechtung, Frankfurt am Main, pp. 15/16.
are actually only two ways to solve the dilemma of the public choice theories. On the one hand you can limit the equivalence of the egoistic rational concept from economic theory in their application on political theory. On the other hand you can integrate negotiation elements to lessen the consequences of egoistic behaviour in reality. The first argument thinks of capable actors in the political system who are able and willing to work for the common good and achieve common goals. Of course human weaknesses exist and have to be controlled by mechanisms in the system. The other possibility is to hold on to the egoistic rational individual and balances it with negotiation system because following to Coase’s theorem of economic welfare theory, all welfare effects that are reached by ideal hierarchic system can be reached by voluntary negotiation between the concerned persons (transaction costs are not included).\(^{19}\) This theorem leaves the possibility that welfare can be achieved without welfare-orientated actors. So the Kaldor optimum can be reached without the risks of the predatory exploitative majority. At the same time they can be highly inefficient, threatened by blockades and democracy harming constitutional forms. To search for the ideal solution requires creativity, teamwork and trustful information exchange. Still the results have different levels of advantage for the participants so that the differences are balanced by package deals and compensation. So the behaviour of the participants, their bluffs and bargaining, become highly important. Because this solution-orientated behaviour can be exploited negotiation systems often reach only the second best solution.\(^{20}\)

### 2.4. Basic elements of federalism

Federalism is a specific state organisation principle. According to Duchacek there is no clear-cut definition of federalism, the whole concept varies greatly, and thus the term is unclear and controversial. There is just no one theory of federalism.\(^{21}\) Leibfried, Obinger and Castles state that there are some features common to all federal systems:

- Institutional arrangements and rules for decision incorporate territorially based interests in the central government level,
- Territorial actors whose ideas and interests differ,
- Jurisdictional arrangements which distribute the policy responsibility between the levels of government, policy making and implementation,
- Intergovernmental fiscal transfer system, and
- Informal arrangements both horizontal and vertical.

Generally the authors see federalism as an institutional device for the vertical separation of power and where jurisdictional activities are split along territorial lines. They come close to Riker’s famous definition of federalism. He defines it as the

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division of government activities between central and regional governments where each government has the right to make final decisions on certain topics. Duchacek sees the non-centralisation of power as the defining point. He defines federalism as the existence of a general government for the whole territory and sub-governments whose territories’ sum make almost the whole of the territory.

2.5. Confederation and federation

There are two main types of federal organisation: the confederation and the federation. A confederation exists when sovereign states come together under a treaty. They usually have a common representation and defence system of the confederation; all other matters are under the jurisdiction of the states. Every member has the right to resign. In a federation the member states are gathered under a common constitution. The main difference to the confederation is that federal law of the central state ranks higher than member state law. At the same time the central state has to be considerate of the member states. Even if there are some main features of a federal state the federations differ enormously in their internal organisation. Main aspects that all federations share are:

- Division of the state in territorial entities,
- Participation of the member states in the decision-making of the federal state,
- Financial autonomy of the member states so that they can fulfil their tasks and jurisdiction competences of the member states.

Rene L. Frey describes the federal state as follows:

- Multilevel construction of the public sector,
- Separation of tasks according to the subsidiarity principle,
- Autonomy of the lower level jurisdictions, competition among the jurisdictions in public services and taxes,
- Cohesion as a task of the federal government, and
- Participation of the sub-national jurisdictions in the decision-making process at the federal level.

Four major aspects have to be fulfilled to make federalism work. The distribution of public tasks has to be appropriate between the different levels of jurisdiction; it has to follow the pattern: local goods to the local jurisdiction, regional to the regional level. Every single jurisdiction must be ready for federative competition in political, economic, financial and social aspects. That means regional disparities have to be reduced to a minimum. Fiscal equivalence between the regions is crucial otherwise decisions are biased. This federative competition must not be

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disturbed by monopolistic interventions of the central government or by cartelisation practices of the politicians.\textsuperscript{25}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
\textbf{Autonomy and Diversity as main goals} & \textbf{Integration and Equivalence of Living Conditions as main goal} \\
\hline
(Con)\textit{Fed}
\textit{eration, intrastate federalism} & \textit{Dual Federalism} & \textit{Decentralised Centralised State} & \textit{Centralised State} \\
\hline
\textit{Competitive Federalism} & \textit{Cooperative Federalism} & \textit{Devolution, Deconcentration} & \textit{Joint Decision Making} \\
\hline
\end{tabular}
\caption{Overview state forms}
\end{table}


\textbf{2.6. Inter- and intra-state federalism}

Two different types of federalism can be distinguished according to the distribution of state functions, intra-state and inter-state federalism. The inter-state federalism has a good vertical power separation and the competences between the governments are based on policy responsibilities, not on functions such as legislation and implementation. There is congruence of legislative and executive competences across different tiers of government.\textsuperscript{26} The intra-state federalism is marked by a functional distribution of responsibilities, where the sub-governments are responsible for the implementation of the federal legislation. There are possibilities for intra-state arrangements in certain policy fields. Cooperation is the main method in administrative and legislative matters as well as in legislation and implementation.\textsuperscript{27}

\textbf{2.7. Asymmetric and symmetric federalism}

In the figure above you can see that it is useful to distinguish between types of federalism, to take the distribution of competences between the different levels into consideration. Unbalances in the federal system are called asymmetries and were first discussed by Charles D. Tarlton. Symmetric federalism is only an ideal form and not possible in reality. Territories and population parts are never equal, but also legally member states in one and the same federal state can be differently positioned.

Symmetric federalism means that all member states have the same rights and competences. Federalism is asymmetric when there are differences in competences of the member states. Spain is a good example for the second type because autonomies like Catalonia, the Basque Country and Galicia have more competences than the others parts of Spain. Asymmetries can also count for the attitudes and values in the member states even if they have the same competences. Here the asymmetry is about differences in values, in political culture or serious socio-economic variation.\(^{28}\)

2.8. Cooperative and dual federalism

Additionally we can also distinguish between dual and cooperative federalism. In the first type the work of central and member states is organised parallel, in the second integrated. In dual federalism there are oftentimes parallel institutions at the central and the member state level as well as a clear-cut division between their tasks. Every political level has its tasks without possibilities of interfering from the other level. This type goes hand in hand with a federal state where a manifold regional, social and political development is the foremost goal. These systems are based on competition and diversity. Cooperative federalism has another goal to achieve, cooperation being in the focus for member and central states. Not historical plurality but higher efficiency of state action is the reason. Cooperation can be found between the member states or result in the participation of the member states in the central state’s legislation.\(^{29}\)

2.9. Coming-together and holding-together federalism

According to Benz this typesetting is not useful because there is a big intergovernmental cooperation. It is better to differentiate after the functions and the political conflict structures. So Benz suggests a scheme were we have coming-together-federalism (unification federalism) and holding-together-federalism (differentiation federalism), following Stephan’s suggestion. The first describes federal states that came together through the unification of different states where the main aspect is the balance between the member states and the central power. Here we usually have integrated party systems that work together at the different levels. Secondly there are federal states that have to deal with socially, culturally and economically diverging regions. In differentiating federalism there are usually vertically and regionally differentiated party systems. Other aspects which federal states can be sorted after are the organisation of the relationship between the levels. They are either institutionally intertwined or the coordination takes the form of formally separated and competing levels in less formalised, subject specific


The figure uses the suggested categories and brings them together. There are of course different combinations possible. In the course of this paper we will see in which category the German federal system belongs.

<table>
<thead>
<tr>
<th>Institutionised joint decision making (generates a tight connection)</th>
<th>“Coming Together”</th>
<th>“Holding Together”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject-specific, informal cooperation (generates loose connection)</td>
<td>Power division between central and member states</td>
<td>Integration of regions</td>
</tr>
</tbody>
</table>

**Figure 2: Coming together and holding together federalism**  

Federalism can have different origins and therefore purposes in a state. The specific forms of federalism in states depend on their historical institutional preconditions (path dependency) and the special needs and demands of the society in question. Generally speaking there are those with societal differentiation and those with societal concord. The reason for a federal organisation lies in the strong centrifugal powers. The aim to integrate religious and language groups is the focus in states with differentiating federalism. Oftentimes those federal systems give a lot of differentiation possibilities to their member states. The second reason for a federal organisation is to divide power between federal and member states (vertical power division). The society is rather homogeneous so that there are no big differences concerning values or languages. We speak of concord federalism in this case. In the 19th century federalism seemed to be only logical in states were smaller units wanted to keep their own identities. The modernisation of society endangers this diversity. In post-modern times the old coming-together federalism that came from confederations is less interesting than the differentiating federalism where territories in a relatively homogeneous state remember their typicality. The British concept is called devolution and in this process differences between the regions arises, are generally more common, which leads to asymmetric federalism.  

### 2.10. History of federalism theories

Federalism as a theory can be traced back to the Greek antique. Johannes Althusius is the greatest early modern federalism theorist. Consociation as the...
universal organisation principle for the symbiotic (citizen) comprised civil law, church law and public law areas and did not only deal with territorial units. Such a hierarchic network of functional and territorial units with limited autonomy was desirable in absolutism’s times. He was the first to discover the connection between people’s sovereignty and the protection of minority rights. Tocqueville is another founder of federalist theory. The bigger freedom in smaller societies seemed to be workable in bigger states through federalism where smaller units have certain autonomy. Proudhon abandoned the concept of anarchy as a means to reach a balance between freedom and authority. Federalism for him was a concept in itself next to democracy. Constantin Franz was critiqued for voting against the national state. He wanted to reach a central European state immediately. The nationality principle is a step against logic and sensibility. Lijphart was a spokesman for consociation democracy where strongly different and organised groups can cooperate in the elite level. He even argues for consociation engineering to strengthen democracy, a decisive work of politicians and not only economists. He valued the segmented autonomy as one possible way of non-territorial federalism. Leibnitz is one among many that has written about federalism. Kuno Fischer one of the best Leibnitz researchers wrote that his highest political aim was a harmony of the European peoples, a peoples’ system where every people had its own naturally given task. Leibnitz was fully hearted federalist; the Reich was a state family, a system of connected sovereign states that are united because of security questions. Leibnitz’ idea was a corporative federal state, where the different counties as territorial states, carried by their smaller units like tribes, unite to build a system that can formulate an own common will. The aim of the uniting is to lessen dangers and hardship.\textsuperscript{33} Federalism has no generally known and accepted interpretation or definition or aim according to Deuerlein.\textsuperscript{34} Still we often think of Germany’s nowadays or Middle Ages system or the USA. Today it is together with western democracy a political system with regional governmental entities. The most important aspect of federalism is that its citizens shall be enabled to solve their problem on their own. Thus those citizens have to recognise reciprocity as basic principle, the step from individual freedom to mutual freedom is essential. Socialism for Landauer means to create an order where the persons gain self-confidence; it creates political, social and cultural order. Only with the self-confidence of the individual socialism can be achieved. Landauer even calls it the treaty of voluntarism. Landauer thought that the individualities of the persons come together and build a new stronger entity, the Gemeingeist. This Gemeingeist influences the individuals on the other hand. But this alone does not create a federal order. The true reason for the treaty is the will of the people. The will, the Gemeingeist and the federative system come together and

influence each other. Landauer calls its federalist system ‘anarchy and federation’, because anarchy starts with the decision of the individual and does not need state force and federation because socialism is a society within societies. He saw an ideal in the middle ages, where the whole was characterised by the independent entities with a Gemeinggeist called Christianity. He aims for the building of decentralised, federative living culture and form with the technical, economic means of our modern civilisation.35 Denis de Rougement saw the development of the national state in the 20th century as negative. They concentrate too much power in the centre compared against the regions. In the nowadays national states the abyss between citizen and state becomes deeper and deeper. The state is an anonymous machine, being feared and loathed and taken advantage for egoistic causes. There is a distance between the citizens’ reality and the state’s power, the abstraction and the underestimating of the citizens, strengthens the state. The identification of the citizen is with its region, its home. The “sick” form of the national state can only be overcome if elements of freedom and responsibility are transferred to lower, smaller entities. Federalism is just another way to express personal aims, because it trusts in the power of the responsible and free person and in political context on self-administration of small municipalities. Rougement speaks about the ideal city where every single citizen feels responsible for the common good, but can also develop his or her personal freedom. This would lead to lower criminality and less urge of politicians to defend their world. This includes a positive ideal human being. He suggests that the first base of a society is the couple, and then comes the family and society. So the necessities of the state reach a different level. Leaving out unnecessary spending like salaries for parliament members or weaponry could fulfill the budget. The regional coming together leads the people to see the common interests and their own responsibility so that solidarity and identification develop. Rougemont enumerates three reasons why Europe should be divided into regions and not national states.

1. The striving for security of persons that cannot only be fulfilled by a group.
2. The autonomy of the entities, because each has vital tasks to deal with to defend the own interests (cultural and ethnic diversity)
3. Material wealth is a necessary component for the mental and social evolution of society.

Good federalism has to find the balance between security and autonomy, regions and central state so that the cultural and ethnic diversity of groups and individuals are secured.36 A new branch of federalist theories came with the concept of subsidiarity, which is rooted in the catholic social theory and was mentioned in the Encyclica “Quadrogesimo Anno” (1931). Individuals, families and small entities

should be protected but it had also a territorial note by stating that it hurts fairness if what small and subdued entities can do will be done by higher and bigger entities. For strict federalist this principle is strongly criticised because it has no clear-cut rules, which on the other hand makes it attractive for the EU. After the 2nd WW the main discussion took place between two branches of political theories: constitutional and governmental ones. New institutionalism speaks about the relative autonomy of institutions, which have their historical life line and are not only an instrument of the single actor’s actions. Concerning federalism this means to look into the organisational features of the member states of federal states, like veto options through two-chamber-systems, referenda, rigid constitutions and constitutional courts. Tsebelis coined the term veto-player in 2002. Also Scharpf’s joint decision making theory belongs here, as well as path dependency theories like Benz’ and Lehmbuch’s in 2002. This eternal debate between institutional and individual explanation designs led to changes and new perspective in individual actor theories. The rational choice theory explains that political actors calculate their profit. Neo-liberal economic theory in the tradition of Hayek discovered that federalism strains the growth of the state and its activities (see also Brennan/Buchanan37). Nowadays federalism is criticised again: on the one hand it is hard to see differences between federal states and decentralised central states. On the other hand it is put into defence by subsidiarity and a strongly growing regionalism. This puts federalism into danger from two sides, from the similar regionalism and from central states and their decisions for more autonomy for the provinces. With modernisation and more efficiency the federal principle has grown into a Unitarian federal state whose prototype is Germany. Another term in this sense is the camouflaged central state, (see Abromeit38). According to Livingston this has to do with the dual focus of federalism on state or society, the society one being the original. Its aim was to unite diversity in unity. In Germany we underline the society focus over and over again. Federalism is thus an interpersonal phenomenon between societies.39

2.11. State theories
To describe the development and specific features of states we have different theories. I want to present some of them because they hold for federal system as well.

2.11.1. Public choice theories
The first set of theories is called ‘public choice theories’. The first one I want to take a closer look at the statement that federalism is a restraint on government growth. With decentralising taxes and expenditures the size of the government declines. Decentralised taxes enhance competition between the units and so

government growth is limited. Hayek actually discovered this mechanism and was the first to write that government intrusion is less in federal states. Brennan and Buchanan explain the other side of the medal by stating that centralisation brings unlimited growth of the leviathan because then it has a monopoly to extract taxes and revenues from the society. This leviathan hypothesis has two main arguments. Oftentimes opportunistic governments spend much money to secure votes in the coming elections, with fragmentation in territorial units they have less opportunity to distribute rents and benefits because they only have a certain portion of the public budget. The other argument is, according to Tiebout, that there are always exit options in intergovernmental competitive systems. Tiebout called this phenomenon ‘voting with one’s feet’. It means that we can choose the territory, which suits our interests and demands best for public goods. Another point is that these exist options may lead to a downward spiral in the provision public goods. Competitive federalism drives the units the less and less spending because of the drive for lower taxes. Following Rodden’s argumentation there is no distinct one-way connection between decentralisation and the size of government. The financial arrangements in federal states vary decisively. Rodden finds that the funding arrangements are the biggest incentives for government to restrict or widened expenses. If funding is provided by revenue sharing or intergovernmental grants the state units tend to ‘over fish’ common pool resources. Horizontal tax competition is restricted and the units can exploit other’s resources. So decentralisation can even be an incentive for a bigger public sector. If units have to prove their own funding they act differently, they spend less. Other economic arguments for federalism are that the competition between the units creates innovation and efficiency, like at markets. Local policies suit local preferences better. Those advantages outweigh the higher costs of federal systems. Federalism is also seen as the possibility to experiment on a small scale first. The units can learn from each other and competition can lead to the discovering of new and creative solutions. Even spillover effects to the federal, central government are mentioned in this context.

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2.11.2. Institutional design theories

The next set of arguments belongs to the institutional design theories. The first branch deals with the long-term and indirect effects of federalism. It is founded on diversity and enhances even, so that a lot of economically divers units emerge. They represent a greater number of actors and institutions involved in policy making and institutional division creates political fragmentation. The political capacities of actors like parties, unions and business organisation are influenced and national strategies are difficult to form. Federalism has an inherent drift to competition and anti-statism.\(^47\) The second branch reasons that the fragmentation between more actors increases the number of possible veto points. This provides greater veto opportunities for minorities. According to Tsebelis’ comprehensive work\(^48\) a veto player is a ‘collective or individual actor whose status quo is required to alter the status quo’. He suggests that policy stability increases with the number of veto players. The institutional safeguards are essential features of vertical power dispersion but veto players are a barrier to constitutional change. In typical federal countries we see negotiation based politics and considerable constraints in majority rule. Scharpf once formulated that ‘constellations in which parties are either physically or legally unable to reach their purposes through unilateral and in which joint action depends on nearly unanimous agreement of all parties involved’ so that ‘goals of particular kind or beyond a certain order of magnitude cannot be attained without collaboration’. Fragmentation requires coordination and negotiation. This can lead to delayed decisions or sub-optimal results because the policy of the lowest denomination is chosen. You can argue that many veto players restrict policy change and that it causes a ‘ratchet effect’. It is also possible to speak of a downward stickiness. The Veto player theory explains the status quo bias and the slow pace of political change in a federal state.\(^49\) Another point to mention in the shared jurisdiction field is the blame avoidance argument by Weaver\(^50\) which means that if political actions is not concentrated on one level but joint decision making and intertwined funding exists there is always the possibility to shift blame to the lower tiers of government. The third theory concerns the path-dependency argument. Central is that earlier stages in a sequential decision process do influence all the later stages, even if the decision are extremely small they can have lasting and reinforcing effects. It is necessary to go back to history and look at the first distribution of competences in federal states. Important to know is the longer the decision is back in history the more “expensive”


is it to reverse it. The constitutional court and its power to interpret the law have a
great influence here.\textsuperscript{51}

3. THE DEVELOPMENT OF THE GERMAN STATE\textsuperscript{52}

In this chapter the history of Germany is the focus. From the path dependency
theories we have learned that a look into the past can facilitate to understand the
present. Kurt Biedenkopf describes that the federal system comes from our history as
a nation that was not one state until the middle of the 19th century, but defined itself
through language and culture. The forming of the state has always been a bottom-up
process, the Länder always being the first to exist. The Reich from 1871 was the first
federal state in modern sense. Central states are only known in Germany in bad
times, under the Nazis and the communists.\textsuperscript{53}

In contrast to the conscious and willing formation of federal systems in
Switzerland and the USA Germany bases its federalism on political accidents,
formula compromises and the will to camouflage hegemonies tendencies. The Holy
Roman Empire could be called feudal system sui generis and when it came down in
1806 through Napoleon most of the German territories (Länder, Counties,
Kingdoms) achieved sovereignty. At the same time a movement started with the aim
to create a unitarian German nation. Together with this there came federal thoughts.
They were meant to support the idea of the nation state and to melt together the
particularistic separation movements. After the Vienna congress the German states
discussed the question of a German unification. After the rejection of more federally
orientated constitutions the German governments agreed on the confederation system
in the Bundesakte in 1815. The German Bund was established. The constitution
demanded consensus of all member states for the formation of the basic principles
and there was contrast and tension between Austria und Prussia. The German Bund
was not able to tackle the political, social and economical problems and so the vote
for a real federation became louder. The March revolution in 1848 is a proof for this
growing dissatisfaction. The revolutionist suggested that there should be sovereign
states but there would be some limitation through the common German constitution.
This so called Paulskirche Constitution was proof for the fact that the idea of
federalism found broad acceptance in Germany. The 1848 revolution failed so did the
plans for a new federal German state.

The next step in the development of a federal Germany is the North German
Bund. After the military defeat of Austria by Prussia in 1866 the formal
disintegration of the German Bund was completed and the North German Bund

\textsuperscript{51} Herbert Obinger, Stephan Leibfried and Francis S. Castles (2005) \textit{Federalism and
\textsuperscript{52} Hartmut Kühne (2005) \textit{Auslaufmodell Föderalismus? Den Bundesstaat erneuern –
Reformblockaden aufbrechen}, München, pp. 29-36.
\textsuperscript{53} Hartmut Kühne (2005) \textit{Auslaufmodell Föderalismus? Den Bundesstaat erneuern –
Reformblockaden aufbrechen}, München, pp. 29-36.
founded. The North German Bund was a federal state. In the North German Bund the member states were brought together without destroying their structure as monarchic states.

The founding of the German Reich is the next move towards federalism in Germany. Basic failures were made though. With the exceptions of the Hansa cities Bremen, Hamburg and Lübeck all member were monarchic-constitutional, except Mecklenburg-Western Pomerania, which was still partly feudal. Different factors led to disharmony and deformation of the power system in the Reich. The Reichstag was no counter player for the Bundesrat so that the governments in the member state were more powerful. Moreover the Reichstag was atomised into small ideological parties. Even worse was the distortion caused by Prussia. Prussia had about 65% of the territory and 62% of the population of the whole Reich. The personal union between Prussian king and German Kaiser made a neutral Reich control over Prussia impossible. Moreover Prussia had a factual veto in the Bundesrat and could thus stop any change of the constitution. A vertical control that is so typical for federal states was just not possible in the Reich thus it is to be called pseudo-federal.

On October 28th 1918 parliamentary democracy was introduced in Germany through pressure of the allied forces of the 1st World War. In consequence the Bundesrat became less important than the Reichstag hence the influence of the member states was reduced. After the war the fear that the Reich would dissolve was big. Bavaria for example was in negotiation with the new founded Czechoslovakian republic and Austria to establish a Donauföderation (Danube federation). The intervention and threatening with military intervention of Berlin destroyed the plans. In Weimar and in the national congregation the Unitarian central powers were strong. The question was federal state or central state. Hugo Preuss developed a plan for a constitution where the member states should be administrative entities. Today we would call it a decentralised central state. The member states’ governments protested against this suggestion but could not exert too much influence on the national congregation. A federal state with tendencies to decentralised central state was established. The Länder were not integrated in the formulation of the central state's will. The legislative competences of the Länder were restricted severely. The Second World War was in interruption in Germany's process of becoming a true federal country.

Already quite early the allied of the 2nd World War made plans what should happen with the defeated 3rd Reich. The main issue was unitarisation or federalisation. Prussia was seen as a problem too and her dissolving quickly agreed on. Also it was believed that a decentralised system would give the Germans better chances to gather practical political experiences. In Jalta it was decided to pursue the concept of federal decentralisation in Germany. France wanted a confederation where all competences were automatically to belong to the Länder, if not exactly assigned to the central state. The USSR pursued a unitary state, whereas Great Britain took the structure of the Weimar Republic, seized all competences from the Reich and
encouraged local self-administration and German participation but left no room for federalism. In the US zone the bottom-up process as agreed on was conducted. The institutions had resemblance with the US ones. In 1948 the three west zones agreed to build a new German state, and a constitutional congregation was founded. The results were summarised in the three Frankfurt documents, which were given to the prime ministers of the Länder by the military governors of the zones. Already here the task to review the Länder boundaries was included. The prime ministers agreed on a parliamentarian council to create the Grundgesetz (constitution). They disagreed to revise the Länder boundaries with the argument that it could not be done in such a short period of time. In the constitutional convent on Herrenchiem Lake the discussions about how the federal system should look like were rough. They agreed on the division of the legislative competences between central state and Länder, the competitive and framework legislation and the supremacy of the central state. They disagreed on the form of the second chamber and its role in the legislation process as well as the financial constitution. Among the people two principles were discussed: subsidiarity and solidarity, both principles should guarantee that the central government would only fill out functions that could not be achieved by the Länder. When the allied took all state power in Germany in 1945, they wanted to create democracy from below again, in municipalities, Länder and then the whole of Germany. They started creating Länder following their influence zones and own plans. Theodor Heuss said that most the Länder are rather original than genuine. The figure below shows a summary of the before mentioned facts concerning the states’ council and compares it to the nowadays Bundesrat.54

<table>
<thead>
<tr>
<th>Categories</th>
<th>German Reich Constitution, 1871</th>
<th>Weimar Reich constitution, 1918</th>
<th>Grundgesetz, 1949</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veto</td>
<td>Bundesrat has absolute veto</td>
<td>Reichsrat has suspending veto, to overrule the veto a 2/3 majority of the parliament is requested</td>
<td>Bundesrat has absolute veto in matters that affect regional administration, in all other matters suspending veto (a suspending veto with a 2/3 majority can be overruled by a 2/3 majority in the parliament)</td>
</tr>
</tbody>
</table>
| Member states | 25 Länder, 58 votes  
• Prussia 17  
• Bavaria 6  
• Wurttemberg and Saxony 4  
• Baden and Hessen 3 | 18 Länder, 66 votes  
• Prussia 26  
• Bavaria 10  
• Saxony 7  
• Wurttemberg 4  
• Baden 3 | 11 (16) Länder, 41 (68) votes  
• North Rhine Westphalia, Bavaria;  
• Württemberg, Lower Saxony 5 (6)  
• Hessen, Rhineland-Palatine, Berlin, Saxony 4 |
| Mandate | Members are delegates of the regional governments, no | Members are delegates of the regional governments, no | Members are delegates of the regional government, no free mandate |

54 Heinz Laufer (1992) Das Föderative System der Bundesrepublik Deutschland, Bonn, ch. 25.
Table 1: Comparison Constitutions 1871, 1918 and 1949  

<table>
<thead>
<tr>
<th>Tax system</th>
<th>Länders receive all direct taxes, central indirect taxes, tax laws need the consent of the states</th>
<th>Taxation is completely a responsibility of the central state, income and sales taxes are shared between Reich and Länder, central government has competence’s competence (can decide who can levy taxes), modest fiscal equalisation system</th>
<th>Basically the same as in Weimar constitution, extensive fiscal equalisation system, that guarantees that no state is a per capita tax revenue below 95% of the national average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central state’s right to legislate</td>
<td>Right to legislate lies with the federal chamber</td>
<td>Right to legislate lies with the Reichstag</td>
<td>Right to promulgate law lies with the parliament, some laws need the consent of the federal chamber</td>
</tr>
<tr>
<td>Member states’ right to legislate</td>
<td>Federal chamber has exclusive right to initiate legislation</td>
<td>Federal chamber has right to initiate legislation (co-legislation)</td>
<td>Federal chamber has the right to initiate legislation (co-legislation)</td>
</tr>
</tbody>
</table>

In this figure it becomes obvious that some structures are always kept in the state organisation. One example is that the members of the Länder council have always been members of the regional/Länder governments, never of the Länder parliaments. On the other hand we perceive a clear cut after the 1st World War. Here the focus and centre of power shifted to the central state, away from the Länder. Examples are the changes in the fiscal system and in the veto rights of the Länder council.

As conclusions remain to say that the tradition of federalism is not as strong as we like it to present. Always there have been strong counter movements. The Germans love their region, but the identification with their nation is stronger.

4. THE GERMAN SYSTEM TODAY

In this chapter I explore the organisation of the modern German state. What are the main organs and which competences do they have? It is necessary to understand these basics before diving into the problems of the structure. The federal level comprises the following state organs:

---

<table>
<thead>
<tr>
<th>State Organ</th>
<th>Parliament</th>
<th>Bundesrat</th>
<th>President</th>
<th>Government</th>
<th>Constitutional Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of members</td>
<td>598</td>
<td>69</td>
<td>1</td>
<td>1 + ministers</td>
<td>2x8</td>
</tr>
<tr>
<td>Election</td>
<td>Direct through the people</td>
<td>None</td>
<td>Federal conventio n</td>
<td>Chancellor through the parliament</td>
<td>Half through parliament and half through Bundesrat</td>
</tr>
<tr>
<td>Duration</td>
<td>4</td>
<td>Forever</td>
<td>5</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>Mandate</td>
<td>Free mandate</td>
<td>Imperative mandate</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Location</td>
<td>Berlin</td>
<td>Berlin</td>
<td>Berlin</td>
<td>Berlin</td>
<td>Karlsruhe</td>
</tr>
<tr>
<td>Tasks</td>
<td>Legislative</td>
<td>Legislative</td>
<td>Head of state</td>
<td>Executive</td>
<td>Judiciary</td>
</tr>
</tbody>
</table>

Table 2: German state organs


The German Grundgesetz, our constitution gives us a basic knowledge about the German state’s organisation. The Republic of Germany is a social and democratic federal state. The Länder are delegated the right to choose their organisational form, as long as it is within the borders of the rule of law. In the context of federalism the rule that all state power is in the hands of the Länder if this same Grundgesetz does not mention anything different is utmost important. But federal law overrides Länder law hence a hierarchical system is designed. Another ground pillar for the German Grundgesetz is art 79 (3) GG, the so-called eternity clause. It states that Germany’s organisation as a federal state with Länder and the participation of these Länder in the federal legislation process must not be changed. The forms of cooperation with the EU are also clarified. The parliament can give competences to the EU with the consent of the Bundesrat. Whenever the EU laws regulate a topic, which is originally a Länder competence, the consent of the Bundesrat is compulsory. Whenever decisions about Länder topics are made in the EU the Länder representative instead of a federal representative acts on behalf of Germany and gives the votes.

The legislative competence is given to the Länder. They have the first right to act if this Grundgesetz does not state anything different. There are rules however about sole competences of the Länder and the central state and competitive competences.

<table>
<thead>
<tr>
<th>Länder</th>
<th>Central state</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Legislative Competence Art 70 GG</td>
<td>Sole Legislative Competence Art 71, 73 GG</td>
</tr>
<tr>
<td>Competitive Legislative Competence Art. 72, 74 GG</td>
<td></td>
</tr>
</tbody>
</table>
The German Bundestag (parliament) is the supreme organ of the German constitution as well as the only organ that is directly elected by the people. State authority is exercised by the classical triad of legislature, executive and judiciary with the well-known checks and balances the others; the legislative part is taken by the parliament. The parliament has the task to make laws, which is extremely complex and time-consuming. A legislative initiative may come from the Federal Government, from within the parliament or from the Bundesrat. Each bill is then discussed three times at plenary sittings, called ‘readings’. The Bundesrat is the organ that allows the Länder to participate in federal law creation and administration as well as in issues of the EU. Every Land has between three and six votes and the members consist of the government of the Länder. Bills affecting the interests of the Länder require the explicit consent of the Bundesrat meaning the Länder have an absolute veto. In all other bills, the Bundesrat may lodge an objection to their adoption, so to say a suspending veto. If the parliament and Bundesrat cannot agree on a bill the Mediation Committee starts its work. This committee’s task, comprising 16 representatives each from the parliament and Bundesrat, is to find a compromise. If the Bundesrat has an absolute veto this signals the final defeat of the proposal, but if the Bundesrat only has a suspending veto the parliament can overrule its objection.

Another important point to mention concerning the relations between Länder and the central state is the administration. Federal laws are usually executed by the Länder as own concern. They regulate the procedure and the offices except that the federal level gives guidelines. The central state has the control if the Länder execute the federal laws correctly. Another form is the on order administration. The main difference is that the central state can control not only legality but as well efficiency. Furthermore the Länder administrations are bound by orders of the federal administrations. Each unit stands for the costs for its administrative tasks, only if with on-order administration the central state has to pay. If the Länder have costs the Bundesrat has an absolute veto and with payment over 50% it becomes on-order administration. There are common tasks too, especially in research and education. There are also rules about a possible reorganisation of the territory with a special rule only for a Fusion of Berlin and Brandenburg.

The Länder are the member states in the German federal state. The population figures are from December 2006 and in millions. The territory is given in square kilometres. There are 16 Länder, which differ considerably in territory and population. Also the governing majorities are presented in the table. Together with the votes in the Bundesrat for each Land it is possible to figure the majority in the Bundesrat, which is decisive in legislative processes.
<table>
<thead>
<tr>
<th>Capital</th>
<th>Territory</th>
<th>Population</th>
<th>Government</th>
<th>Votes in Bundesrat</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baden-Württemberg</td>
<td>Stuttgart</td>
<td>35.751</td>
<td>CDU/FDP</td>
<td>6</td>
</tr>
<tr>
<td>Bavaria</td>
<td>Munich</td>
<td>70.553</td>
<td>CSU</td>
<td>6</td>
</tr>
<tr>
<td>Berlin</td>
<td>-</td>
<td>883</td>
<td>SPD/PDS</td>
<td>4</td>
</tr>
<tr>
<td>Brandenburg</td>
<td>Potsdam</td>
<td>29.477</td>
<td>SPD/CDU</td>
<td>4</td>
</tr>
<tr>
<td>Bremen</td>
<td>-</td>
<td>404</td>
<td>SPD/CDU</td>
<td>3</td>
</tr>
<tr>
<td>Hamburg</td>
<td>-</td>
<td>755</td>
<td>CDU</td>
<td>3</td>
</tr>
<tr>
<td>Hessen</td>
<td>Wiesbaden</td>
<td>21.114</td>
<td>CDU</td>
<td>5</td>
</tr>
<tr>
<td>Mecklenburg-Western Pomerania</td>
<td>Schwerin</td>
<td>23.800</td>
<td>SPD/CDU</td>
<td>3</td>
</tr>
<tr>
<td>Lower Saxony</td>
<td>Hanover</td>
<td>47.348</td>
<td>CDU/FDP</td>
<td>6</td>
</tr>
<tr>
<td>North Rhine-Westphalia</td>
<td>Düsseldorf</td>
<td>34.068</td>
<td>CDU/FDP</td>
<td>6</td>
</tr>
<tr>
<td>Rhineland-Palatine</td>
<td>Mainz</td>
<td>19.848</td>
<td>SPD</td>
<td>4</td>
</tr>
<tr>
<td>Saarland</td>
<td>Saarbrücken</td>
<td>2.570</td>
<td>CDU</td>
<td>3</td>
</tr>
<tr>
<td>Saxony</td>
<td>Dresden</td>
<td>18.412</td>
<td>CDU/SPD</td>
<td>4</td>
</tr>
<tr>
<td>Saxony-Anhalt</td>
<td>Magdeburg</td>
<td>20.444</td>
<td>CDU/SPD</td>
<td>4</td>
</tr>
<tr>
<td>Schleswig-Holstein</td>
<td>Kiel</td>
<td>15.730</td>
<td>CDU/SPD</td>
<td>4</td>
</tr>
<tr>
<td>Thuringia</td>
<td>Erfurt</td>
<td>16.000</td>
<td>CDU</td>
<td>4</td>
</tr>
</tbody>
</table>

Table 3: Länder and facts
Source: [www.bundesrat.de](http://www.bundesrat.de), 01.09.2007.

In the end of this chapter I want to add some explanations concerning the party system in Germany. The party Bündnis 90/Die Grünen was founded 16th/17th January 1993 from the East German Bündnis 90 (former GDR civil rights spokesmen) and the West German party Die Grünen (alternative, ecological forum founded as party in 1980). From the beginning they programmed for ecological, social, basis democratic and force free positions. In 2004 they had 44000 members. It established as 3rd strongest party in Germany in the 1990s and often formed a coalition with the SPD in the Länder parliaments. The CDU (Christian Democratic Union) is a Christian-conservative Folk party with Christian values as base for political action. It was founded after the 2nd WW from the different Länder CDUs in 1950. They act on the concept of social market economy and found their politics on the Christian understanding of the human being and his responsibility before god and the basic values freedom, solidarity and justice in 2005 it had 572000 members.

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56 All information about the party system is taken from: [www.bpb.de](http://www.bpb.de), 12.04.2008.
CSU (Christian Social Union) was founded in Munich in 1945 and is a Christian-conservative folk party and the more conservative sister organisation of the CDU. She works only in Bavaria and since 1949 she forms a fraction society with the CDU in the federal parliament and thus has influence on federal politics. Strengthening of federalism and conservative values are her programme. The Bavarian population and the CSU share a strong connection. 170000 people are members of the CSU. The FDP (Free Democratic Party) was established in 1948 by several liberal parties, including left and national liberals, which was a novelty. Although being a small party, she has found her place as 3rd strongest party in Germany and was often part of governments in coalitions with the SPD or CDU. The party propagates a state free economy and society. 65000 people are members in the FDP. Germany's biggest party SPD (Social Democratic Party) has 590000 members. She sees herself as the left, social and future orientated party for all population classes. She has her origins in the workers' movement in the 19th century and was founded in 1875. Hence the SPD is one of the oldest parties in Germany. During the Weimar Republic the SPD was decisive in politics. In 1959 the change from workers' party to folk party occurred. In the later years she developed to a professionalised media party from the typical functionary and member party. Founded in 1987 the DVU (German Folk Union) stands for nationalist and right wing extremist viewpoints. The party was elected into several Länder parliaments but in their federal campaign in 1998 she was not successful. She is antidemocratic, revisionist, foreigner hostile and subtly anti-Semitic. The dominating figure of the party is Gerhard Frey, the chairman. In 2005 the DVU had 9000 members. The NPD (National Democratic Party in Germany) was founded 1964. Until the Foundation of the DVU and The REP she was the most important right wing-extremist party and even elected into some Länder parliaments, though into the federal parliament. In 2003 the initiative to prohibit the NPD was voted down by the Supreme Court. The programme of the NPD is nationalistic and folkish as well as anti capitalistic and contains national revolutionary elements and stands close to National Socialism. She distanced from Germany's free democratic order and its liberal and market economy elements. Also anti-American, anti-Semitic and revisionist and foreigner hostile elements are found in party documents. In the last years she regularly participated in election and was elected into some Länder parliaments but not into the federal one. The party actively looks for association with right wing groups like right wing-radical Skinheads. She had 6000 members in 2005. The REP (Republicans) was founded in 1983 and stands for a nationalist and folkish programme. After being elected into some Länder parliaments in the beginning she has lost significance and is not represented in any parliament nowadays. In 2004 she had 6500 members. The centre of her programme is the German nation, which is defined through common culture, history and lineage. A strong state should represent the nation’s interest within and outside the national borders. The party has foreigner hostile, revisionist and conservative values.
5. PRESENTATION OF THE INTERVIEWS

The following chapter is dedicated to the presentation of my study, the phases of it, the interviewees and the results.

5.1. The method and phases

In the course of my thesis I interviewed politicians and researchers. The reason for choosing researchers is to get a better understanding on a neutral base. They have oftentimes a background as professors or members of important organisations and committees in Germany. Their opinion is valued highly by German politicians. Politicians I interviewed because they are the decisive persons for the development and character of the German political system and its future. With their decisions in parliament the way for federalism in Germany is paved or blocked. Politicians represent the highest authority concerning the political system itself therefore it is logical to start researching what they expect and want to develop in Germany.

5.1.1. First phase

In the first phase I concentrated my study on three Länder, Bavaria, Brandenburg and Bremen, and the central state. The three Länder represent different types of German Länder, Bremen being a city Land, Brandenburg a new eastern Land and Bavaria an old western German Land. The choice of the three Länder was made because they can represent more or less typical issues of the other German Länder. I contacted the parties that were represented in their parliament in 2006 to interview one representative for each party from each of these countries. Unfortunately the responses were scarce, even after several efforts from my side. In Bavaria I never got the opportunity to speak to a CSU (Christian Socialists, exist only in Bavaria, cooperation with the CDU (Christian Democrats) on the central state level) or a Grünen member (greens). In Brandenburg I could not get in touch with someone from the DVU (German Folk Union). Moreover I spoke to five researchers.

<table>
<thead>
<tr>
<th></th>
<th>SPD</th>
<th>CDU</th>
<th>FDP</th>
<th>Greens</th>
<th>Linke/PDS</th>
<th>DVU</th>
<th>CSU</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Central state</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Bavaria</strong></td>
<td>Yes</td>
<td>-</td>
<td>No</td>
<td>No</td>
<td>-</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td><strong>Brandenburg</strong></td>
<td>Yes</td>
<td>-</td>
<td>-</td>
<td>Yes</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Bremen</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>-</td>
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<td>-</td>
</tr>
</tbody>
</table>

*Table 4: First phase*

*Source: own draft*

During this stage of the study I conducted the interviews via telephone or face to face. The reason for choosing telephone interviews lies in the cost and time
restraints, the interviewees live in Germany and travelling back and forth would not have been possible. During a short stay in Berlin I conducted some face-to-face interviews but there was no difference in reaction, responsiveness or general attitude of the interviewees based on the mode face-to-face or telephone interviewing. So I decided to continue with telephone interviews. The interviews lasted for about 45 to 75 minutes. During them I followed my question catalogue. All in all I conducted 17 interviews in this phase.

5.1.2. The second phase
Because I could not reach all parties in the three Länder I broadened the perspective and sent out a second electronic interview form. Here I contacted every party in the parliaments in the 16 German Länder. Unfortunately the response rate was even lower here. I received 15 responses plus material like law initiatives or speeches. Three Länder are not in the study because I did not receive any responses, Hessen, Mecklenburg-Western Pomerania and Saarland.

<table>
<thead>
<tr>
<th>Lower Saxony</th>
<th>CDU, SPD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schleswig-Holstein</td>
<td>Greens</td>
</tr>
<tr>
<td>Thuringen</td>
<td>CDU</td>
</tr>
<tr>
<td>Baden-Württemberg</td>
<td>SPD, CDU, Greens</td>
</tr>
<tr>
<td>Hamburg</td>
<td>CDU</td>
</tr>
<tr>
<td>Rhineland-Palatinate</td>
<td>SPD</td>
</tr>
<tr>
<td>North Rhine-Westphalia</td>
<td>Greens, SPD, CDU</td>
</tr>
<tr>
<td>Berlin</td>
<td>PDS</td>
</tr>
<tr>
<td>Saxony</td>
<td>CDU, NPD, PDS</td>
</tr>
</tbody>
</table>

Table 5: Second phase
Source: own draft

5.2. Interviewees
I will start with a short introduction of the interviewees. I only present them and their main function shortly. The aim was to talk to the most important person possible. So I usually contacted the leaders of the parliamentary group or members of the board. Sometimes they handed my approach to another person to answer it.

First I want to introduce the federal politicians. Krista Sager\(^{57}\) has been the vice leader of the parliamentary group of Die Grünen in the federal parliament since 2005 and at the same time she is a member of the board, the council of the party and the work group for societal modernisation called ‘Knowledge and Generation’. She is responsible for the topics media, culture, youth and elders. Klaus-Uwe Benneter\(^{58}\) was General Secretary of the SPD from 2004 to 2005, when he became legal advisor. Since 1999 he has been legal spokesman and spokesman for the Protection of the

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\(^{57}\) Krista Sager, 07.07.2006
\(^{58}\) Klaus-Uwe Benneter, 22.05.2006
Constitution (Verfassungsschutz) of the SPD parliamentary group in Berlin. Ernst Burgbacher⁵⁹ has been chairman of the committee for European issues of the FDP in Baden-Württemberg from 1989 to 2001. Since 1993 he has been a member of the board of the FDP in Baden-Württemberg and since 2004 he is vice chairman of the FDP in Baden-Württemberg. Since 1998 he has been a member of the federal parliament and since 2002 one of the parliamentary directors of the FDP parliamentary group in the federal parliament. Wolfgang Bosbach⁶⁰ has been a member of the CDU in the federal parliament since 1994. He has been the vice leader of the CDU/CSU parliamentary group in the federal parliament since 2000. He works as well in the committees for legal and internal questions.

Then I want to turn your attention to the experts. Ulrich Häde⁶¹ has been a professor of public, administrative, financial law and international law at the Viadrina University in Frankfurt (Oder) since 1997. The focus of his academic work has been on the financial equalisation system in Germany and the EU. Thomas Fischer⁶² is the leader of the optimisation of political reform processes at the Bertelsmann foundation. From 1994 to 1997 he was working in the research project ‘To Organise Europe Federally’. In the years 1998 to 2000 he was coordinator at the European Centre for Federalism Research. Since 2000 he has worked for the Bertelsmann foundation. Hans Meyer⁶³ is emeritus professor of state and administration sciences. He was even one of the seven experts in the legal commission. Horst Risse⁶⁴ is a member of two commissions of the federal council and two symposia. He was the leader of the secretariat of the commission for federalism. Dieter Grimm⁶⁵ is professor of public law at the Humboldt-University in Berlin and head of the sciences college (Wissenschaftskolleg) in Berlin. From 1987 to 1999 he was judge at the federal constitutional court. He worked also at Yale Law School and New York University Law School.

The politicians I spoke with in Bremen are the following. Karoline Linnert⁶⁶ has been the leader of the parliamentary group Die Grünen in Bremen since 2000. Dirk Hoffmann⁶⁷ is director of the parliamentary group the CDU in Bremen. He organises the cooperation of coalition, parliamentary group and city senate. He also prepares the sessions of the parliamentary group. Carsten Sieling⁶⁸ is the leader of the parliamentary group SPD in Bremen since 1995. From 2004 to 2006 he was the chairman of the SPD group in Bremen. Finally he works as well in the committee for the constitution and rules of internal procedure. Most of the Bavarian politicians I

⁵⁹ Ernst Burgbacher, 22.06.2006
⁶⁰ Wolfgang Bosbach, 18.05.2006
⁶¹ Ulrich Häde, 21.05.2006
⁶² Thomas Fischer, 10.05.2006
⁶³ Hans Meyer, 29.04.2006
⁶⁴ Horst Risse, 23.06.2006
⁶⁵ Dieter Grimm, 01.06.2006
⁶⁶ Karoline Linnert, 07.07.2006
⁶⁷ Dirk Hoffmann, 21.08.2006
⁶⁸ Carsten Sieling, 23.08.2006
contacted did unfortunately not answer my requests so I can only present two for this country, both from the SPD. Johanna Werner-Muggendorfer\textsuperscript{69} is a member of the Bavarian parliament and prepares the material for the cross party Enquete commission. Since 1998 she has led the parliamentary group in Bavaria. Her special topic is social policy. Today she is vice leader of the parliamentary group. Franz Maget\textsuperscript{70} has been the leader of the parliamentary group of the SPD since 2000. Being known as an expert for social issues he leads this committee in the Bavaria parliament. Since 1997 he is chairman of the SPD in Munich. In Brandenburg I could get in touch with the following politicians. Heinz Vietze\textsuperscript{71} is a member of the parliament in Brandenburg. He is parliamentary director and vice chairman of the Die Linke.PDS in Brandenburg. In the parliament his special tasks are constitutional issues as well as federalism, the fusion of Berlin and Brandenburg and budget and finances. Günther Baaske\textsuperscript{72} is the leader of the parliamentary group of the SPD in Brandenburg. The task of the leader is forming, together with the parliamentary director and the vice chairmen, the board of the parliamentary group. The board makes the executive decisions and leads the parliamentary group as well as coordinates the work of the different working groups. Another task is to prepare the sessions of the parliamentary group. The leader represents the parliamentary group in public and speaks for it.

In the second phase of the study, which means during the email interviews, I received answers from the following persons. I will present them sorted after Länder as well. For Lower Saxony David MacAllister\textsuperscript{73} spoke with me. He has been a member of the parliament in Lower Saxony since 1998. From 2002 to 2003 he was general secretary of the CDU in Lower Saxony and since 2003 he is the leader of the CDU parliamentary group in Lower Saxony. Wolfgang Jüttner\textsuperscript{74} has been the chairman of the SPD in Lower Saxony from 2003 to 2005. Since 2005 he is a member of the board of the SPD. Today he is chairman, minister and leader of the parliamentary group of the SPD in Lower Saxony. In Schleswig-Holstein I spoke with Karl-Martin Hentschel\textsuperscript{75} who is the leader of the parliamentary group Die Grünen in Schleswig-Holstein and works in the following committees, the legal and the internal committee. His major points of interest are civil rights, administrative reform and integration policy. He has been a member of the parliament since 1996. In Thüringen Christine Lieberknecht\textsuperscript{76} answered my questions. She has been a member of the Thüringen parliament since 1991. From 1999 to 2004 she was the president of the parliament in Thüringen. Since 2004 she has been the leader of the

\textsuperscript{69} Johanna Werner-Muggendorfer, 22.09.2006
\textsuperscript{70} Franz Maget, 28.11.2006
\textsuperscript{71} Heinz Vietze, 29.05.2006
\textsuperscript{72} Günther Baaske, 31.07.2006
\textsuperscript{73} David MacAllister, 13.12.2006
\textsuperscript{74} Wolfgang Jüttner, 07.12.2006
\textsuperscript{75} Karl-Martin Hentschel, 21.11.20
\textsuperscript{76} Christine Lieberknecht, 07.12.2006
CDU parliamentary group in Thüringen. In Baden-Württemberg I was more successful and could talk to three different persons. Stefan Mappus\textsuperscript{77} has been the leader of the parliamentary group of the CDU in Baden-Württemberg since 2005. With the help of the executive board he takes care of the daily business and the sessions of the parliamentary group and the board. He represents the parliamentary group to the government and the public. Wolfgang Drexler\textsuperscript{78} is the first vice president of the parliament in Baden-Württemberg from 2006. Before, he has been chairman of the SPD parliamentary group in Baden-Württemberg from 2001 to 2006. His special interest in politics lies in environmental and traffic issues. Friederike Kaiser\textsuperscript{79} is a member of Die Grünen in Baden-Württemberg. She works on the communal level and is a member of the board in Stuttgart. In Hamburg I had the chance to interview Bernd Reinert\textsuperscript{80} who has been a member of the parliament in Hamburg since 1993. Since 2004 he has been the leader of the CDU parliamentary group in Hamburg. In Rhineland-Palatinate only one person answered my request. Jochen Hartloff\textsuperscript{81} has been a member of the parliament in Rhineland-Palatinate since 1996. From 2001 to May 2006 he was parliamentary director of the SPD parliamentary group. In 2006 he became leader of the parliamentary group of the SPD in Rhineland-Palatinate. In Northrhine-Westphalia the will to cooperate and participate in the study was bigger so that I could interview three politicians. Sylvia Löhrmann’s major topics are women and municipality issues. In 1998 she became parliamentary director and 1999 spokesman of the parliamentary group of the Grünen in Northrhine-Westphalia. In 2000 she was elected as the leader of the parliamentary group and re-elected in 2005. She has also been the spokesman for education issues and is now spokesman for European issues. Hannelore Kraft\textsuperscript{83} has been a member of the board from 2004 to 2005 of the SPD in Northrhine-Westphalia. Since 2005 she is an advisory member there and member of the board of the federal SPD. She has been minister for federal and European issues and for sciences and research until 2005. Now she is leader of the SPD parliamentary group in North Rhine-Westphalia. Werner Jostmeier\textsuperscript{84} has been a member of the parliament in Northrhine-Westphalia since 1995. He is a member of the CDU. In Berlin again only one politician explained his view on federalism. Stefan Liebich\textsuperscript{85} was the chairman of the PDS in Berlin from 2001 to 2005. He is a member of the Berlin parliament and works in the committees for youth, finances, sciences, economy and the Enquete commission ‘A future for Berlin’. He was spokesman for economic and financial as well as science related

\textsuperscript{77} Stefan Mappus, 05.12.2006
\textsuperscript{78} Wolfgang Drexler, 14.12.2006
\textsuperscript{79} Friederike Kaiser, 06.12.2006
\textsuperscript{80} Bernd Reinert, 21.11.2006
\textsuperscript{81} Jochen Hartloff, 24.01.2007
\textsuperscript{82} Sylvia Löhrmann, 11.12.2006
\textsuperscript{83} Hannelore Kraft, 09.01.2007
\textsuperscript{84} Werner Jostmeier, 07.12.2006
\textsuperscript{85} Stefan Liebich, 22.11.2006
issues for his parliamentary group. In 2002 he was elected as the leader of the PDS parliamentary group in Berlin. In June 2006 he was not re-elected on his own demand. Now he is vice leader of the parliamentary group. Finally, in Saxony three politicians were willing to answer my questions. Hartmut Stiegler\textsuperscript{86} works in the state chancellery of Saxony for the CDU parliamentary group. Per Lennart Aae\textsuperscript{87} is the parliamentary advisor of the NPD parliamentary group in Saxony and deals with state and constitution issues. One special focus is federalism and the reform of it. Peter Porsch\textsuperscript{88} is a member of the Saxony parliament for the PDS. He is the leader of the parliamentary group and works in the committee for sciences, higher education, culture, and media. He was a professor at the university.

5.3. The results of the interviews

In the following chapter I will present the results from the conducted interviews. There are grouped into several basic headlines.

5.3.1. The characteristics of federalism

Concerning the theme typicality and characteristic features of federalism the interviewees thought of the following things. The word federalism originates from Latin: foedus, foedera “alliance”, “league” or “contract”. The Länder have own competences and their regional parliaments. Thus the state functions, political responsibility, legislative and executive competences are vertically divided between two levels. The sovereignty of the two levels that have to work together allows each level an own decision sphere. The Länder have strong competences in education and internal policies. Also they do participate on the central state level legislation.

Another point the interviewees mentioned is the subsidiarity principle, which shows the decision against a centralised state and for the bottom-up principle. Subsidiarity means that the smallest possible unit should fulfill the tasks. Democratic participation of the different regional, historically developed regions makes it possible to take regional specialities into consideration.

Also the manifold general reasons for a federal organisation like heterogeneous economy, and multi-ethnic population are discussed. Federalism holds the opportunity to build a nation without neglecting regional differences and heterogeneous systems can be united peacefully in supra-regional systems. This means that federal systems develop when there is a regional structure of interests and a central Unitarian state system not workable. The stronger the differences the more competences have to be carried out by the regional actors. The aim is the integration of different societal groups in one state. Every state has centripetal forces, even classical central states such as Great Britain or Spain. More autonomy can give more togetherness in the end. Most federal states have developed historically. Although

\textsuperscript{86} Hartmut Stiegler, 28.02.2007
\textsuperscript{87} Per Lennart Aae, 14.12.2006
\textsuperscript{88} Peter Porsch, 28.11.2006
especially in big regions federalism developed, a minimum size seems to be unavoidable. Finally the people decide about this too.

Also the relationship between the different state levels is mentioned. From the juridical point of view federal states have to have a second state level, which practically means that the member states must have decent financial power. The relationship between member and central states is difficult. In Germany there is always the problem of finding the balance between the equality of living conditions and the federal competition principle.

5.3.2. The origins of German federalism

The next big theme is the root of German federalism, the answer to the question why Germany is federally organised is often answered with historic references. Since the reformation Germany has been a loose confederation of sovereign states. Napoleon had a huge influence on the formation of the German Länder. The first idea to unite the counties into one national state came in the 19th century. During the 1849 revolution the idea to found a German state without Austria developed. After the German-French war in 1870/1 a united German state consisting of 25 counties was founded. Originally the Freistaaten (Bayern and Sachsen) and Prussia were the German Länder. After the 2nd WW Prussia was destroyed. Even in the early GDR there were processes of building units stopped soon. After the reunification the old Länder were built again. Today there is a system of European regions that build a layer over the German Länder. In Germany there has always been a tendency to small units, the allied have only re-introduced federalism after the 2nd WW. One always has to keep in mind that the GG would never have been so successful if it only had been an allied project. The growing together was difficult and strenuous with the member states always being actively involved. Even in the parliamentarian Council that created the GG the Länder representatives were members.

Still the allied influenced federalism in Germany. The nowadays Länder borders follow the allied influence zones, for example. Already during the Potsdam conference the allied decided that Germany had to be more democratic. Especially France and the USA did not want a central power in Germany. The allied thought a federal Germany would be less able to pose a threat on the world. The more independent the Länder the more peaceful Germany would be. Closeness to the citizens was never the aim, but a system of checks and balances and power division. The Parliamentarian Council wrote allied friendly paragraphs into the GG (see the first right of legislation and administration for the Länder). According to Per Lennart the allied imposed the federal system on Germany after the 2nd WW. They thought of a political blockade of the system itself.

Finally some see the 2nd World War and the Nazi regime in themselves as reasons for renewing the German federal system. Federalism was a reaction to the
Hitler system where blind obedience was craved. Also the negative experience with the Weimar republic is a reason.

5.3.3. Advantages of federalism

The next set of questions circled around the advantages of federal systems, also including a German perspective. The possibility to guard regional interests and develop regionally suiting policies is highlighted. Especially the subsidiarity principle and its strict application guarantee the taking into consideration of the special needs of the regions and choosing the best, individual method and solution. Close to the topic decisions are a result. Also the decision is at the place where it is needed, so that the responsible people are close to the people their decisions affect. Responsibility and carrying out of tasks are at the same level. The communication between politicians and citizens is thus easier and acceptance higher. The strength of a specific region can be taken into account, for example regional cooperation partners can be found (ones that would not work together with the whole state). An example is the Scandinavian countries and the Northern German Länder, which have a lot in common. The conflict solution potential is another advantage. Social and ethnic groups can receive regional autonomy so that conflicts between them are peacefully settled. Regional minorities find better protection in federal systems. The influence of the regions, the Länder, on the decisions of the central state is important because it guarantees the work for equal living conditions in every member state. Finally the identification for the citizen with his or her unit is a lot easier.

Many argue as well from the democracy perspective. The multilayer democratic legitimating is a plus. There are more possibilities for the citizens to exert influence on the political level, more elections on more levels. Moreover there is no competence accumulation or power concentration at the central level. The limitation of power of the different state levels is called vertical power division, which leads to a system of checks and balances. No level can control the state entirely. The division into member state and central state level in bigger states is a good choice from the democracy perspective as is from the technical one. A decentralised, close to the place decision of the administrative units is crucial. The complaints of the citizens are recognised in the Länder parliaments.

Another broad stream of advantages is connected with competition in federal systems. Competition for finding the best solutions and possibilities is an advantage. There is competition concerning the fulfilment of tasks and different legislative models can be tried so that the best is chosen in the end. So the Länder can learn from each other. It leads also to international competitive ability.

That the Länder can be used as laboratories to experiment with new solutions is another plus. A huge advantage is that not everything is directly tried at the central level. Power division is a means for regional training and testing of political leaders.

Federal systems also tend to be more stable according to some interviewees. Federalism is less viable for putsch tries of other political forces. History shows that
federal systems are more flexible and that the smaller units remain capable in difficult times because there is no suppressing central power.

5.3.4. Disadvantages of federalism

After discussing the positive sides of federalism the interview turned to the disadvantages and difficulties. For some there are no real disadvantages of federal systems though a danger of the central state strengthening its position by widening its competencies with the explanation of keeping the unity is possible. On the other hand if the unity element is too weak, there is the danger of secession. Unitarian states need coordination too and are not automatically saved from this conflict.

Most interviewees answered that the slowness of the system can be problematic. Shared responsibilities and problems concerning competencies are normal in federal systems. They slow up reform or decision processes. The creation of federal laws takes even longer than in centralised states. There are compromises and the other side has always to be taken into consideration.

Closely connected to this problem is the number of participants in the decision making processes in the German federal system. The constitutional practice has deformed the federal system into the joint decision making system. There are many interests and it is difficult to find solutions. Coordination necessity is big and veto situations occur. Complicated coordination processes between the Länder are needed and they have too much influence on federal laws. The Bundesrat is strong a veto player and seldom discusses true political issues. It has an absolute veto right when the Länder will be responsible for the administration of a law. Sometimes it blocks the law because of the administrative regulations even if the true reason is to be found in the material law, the content. When the content is changed the Bundesrat agrees to the very same administrative regulations. Another example is the reform of the VAT, which the Bundesrat blocked, even if the Länder were in need of the extra income.

Democracy is an aspect mentioned by some of the interviewees. They worry about the democratic legitimisation of the German federal system. The main problem is that there are too many relativizing organs in Germany. The parliament is the highest democratic organ in Germany; still its decisions are challenged by the Bundesrat, which creates internal tensions. The parliament cannot bring through its politics. The Bundesrat is built of the executive organs, which is another big problem. The administrative units work often together without the politicians, which can create a democracy problem.

No competition is another problem mentioned. The different sizes and economic powers of the Länder are a problem in Germany. Real competition as normal in federal systems can only take place between equals.

The interviewees also mention finances and finance-connected problems. In Germany there is executive federalism so that the member states carry the costs.
Financially stable Länder have hence more possibilities to act. Responsibilities and finances have to be brought together.

Problems of drifting apart and secessionist tendencies are named. Central and common representation is really weak in Germany. The Länder have no obligation to act for the common good of the federal state. There are big differences in living and economic conditions between member states, what handicaps mobility and endangers the legal and economic unity of a state. The differentiation in the education policy does not allow for mobility in the federal state.

Often the question of responsibility for a legal aspect is raised in Germany. The interviewed are well aware of that. In Germany there is no clear assignment of political fields to different state levels. The tasks of the Länder can be confusing; there are many different centres for tasks and many cooperation schemes. Complex decision processes are necessary which can make responsibilities even more unclear. Responsibility is played between the different parties and levels. Also a system of blame avoidance developed. The actors tend to hold the other participants responsible so that the citizen is not able to see the true responsibilities. That can make people fed up with politics.

5.3.5. German federalism and the European Union

In this field Germany has seen many heated discussions. The relation to the EU is not problematic say some. German federalism will work excellently in a united Europe. The German state is a successful example for a federal state. Federalism and subsidiarity are more and more up to date than ever before. In Germany and in the EU the subsidiarity principle will allow for decisions close to the citizens.

Representation is definitely an issue concerning the EU level. Who has the right to represent Germany in Brussels? Maybe Bavaria or Brandenburg should be represented and not Germany. Art. 23 GG is the German solution and discussed during the interviews. Representation must be agreed on by the Länder and the central state. A balance has to be found between the central state that has the competence for representation and the Länder whose competences are endangered by the EU. The new form of art 23 GG where there is a representative from the Länder in Brussels will not be more efficient. In Brussels the informal contacts are most important and the Länder have no chance to contribute there because they only appear sporadically. The Länder are oftentimes not taken seriously. So Germany cannot fully bring forth its argumentation in the EU council/commission. A central state representation is necessary at the EU level is the solution for some. Others underline that it is important to remember that not only the central state is best to represent Germany. Art 23 GG is not as bad as many want to put, the German state is not completely lame in the EU. It has proven its functionality and gives the Länder a decent amount of influence at the EU level. The representative of the Länder in Brussels makes it possible for the Länder to be heard which makes German Brussels policies more capable. The national representation was strengthened. The problem is
that the German EU policy is dictated by the typical German policy of internal non-trust. There is already a term for non-voting, the German vote, in the EU.

In times of globalisation and growing together processes in Europe many seek for a regional identity. A lot of people have difficulties understanding the growing internationality. There is a growing need for small units in the processes of globalisation and for the EU. Federalism can be a way to give them an identity and heimat. It allows for thinking globally, acting locally. Decisions are made at the place needed so that regional needs are met. In the typically centralised organised states of the EU there is a decentralisation wave. Germany can be an example because the regional factor tends to be ignored in centralised states. Baden-Württemberg is one of the most prospering regions in the EU.

Competences that are given to the EU lead to a centralisation in the EU. Activity space for states in general has shrunk, because of the EU or GASP. Problematic is the resulting power concentration in Brussels and the results for the Länder. Some of the competences where the EU is going to decide in the future and are not central state but Länder ones, such as environment protection and education. The Länder are hollowed out by the central state and the EU. Clear-cut rules are necessary within the EU for the division of competences.

Subsidiarity can be a problem solution. Some interviewees mention the subsidiarity principle as a way to strengthen the regions, here Länder. Subsidiarity does not stand in conflict with the European integration. It guarantees that matters are dealt with at the appropriate level. The subsidiarity principle will convince the people in the regions more than all the directives and bureaucracy and elsewhere in the world. The strengthening of political institutions and instruments has to go hand in hand with the strengthening of federal structures. In the end the citizens could have more influence if the subsidiarity principle was used consequently.

Central state and Länder organisation is essential when dealing with German EU questions. The internal organisation has to be flawless, just because it has no importance on the EU level. The EU does not care about the internal organisation of its member states. German federalism is functional but complicated, the Länder are not as organised as they could be. Information get too late to the Bundesrat, the central state is part of the discussion in the EU commission. It is not possible to find an inner state solution/agreement first, while the process in the EU has started already and connections have to be made there. The parliament must be informed earlier. The real problem is the German executive federalism though. Germany has to deal with the higher level EU and its internal problems at the same time. Not only the internal German organisation is a problem but the action forms of the EU organs. It is necessary that the higher level respects the rights of the lower ones which the EU is but lacking.

The late transformation of EU directives and resulting fines are well known to Germany which has a big problem with deadlines of directives and guidelines, especially as the central state is fined if the Länder are too slow.
Europe of regions is a term that is often heard in Brussels. Also during the interviews the politicians mentioned this quite new concept several times. There is a new self-consciousness of the European regions, identification and roots in these regions are more and more necessary in the growing Europe. Strong, independent and confident region in the states are a basic precondition of a successful European integration. There is a wave of regionalism; even centralised states as France or Spain introduce regionalism processes. Still there are demands for a strengthening of federalism in the EU. For the Länder there is sometimes the problem how to influence the decisions on the European level. The Länder look for cooperation with other EU member states. A framework is the project “Europe of Regions” that is a bottom-up process with more participation of the citizen. But in the EU there is a tendency to big regions concerning settlement or economic policy. There are special programs for regions in the EU such as the metropolitan region Bremen-Oldenburg. Moreover the Länder raise their voices in the EU, Bremen alone has five continuing workers there, Bavaria 70. The Länder want certain rights, as Bremen for example for harbours and coastlines. The regionalism in the EU is a chance for Bremen. Some interviewees say that German federalism is a very flexible system, the Länder have many different possibilities to engage in the EU. They can be part of the “Committee of the Regions”, or send their own parliamentarian to the EU or directly influence the central state government.

No more nation states or the end of the nation state is a slogan that is heard sometimes. Nation states are too small for proper defence and economic policy but at the same time the regions are important in the competition for location. Through the common framework there is no fear for particularism or dumping competition. A strengthening of the nation state is on its way, even if it will never be superfluous. There could be a level too much in Germany if a Union of the European States will be founded. A reduction to the five main German tribes and the splitting up of Germany into them would be a solution. Direct member states of The Union of European States would be Bavaria, Allemande, Rhine-Franken, Lower Saxony and Thüringen.

In the EU in general there is an overregulation and the organisation is rather technocratic. The EU has a general democracy deficit so that every member state has the same problematic situation.

5.3.6. The failed committee and successful reform

The failing of the committee for the modernisation of federalism in Germany was a major topic of the interview. The explanations for this are manifold. The personal conflicts and rivalries as well as party politics are part of the explanation. Some say the failing was caused because the reform was of personal interest for Müntefering. It was a political NO, before the elections. Müntefering should not be successful. The prime ministers wanted to stop their chairman and the CDU wanted to offend the SPD and CSU.
The reform is failed because of the prime ministers of the Länder; some prime ministers did not see enough power gain. The Bundesrat is party politically instrumentalised. The prime ministers of the Länder use the Bundesrat as stage and interfere with central state politics.

That the Länder are different and present different stand points is oftentimes forgotten. There were also rivalries between the prime ministers of the Länder, especially concerning the initiative for excellence (education policy). There was a general underestimation of the conflict line between the Länder.

The policy field education was heatedly discussed and led to disagreements and the failing of the committee. At least some think that. The commission should reorganise the competences between central state and Länder, in the aspect education no consent was found. The EU was another conflict point. The Länder wanted the sole competence; the central state did not want to give away core competences. Still today environment and education are the fields that are discussed. Five aspects had no consent, but that finally the SPD changed its view in the education policy so consent could be reached. The actors estimated the situation wrongly; the central state education policy led to mistrust in the Länder.

Some do state that the commission is not failed at all, but as attachment completely in the coalition treaty. The reform can be successful at the end of the difficult path.

Most of the interviewees highlight the positive aspects of the reform. Some basic changes have been made and Germany is on the road to a revived federal system. The reform in 2006 is the biggest change since the foundation of Germany. It has undone intertwining and joint decision system. Less blockade opportunities in the Bundesrat mean more efficient politics. Before 60% of the laws were under absolute veto legislation, now only 30%. In contrast the Länder parliaments received important competences, like the payment regulations of their employees and the sole competence for education. The framework competences are gone. Clearer financial responsibility through less mixed financing and new regulations concerning financial aid are other facts. There is a regulation to pay EU fines after the cause principle.

The reform does have negative sides which the interviewed mention too. Main policy field have changed for the worse. The reform stopped on half the way and is only agreed on by the two big parties. Bündnis 90/ Die Grünen would have stopped the reform in last parliament period because of the irresponsibility of the solutions in education. The main problem is that the Länder decide in education. It is not that the Abitur (A-levels) is so different, it does not need to be congruent, but it must guarantee the admission to work. The shaping of a modern knowledge economy has been made more difficult, there are infrastructural weaknesses in day care and schools, family resources are not taken into consideration to 100%. There is also a high dependency on education chances. Facing a demographic change Germany must develop a strategy concerning education. Penal system, environment and elderly care also need a common frame. That government and administrative employees payment
is in Länder discretion is ambiguous, comparisons are difficult but there will be more competition. It could also lead to emigration of the most talented from certain regions. There will be different standards between rich and poor Länder and this threatens the equality of living conditions. Poor Länder do not get the chance to participate successfully in the competition for localisation in Europe and the world. The clearer separation of tasks is good, but the Länder still need more competences. Financing of education is in Länder hands, competences for gastronomy and opening hours for shops is a first step but not much. The art 23 GG solution is dissatisfying for some, both central state and Länder are represented in Brussels. It would be better to connect the Länder representatives to the constant representatives. A look to Austria may be helpful. Per Lennart Aae says that the reform is only a possibility to facilitate the integration of EU law and hollow out the German state. Some reform laws need further clarification through the Bundesrat.

Also new suggestions and ideas come up throughout the interviews. A financial reform is still missing, shared taxes and the equalisation system must be regulated. The Länder have only limited possibilities to raise taxes and thus nor own income. Executive federalism, where the Länder carry the costs but the income (tax) goes to the central state, is problematic. If the Länder get the tax competence, it would be possible to degrade them to communal regions. The federal equalisation system slows down successful Länder as Baden-Württemberg and makes the deficient structures in poor Länder stable and continuing. That the east Länder receive much money is hard for Länder like Baden-Württemberg. The financially strong Länder have more decision freedom, most of the poor Länder prefer the responsibility at the central state level. That the territorial reorganisation must be tackled is obvious for some. A re-scheduling of the election times seems logical to some, elections put on the same date abolish the problem of continuous elections in Germany. Finally some utter that it is most important to unite responsibilities so that the citizen can clearly understand it.

5.3.7. The role of the Länder

A whole set of questions circled around the Länder, the differences between them or their position in the federal system. Every Land has its own relation to federalism, but all agree that federalism is only strong if the Länder can use their strength freely. The understanding of federalism as a principle can vary. CDU led Länder are more federal because also the CDU party organisation is more federal. The big Länder are CDU led. North Rhine-Westphalia would be the seventh biggest state in the EU at the moment. There is also a difference between the historically grown Länder that want more independence and the after 1945 created ones. The south, Länder like Bavaria and Baden-Württemberg, is rich and wants more autonomy whereas the north poor. The south wants to unite the Länder in the north. They request rational decisions and not thinking about heimat. Federalism finds broad acceptance in the population but the confidence to act upon is very different
between the Länder, it is strong in Bremen and Bavaria. Bavaria neglected the GG already in 1949 because it was not federal enough. Mecklenburg-Western Pomerania on the other hand wants to be closer to the central state, no own competences and prefers solidarity. Small and poor Länder oftentimes keep quiet in federal discussions. There is the need for all-state solidarity and unity.

The citizens do have an emotional relation to their Land. Bavarians and Saxons identify strongly with their region. Forming a regional identity in the east went fast, too. In the population there is a higher mobility connected to work, moving because of work and not because of the Land is normal. This destroys the regional identity. There are differences in how people feel about federalism, some look for more centralised rules because they think federalism hinders mobility. The citizens have the wish for not too many small laws. Most often the population does not care whereas in Bremen there is a constant fight for independence and finances.

A reorganisation of the German Länder has been discussed again and again. The 16 Länder are very different in size, territory and population, but also politically. North Rhine Westphalia with 18 million inhabitants is bigger than some of the middle sized EU members. In this perspective a reorganisation is sensible. Generally speaking a population size of ten to 15 million would be logical. Some Länder need financial help of the others, some can only marginally fulfil their tasks even if there is a financial equalisation system. The eastern Länder have to survive without the EU's financial help from 2013 and without the solidarity pact from 2019. Thus it would be sensible to restructure to create competitive but not necessarily similar Länder. A focus is the building of capable units that are able to survive and take part in the federal competition. The fusion of Berlin and Brandenburg should have taken place long ago. A new financial constitution will be difficult to create with the existing 16 Länder. Everything concerning the infrastructure, hospitals and theatres is double. A necessary thing failed. A territorial reorganisation could the third step in the reform of federalism.

Contra reorganisation is the motto of others. One striking argument is the efficiency of small Länder and the political cost of a territorial change. A combination of three weak Länder does make one strong Land; see Thüringen, Saxony and Saxony Anhalt. The effect of fusions should not be overestimated. Diversity is strength and the closeness to the citizen is better in city Länder. The nation is the bracket for a diversity of related folk tradition. This is a projection surface for cultural identity. It cannot be stretched too far so that the identification is lost. There are already too many hyphen-Länder with internal conflicts. If there would be equally strong Länder then the central state would loose severely, because today it is still responsible for the equalisation between weak and strong. A territorial reorganisation would only be possible with the consent of the population, and in Bremen it would probably result in a NO. It is important to take the population and their wishes into consideration; a lot of information work has to be done in preparation. There are historical fears against fusions like in Berlin and Brandenburg,
even before everything was focused on Berlin. In Brandenburg the fear of a dominating Berlin prevails. Brandenburg's population voted against a fusion, and a change is not in reach partly because of the debts of Berlin. In the western Länder a division is more in favour, such as Franken separated from Bavaria or Lippe and Oldenburg. Another method are co-operations, in the Bremen region there is a successful cooperation around the metropolis Bremen. A strengthening of co-operations between Lower Saxony and Bremen is an aim in the north. Already now there are many, examples are the NDR (northern German Media) or the common administration of the national park Harz. Also Brandenburg and Berlin work together in media, airports, insurance administration, statistics agencies, and courts to reach synergy effects. More important is to give competences back to the Länder, to rethink Länder tax for city states and to create a better financial equalisation system that works and recognises economic power. This includes a debt-free budget and an equalisation system for extra tasks, for example in Bremen harbours and universities. Even the new Länder are actually old Länder and have an old confidence. Citizens did demonstrate not only for freedom and unity but also for the re-establishing of the Länder. They receive help from western Länder, like Brandenburg 5000 administrative staff members from North Rhine-Westphalia. Thus they are thankful but they still want to make decisions and have a certain degree of independence. Finally art 29 GG rises high barriers for. Many Länder politicians are against a change because they would loose their political stage.

Concrete suggestions are made during the interviews as well. Every new built Land should have its own economic cluster. The prime minister of Saxony-Anhalt made a suggestion for a Central German Land (which Thüringen strongly opposes), but also in the north and south changes are required. In the north a North state is in discussion, too, consisting of Hamburg, Schleswig-Holstein and Mecklenburg-Western Pomerania. In Bavaria there are some that demand an independent Franken. City Länder as Bremen, Hamburg and Berlin and small Länder as the Saarland should unite with their surrounding Länder because they are tightly interwoven with them anyway utter others. Saarland and Rhineland-Palatine have a historical connection. Berlin would belong to Brandenburg which is not an old Land. Between them a typical city countryside relation prevails. The unification between Berlin and Brandenburg should have taken place a long time ago, but the Brandenburg area around Berlin is economically strong (Speckgürtel) and opposes. Uniting Schleswig-Holstein and Hamburg would be meaningful because the city is isolated from its surrounding in tax issues, meaning the income is generated in Hamburg and the tax in Schleswig-Holstein. On the other hand some say that it is not sensible to unite Bremen and Lower Saxony because two weak do not make a strong. Another suggestion is to create two Länder in the east: the north Land from Mecklenburg-Western Pomerania, Berlin, Brandenburg and parts of Saxony-Anhalt, and the South Land from the rest of Saxony-Anhalt, Thüringen and Saxony.
One major point of discussion is the German financial equalisation system which is under constant critique in each Land. The financial situation is really different between the Länder, those with a better situation can fulfil their tasks more effectively. This explains as well why some Länder do not request more competences while in general there is such a process. This leads to the opinion that there is no east west problem but one between financially strong and weak Länder. The last receive extra help from central state's extra financial aid (Bundesergänzungszuweisungen). Poor Länder need the help of the central state, but most of the times its involvement leads to the moving of industry to rich Länder, as Bavaria that gained a lot of financial help in its history. A disadvantage for receiving Länder in the financial distribution scheme is that they cannot compete in the central state whereas the paying Länder cannot use the tax revenues. The federal equalisation system hinders competition and slows down successful Länder as Baden-Württemberg. Moreover, the equalisation system is not stimulating. Rich Länder should be able to keep more but poor ones still get some. It is too levelling; it is not worth making more money as a Land, it disencourages to extract higher taxes and at the same time supports deficient structures in financially weak Länder. It would be better to direct money to certain projects and strengthen city clusters. Financial relations have always been unfair, the size of the Land and special cost factors such as coast lines or mountains are not calculated and therefore there is no justice. Even in centralised states the regions have certain tasks, and geography stays. Bremen is disadvantaged strongly, even if the citizens count 135% in the equalisation system, city Länder in general are. In Bremen there are the harbours as extra cost factor. Concerning the universities there is a heavy import of students from Baden-Württemberg. Another problem is depicted in the bad financial situation of Bremen, but Bremen's economic power is 140% of the average in Germany. The problem here is the tax duty at the place of living not working and Bremen has many incoming work commuters (80.000). That is a general problem of city states; Hamburg only copes better with it because it is bigger. The communal equalisation system is not sufficient anymore.

The size of the whole state and the member states is seen as important. Also the differences in size between the member states are discussed. Is there a minimum size? If you compare debts, it is important to keep in mind that city Länder have one administrative level less (the communities are not there). Size is therefore a decisive factor in federal systems. There are advantages for certain types of Länder. The valuation of citizens is higher in city Länder, but they have the disadvantage to support their own necessary infrastructure. In smaller Länder the distances are shorter and administration therefore more efficient and closer to the citizen. The central state oftentimes prioritises small Länder which on the other hand need the central state. Länder as Bavaria, Baden-Württemberg, Hessen and North Rhine-Westphalia could be direct member states of the EU. It is possible for the big Länder to buy the vote of the small ones. Others on the other hand claim that the size of the Länder is unproblematic; the USA member states are sometimes even smaller.
The east-west-conflict is heard of quite often. Is there a difference between the east and the west in Germany? Some say there are difficulties to fulfil tasks in west and east so there is no problem between. The east is economically weaker and such unbalances are always bad for federalisms. Money will not solve the problem of the eastern Länder (look at development theories), they just need time. The new Länder are very different too, there is also a periphery and a centre structure. The solidarity pact stays until 2019 and the financial help for the new Länder is big. In western Länder there is the opinion that money is pumped into the east, they tend to forget what was already reached. The east west conflict shows in the parliament. For example the FDP in the east demands more centralisation and less competition which is its programme on the central state level. In the east people were raised in a centralised state, but that even in the west federalism is not popular with the people. There is also a north south conflict, because the south thinks the north consists of too small units. It is a conflict between the south and the Hansa cities. Baden Württemberg is a successful story of unification and the independent Länder in the north have grown historically.

Last but not least competition is mentioned in connection with the organisation into Länder. There are no advantages for special types of Länder because they all have the freedom to apply different solutions and make a difference. A centralised state is better for weak Länder and confederations better for strong ones. The mainstream indicates a tendency to competitive federalism but there is no discussion what this competition actually means. The best solution is a system of (cost) efficiency and best practice where each party can learn from the other. Nowadays competition means de-solidarising though.

5.3.8. The future of German federalism

The future is of course in all minds. Discussing changes and characteristics of the German federal system will inevitably reach a peak in the future. A Germany without federal organisation is not imaginable for many interviewees. Art. 79 II GG (eternity clause) guarantees the existence of Länder. There are always different ways to fill it with life. Interesting is how the parts are organised, also concerning size and number. A central state would be difficult because of the big Länder, Bavaria in size; Hessen in financial power. Länder parliamentarians of course support federalism. People want regional decisions; therefore Germany needs federalism providing acceptance of politics. Federalism and subsidiarity are perfect means against the disenchantment with politics. Federalism is underestimated very much in Germany while others envy it. It seems to be in vogue to dislike the Bundesrat and federalism.

One point of discussion was the strength of the members of the German federal system. Who should be stronger or dominating? In general the strength of the central state is determined by the strength of the Länder, the strong ones being centrifugal forces, the weak keeping everything together. German Länder have a chance for a renaissance in the EU, they are the connection between nationals state
and the Europe of regions. Tendencies go to more cooperation but also more competition, finally both state levels gain power.

Another heated discussion is about the form federalism should take in the future. More solidarity is a request from some of the interviewed. Cooperative federalism guarantees living quality. The importance of equal living conditions is less and less pronounced; especially since the constitutional court has questioned it. Competitive federalism is a declaration of war of the southern Länder against the northern ones, a solidarity equalisation system is necessary. Competitive federalism is not solidary but unprogressive. One economic area is needed and standards must be the same everywhere. Solidarity federalism where the member states do not flee a fair competition but also work together for the best of the central state would be best.

More centralism, only leaving what is bound to regional interests on the Länder level, is another request. Education and internal politics should be decided on at the central level. The wish for more solidarity and less competition exists.

Shaping federalism is a new term in the discussion. What does it stand for? Shaping federalism is a sound relation between shaping competition and solidarity in the central state. If politics are formed after the subsidiarity principle it is a chance for the citizens to execute more influence. As many decisions as possible on the communal level, strong Länder with own financial resources and a clear competence division on the federal level that is another way to describe this federalism. Bündnis 90/ Die Grünen chose the term shaping federalism; the term competition has both bad and good connotations, especially with the background of really different starting points which is the case with the Länder. It is time to abolish the partaking federalism and develop more shaping federalism which leads automatically to more competition.

The older concept of competitive federalism is still attractive to others. A sound part competition is good and healthy because it leads to the best conditions to solve political tasks; equal living conditions are questionable in this model. Thus cooperative federalism needs more elements of competition. Tax competence should go to the Länder, a capable equalisation system and creativity strengthened. A solidarity element is always needed. Today solidarity means no competition at all, which is wrong. Strong elements of competition are introduced by the reform, the state will loose it cooperative character. Competition can only exist if the weaker members can partake, it must be a means to reach equal living conditions and development chances in entire Germany. Cooperative and competitive federalism do not exclude each other. Competition revives the political system but it must not lead to disadvantages for citizens. The Länder parliaments are important because of the connection to the citizen. In Lower Saxony there is a strong interest in creating new rules in the area of the new competences to strengthen the position of Lower Saxony. Competition opens the possibility for the Länder to react in different ways, so that the best solution can be found. International regions are in competition with each other, so that it would be logical to give concrete economic aid to gain localisation
advantages in the international competition. It is easier for the regions to position themselves than the central state directing them.

Forms of federalism that raise the differences between the Länder purposely are mentioned too. Asymmetric federalism leads to stronger decentralisation. According to Pernthaler’s differentiated federalism the Länder have the right to differ. Big Länder will probably use this clause; this encourages the tendency of growing apart from each other. Still it is questionable if the Länder will use it at all.

6. ANALYSIS OF THE INTERVIEWS

Knowledge has been won during the presentation of the material. In this paragraph I want to connect these results to the theoretic points I made before. This will help to recognise the underlying structures and schemes at work in the German federal system.

One broad stream of theories was connected to veto situations and veto players. The interviewees named these terms themselves, especially concerning the law creation and reform processes. The Bundesrat is a veto player, because its consent is needed to change the status quo. Usually the parliament is the legislative organ, in Germany the Bundesrat and the parliament share this function and have to cooperate. They represent different levels of the federal state and thus sometimes also different stand points. The Bundesrat can block legislation from the parliament by the power of its absolute veto. Even the suspending veto hinders the legislative process, slows it down. This is called stickiness of veto systems. Also the Bundesrat is the body where the delegates of the 16 German Länder discuss and decide, each Land having an own position on specific topics. This means the veto players count up to 16 in this political organ. This also shows in the reform process of the federal system. The interviewees mention that the prime ministers did not see advantages for themselves and therefore rejected the reform project. That the Bundesrat is only used as a stage from the prime ministers is critiqued too. Blame avoidance is another effect of the veto player system. The different actors blame the failings and negative results on the other actors and never on themselves. There is always someone else who is held responsible and so it is never clear who really stands behind certain actions. An example for a veto-situation is the following. That the reform commission did not deal with a territorial reform is only since a promise was given to the small Länder not to touch this topic, according to Uwe Leonardy. The Länder politicians are not interested in reorganisation because they would loose their positions and connections. The interest of the Länder politicians is more than obvious in the matter of territorial reorganisation, because fewer Länder mean fewer political positions. Already in 1969 Tulloock found that administrations are led by

own motives and ambitions.\textsuperscript{90} Within the political parties there is a structuring along Länder borders, so that the interest situation is similar here.\textsuperscript{91} The discussion needs the insight that without a territorial reform the reform of German federalism cannot be successful. One main reason is that the parties and the institutions are dominated by them.\textsuperscript{92}

It is interesting why the Bundesrat blocks legislation and how conflicts are solved, which leads us to the theory of negotiation systems. The Bundesrat sometimes does not agree to or blocks a law because of other reasons than the specific regulations of the law in question. The interviewees mention that the Bundesrat is not occupied with actual politics. These are situations where egoistic actors meet and have to find an agreement. Only package deals and compensation can lead to a result here. This means consent of the Bundesrat can be achieved by offering other positive regulations or changes of the law in question or other law initiatives. The very same situation appears in the Bundesrat itself. The interviewees mentioned that the votes of the small Länder can be bought. This buying contains offers for advantageous rules concerning the financial system or the actual law content. The economically stronger Länder or the central state may be the buyer. Ronald Watts reminds us that the actual number and relative size of the member states in a federal state may play a role. Few but big member states will probably have a stronger influence on the central state.\textsuperscript{93} Also the less than optimum outcomes of negotiation systems are discussed. The latest reform is seen as the smallest possible compromise. Improvements are still possible for the common good and even for single actors. This does not fulfil either the Kaldor or the Pareto optimum. To reach them package deals and compensation have to be offered. There are several reasons why negotiation systems may not create optimum allocation results. Problems of coordination and cooperation result in different outcomes for the various actors, here the Länder. Economic theory in the rational-choice-paradigm sees an egocentric attitude (seeing only the own (dis)advantages) as normal, but in politics cooperative (each one's gain is the gain for everyone) and competitive (the other's gain is the own loss) tendencies are fairly probable. Mayntz and Neidhardt perceived that in coalitions the first period responds to the cooperative phase and the second oftentimes to the competitive phase.\textsuperscript{94} Within and between the Länder this behaviour

\textsuperscript{91} Adrian Ottnad und Edith Linnartz (1997) \textit{Föderaler Wettbewerb statt Verteilungsstreit – Vorschläge zur Neugliederung der Bundesländer und zur Reform des Finanzausgleichs}, Frankfurt/Main, pp. 138-9.
can be seen. The starting point is the egocentric attitude; the actors of the Land are hold responsible for their Land only. Still there is a factual interdependence, Länder can be dependent on each other to reach certain goals and the projects in one Land can have external effects on the neighbouring one. The ignorance of external effects, positive or negative, is one reason for the cooperation and coordination problems between the Länder. The range of possible decisions of two Länder contains options that are neither in the range of the Pareto nor the Kaldor criterion, if the decisions are made egocentrically. This shows that the common good can be damaged through uncoordinated behaviour of the Länder. The border crossing external effects happen more often between city Land and surrounding area than between large Länder. As long as the Länder are independent disadvantageous solutions could be reached, but overcome by negotiations where both sides agree. In contrast to a new territorial organisation this would mean that the Länder parliaments still had the possibility to decide for unfavourable projects. Unifications of Länder can be advantageous concerning their bigger size, thus economies of scale and a more efficient use of administrative structures can develop. In general in bigger Länder hierarchic decision structures are evident, so that the aggregated gain of all parties of the Land is the focus. This would satisfy the Kaldor criterion. In the decisions the means with the highest gain for the whole Land would be the chosen, independent on its influences in individual areas of the Land. Assuming that this hierarchical authority will be exercised unbiased (which would distribute the dis-/advantages equally in the long run) it is only valid to discuss about the citizens’ identification and the politicians’ positioning and own interests as arguments against a new territorial organisation. Still the danger of amortisation has to be mentioned, the population of the stronger part of the new Land can pursue their interests undisturbed. The political-structural characterisation of Germany and its Länder does not lead to this problem. The party system forces the politicians to take every region into consideration. Others claim that these effects can be reached in supra-regional negotiations as well. Transactions costs (costs for information flows and mobility) have to be taken into consideration, which are rising with complexity of matter and number of participants. If the negotiation is forced, the risk for veto-players rises incredibly with complexity and numbers, so that negotiations often end without result. In voluntary negotiations a similar picture arises, here situations can be created where suboptimum solutions are chosen, because after failed negotiations each parliament can act as it wishes. This leads to more actions but these include those that are not even within the Kaldor optimum. Let alone the problem that negotiation systems oftentimes lead to the second best result, the question of distribution of gains has to be considered. Most of the times there are benefits of coordinated behaviour, this is the cooperation

potential. The distribution of the gains equals one of a monopoly; the distribution is negotiated because there is no external, objective mechanism. It is always too difficult to decide what the benefit is and how it is to be divided. The minimum to participate in cooperation is a share in the costs but more so in the benefits (not every situation contains enough incitements). The free rider problem is standard in this situation. All in all it has to be said that horizontal joint decision is utmost complicated, problems that disappear if the decision is given to the higher level.  

Federal systems divide their political responsibilities regionally. If problems are perceived as trans-regional they will be taken care of on the higher level or they can be solved in cooperation, between the entities on the same level or between the entities of different levels. Joint decision is a special system that developed in Germany out of the necessity to cooperate and negotiate. Only together Bundesrat and parliament can make most of the legislative decisions so the cooperation schemes grow. This is how cooperative federalism got a foothold in Germany. The reform has changed some of the preconditions, but the interviewees believe that the results will only show in the future. The number of veto laws was reduced, still cooperation is not going to die out.

We also can see the truth of Rodden’s argumentation that decentralisation does not hinder the growth of the state apparatus. In Germany all Länder have their own states apparatuses, even the smallest city Land has to have a parliament and ministers. Rodden's argumentation about funding on the other hand seems to be quite sensible. The over fishing of the common pond is seen in Germany. Every Land tries to get as many advantages of the central state as possible. Small and poor Länder lean heavily on the central state. This applies even in financing according to some interviewees.

Germany’s federalism can be described as a centralised federalism. The interviewees mention that many competences have been centralised and the Länder lack fields for legislation. The system is still a federal one and the member states with own state quality are the Länder. They together build the German federal state. Still from the viewpoint of legislation and competences the German system is rather centralised. A step to introduce a counter movement is the latest reform. The Länder got back competences in certain fields like education or environment. This is criticised by some interviewees. This opposition strengthens the argument for centralised federalism. The wish for centralised rules exists in Germany, also in the population as the interviewees admit.

Coming-together federalism is the form that the German federal system takes. From the history part we have learned that the German Länder have existed for a

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long time. Early attempts to unite them into a capable German state failed. The Länder decided for the Reich in the end, even if it was for major and political engineering. The unification was out of economic and military aspects. Even though the German tribes are different, Germany has a rather homogeneous population with one common language and cultural heritage. This is why holding-together federalism is ruled out. Also the interviewees highlight that the Länder existed first. They minimise the influence of the allied and the 2nd World War and stress the historic roots of German federalism.

Path dependency is a theory that describes this history bound development of institutions and organisations. In Germany we can clearly observe this factor. It has always been Länder government delegates that are members of the second chamber, never the Länder parliamentarians. Also the continuous attempts to bring the German Länder together can be seen in its light. The influences of the 2nd WW were thus to minimise to the reintroduction of an already accepted and well established system. This also explains the continuous fight for independence of some of the Länder, like Bremen and Hamburg. These two cities are old Hansa cities and have a political tradition of independence. The interviewees are well aware of this fact too.

Asymmetric not by law but capability describes the German situation. By law all Länder are equal and have equal rights within the federal system, they have the same status. Factual asymmetries do exist in the German system. The Länder are not equal in size of territory and population, in economic or financial power. This is underlined by the interviewees. In Germany the phenomenon of mini member states occurs. To define a small member state is as difficult as defining federal states. But there are some tries: a member state may be small in territory, its economic power may be low, and its population may be small too. Basically all factors have their weight. It also has much to do with the self understanding. The concepts of big and small are always contextual. One rule can be named: less than 100000 inhabitants, another rule is a state with less than 1% of the whole state's population. A change after the reform is that asymmetries can occur in the legislation too. Now the Länder have the right to create law that differs from the federal law in certain policy fields. It is not clear yet if the Länder will use this according to interviewees. Also there is doubt that the smaller, poorer Länder will be able to take advantage of this new rule. That will lead to actual legal asymmetries in the German federal system. Fritz Scharpf uttered that a compromise to give back competences to the Länder could be reached, if the original plight for territorial reform would be fulfilled. The problem that Germany faces is that it either has to distance from the rule of equal living conditions or lift the taboo on territorial reform. Without territorial reform and along with that the approximate equality of the Länder more legislative and fiscal rights to the Länder are impossible. Competition itself is a positive part of federal systems, but it always has to be questioned how far reaching and what kind of partners there are in

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the competition. Competition between partners with huge finance and economy disproportions is ruinous. In Germany there are several such partners. The prime ministers argued against the fiscal autonomy of the Länder with the argument that a fair competition through taxes is not possible in Germany because of differing economic preconditions.  

7. TERRITORIAL REORGANISATION

One topic that I want to have a closer look at in the end is the territorial organisation of Germany's Länder. During the interviews the territorial issues and resulting problems were named several times. This chapter will analyse the situation and give possible solutions.

7.1. The German map today

A first step to the understanding of the territorial organisation of Germany is to learn how the Länder were created and what origins they have. In the US zone the Land Bavaria was built, almost within its old borders. Wurttemberg-Baden was created from Wurttemberg and parts of Baden. The borders in the southwest cross and divide many originally political and economic areas. Political differences were destroyed by the north-south division of Baden and Württemberg. From the old Hessen area Hessen-Darmstadt and the former Prussian provinces Kurhessen and Nassau the new Land Hessen was established. Bremen and Bremerhaven, as enclave in the British zone, were united to the Land Bremen. In the British zone the old Hansa city Hamburg was re-established. The former Prussian province Schleswig-Holstein became a Land of its own. From Oldenburg, Braunschweig, Schaumburg-Lippe and parts of the former Prussian-Hanoverian provinces the Land Lower Saxony was built. North Rhine-Westphalia was created from the Prussian provinces Rhine and Westphalia and the Land Lippe. The French re-established Baden. From Prussian Hohenzollern and parts of the old Wurttemberg the Land Wurttemberg-Hohenzollern came into being in the French zone. The Land Rhineland-Palatine was created from the Prussian Rhine area, parts from Nassau and Hessen-Darmstadt and the Bavarian Palatine. The Saarland was split from Germany and came into being as sovereign state but with close cooperation with France. Only in 1959 it was united with Germany. The financial situation of Saarland and Rhineland-Palatine was extremely bad. The division of the industrialised city regions along the (rivers) Rhine and Main by Länder borders was negative. Borders were created without consideration of cultural, economic, historic relations and connections. Only Bavaria, Hamburg and Bremen remained unchanged, as well as Schleswig-Holstein that became an independent Land.

Neither Germans nor allied were satisfied with this solution. Already in 1948 the prime ministers were asked to reconsider the territorial organisation. Even then the large Länder were financially weak and suggestions were made to unite them with the city Länder. The prime ministers had differing opinions and no concept was created. Already in 1946 first steps were taken to change the territorial organisation. Negotiations started in 1948 and the political forces in Baden strongly opposed from this very beginning. In 1949 a special article in the GG was added and hence facilitated the unification. In 1951 the population voted pro unification even if the government of Baden filed a complaint at the German constitutional court. In 1952 the Länder were united under the name Baden-Württemberg.100

7.2. Ottnad’s and Linnartz’s method

According to Ottnad and Linnartz101 a new territorial organisation is unavoidable because only then the Länder can use their competences and federal competition can take place. The huge differences in financial and economic power distort, although stately organised redistribution schemes are at work. The minimum size to compete on the European and national level as localisation spot is not reached by most of the Länder. A new territorial organisation should take the following aspects into consideration:

- Central state and centrally economic advantages
- Create a balanced Länder structure
- Consider historically grown boundaries
- Offer a simple solution
- Be possible to realise

Of course there is tension between the different points, but the quality of the suggestion is also measured by the fact how good it combines them. Only if there is a net advantage a territorial reorganisation is logical and sensible. This is the case when in economic and political aspects competitive Länder are created. Efficiency potential should be used, which is only possible when creating balanced entities. A pure size or history orientated solution would not fulfil these requirements. Economic power should only be levelled as far as size differences distort competition; a certain minimum size is unavoidable though. Partly the fight about the financial equalisation system will be moved into one single Land so that the possibility to engage in politics on the cost of its people will be removed. Minimum size guarantees as well that costs and effects are kept in the Land and that the fiscal equivalence is kept up. The less is interfered with existing boundaries the less cost intensive and easier the reorganisation will be.

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7.2.1. Seven Länder

Ottnad and Linnartz both published their suggestion for a territorial reorganisation through the IWG Bonn (Institut für Wirtschaft und Gesellschaft). In the figure you can see the suggestion which consists of seven instead of 16 Länder. It works by uniting the already existing Länder. Eastern and western Länder are not united because of the bigger mental differences. The exception to the policy of no border changes is the little district of Halle that will belong to Saxony and Thüringen and not to Saxony-Anhalt anymore. This is a geographically adequate solution which distributes economic strength more equally between the two new eastern Länder.

Figure 4: 7 Länder
Source: IWG Bonn e.V. (Dezember 2006)
IWGaktuell, Informationen aus dem Institut für Wirtschaft und Gesellschaft Bonn e.V., Nr. 5.

7.2.2. Results

This solution would reduce the economic differences between the eastern and respectively between the western Länder, but not between them. Even in the new model the structure of population and economy will show differences, but the structural risks would be better distributed. The differences in the future would only result from varying attitudes, behaviour, institutions and the following actions of economic and political actors. Even the variation between the financial outputs of the Länder would be more even, so that even a complete restructuring of the horizontal equalisation system could be reached. The new solution also gives the opportunity to a stronger internalisation of costs and needs so that wrongly directed actions in political and economic areas are reduced. Possibilities and incitements for subsidiary competition would be hindered, because the Länder had to finance it themselves. Compromises between subsidies and flourishing business had to be found within the Land and not between them and the central state. This will lead to positive results for growth and employment. Direct cost savings because of the abandonment of small units are obvious. Investments from the Länder could be reduced as well, looking at administrative buildings and infrastructures (traffic, garbage, health care, education), because they would be used more intensely and efficiently. A complicated and expensive cooperation between the Länder would not be necessary so that the dream of a slim state can come true. Even parliamentary representation could be evened out in parliament and Bundesrat elections. In the Bundesrat for example a vote from Bremen has 13 times the weight of North Rhine –Westphalia’s. The electoral districts for parliamentary elections...
differ between 57000 and 280000, so that Saarland has five times the representation of Hessen. A shrinking of the parliament could be possible, because electoral districts cannot cross Länder borders, but with bigger Länder they could be enlarged anyway.

7.3. Rutz’s method

Rutz\textsuperscript{102} reminds us that the inner-German separation has to be undone, thus a territorial reorganisation has to cross the east-west-border. His starting point is a set number of Länder where after he draws the borders. He argues that regional identification can be created by political opinion makers, so that its value is diminished. This feeling can grow fast when the social, economic and cultural circumstances are good. The aim is a reduction of the number of Länder. But the main purpose is to find borders that are advantageous for the whole state in the long run.

7.3.1. Eight Länder\textsuperscript{103}

In the original conception of art. 29 GG seven criteria were named, they have been weighted differently throughout time. By now the criteria size and capability are considered the most important ones. The Ernst-committee decided that capable Länder need at least a population of five million. Rutz suggests that taking this concept as base and by connecting it to the other criteria leads to eight Länder in Germany. He takes the existing Länder as a base and develops his map accordingly by uniting some and redistributing territory between others. All in all, the suggested organisation reaches an optimum of territory, population, economic capability and spatial-functional relations.

Figure 5: 8 Länder

\textsuperscript{103} Werner Rutz (1995) Die Gliederung der Bundesrepublik Deutschland in Länder, Baden-Baden, pp.18-69.
7.3.2. Six Länder\textsuperscript{104}

This organisation scheme is best if the capability criterion is the utmost important and if the Länder shall compete like other small and medium-sized EU member states in the EU. Through these bigger Länder the federative element would be strengthened and the central state weakened. Big Länder tend to centralisation and comprise basically different socio-economic regions so that regional typicality is in danger. The inner organisation is thus more important as warranty for these. Again Rutz works on the base of uniting already existing Länder and redistributing border territories according to economic sensibility. This solution is criticised for the big differences within the new formed Länder. The identification of the population with their Land would suffer considerably. Rutz suggests creating a middle level between the Länder and the self-governing Communes, a so-called Landscape district. They would channel the Land politics to the regional level and guarantee that the populations’ interests are heard. It would be cost and time efficient to create such a middle level congruent with the government districts. They should be orientated on the regional identities but still be comparable in size and capability. Thus bigger government districts could be created than was the case with the old Länder boundaries.

7.3.3. Seventeen Länder\textsuperscript{105}

Another possibility is to take agglomerations as base and define the core territory and its surrounding area as new Länder. They would have less than five million inhabitants and there number would be 17. An advantage of this solution is that the criterion city regions and dense areas as cores of the Länder will gain meaning for the first time. These 17 Länder would have different sizes and even if they fulfil all other criteria of art 29 GG, they do not meet the most important one of size and capability. Bigger Länder have trouble fulfilling the other criteria from art 29 GG. When the idea is to emphasise the factor regional identity, then the Länder must be smaller even than they are now. Hence the territorial re-organisation of Germany is following the agglomerations, cities or other places with high density, of

\textsuperscript{104} Werner Rutz (1995) \textit{Die Gliederung der Bundesrepublik Deutschland in Länder}, Baden-Baden, pp. 73-81.
\textsuperscript{105} Werner Rutz (1995) \textit{Die Gliederung der Bundesrepublik Deutschland in Länder}, Baden-Baden, pp. 82-95.
which we have 24 in Germany. If each of them would become the core of a surrounding Land the result would be Länder very different in size and capability. Problematic is how far two such cores have to be away from each other and how high the density level must be to form an own Land. The advantage is that there is high economic coherence. Hence cross border regional planning is not necessary anymore.

<table>
<thead>
<tr>
<th>Core</th>
<th>Land</th>
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</thead>
<tbody>
<tr>
<td>Berlin</td>
<td>Brandenburg</td>
</tr>
<tr>
<td>München</td>
<td>Baiern</td>
</tr>
<tr>
<td>Köln, Düsseldorf, Essen, Dortmund</td>
<td>North Rhine-Westphalia</td>
</tr>
<tr>
<td>Leipzig</td>
<td>Saxony</td>
</tr>
<tr>
<td>Frankfurt/Main, Wiesbaden, Mainz, Darmstadt</td>
<td>Hessen-Nassau</td>
</tr>
<tr>
<td>Hamburg</td>
<td>North Elbingen</td>
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<tr>
<td>Nürnberg</td>
<td>East Franken</td>
</tr>
<tr>
<td>Bremen</td>
<td>Ems-Weser Land</td>
</tr>
<tr>
<td>-</td>
<td>Mecklenburg-Western Pomerania</td>
</tr>
<tr>
<td>Ulm</td>
<td>Oberschwaben</td>
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<tr>
<td>Erfurt</td>
<td>Thüringen</td>
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<tr>
<td>Hannover</td>
<td>East Falen</td>
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<tr>
<td>Saarbrücken</td>
<td>Trier-Saar Palatine</td>
</tr>
<tr>
<td>Mannheim, Ludwigshafen</td>
<td>Rhine-Palatine Baden</td>
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<tr>
<td>Freiburg</td>
<td>Zähringen</td>
</tr>
<tr>
<td>Bielefeld</td>
<td>Engern/Lippe</td>
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<tr>
<td>Stuttgart</td>
<td>Lower Schwaben/Württemberg</td>
</tr>
</tbody>
</table>

*Table 6: Agglomerations and Länder*

Interesting is that from 24 agglomerations only 17 are qualified to become Länder. The others were not big enough, too close to other agglomerations or had no sufficient surrounding area. Sometimes the problem was to choose one of the agglomerations if there were two in competition for the same surroundings. The orientation direction of the population was always the guideline. There is one Land without an own agglomeration, Mecklenburg-Western Pomerania. Its major cities are too small to form agglomeration centres according to this scheme. On the other hand the area is so large in itself that it would be senseless to sort it to another Land. Also the identification of the population is extremely strong. To form equal Länder was not the aim of Rutz’s territorial re-organisation schemes. Even in the 17 Länder plan there are more balanced relations between the Länder than there are now. The main advantage is definitely the optimum adaptation of the Länder borders to the periphery zones of agglomerations together with the congruence of socio-spatial structures.

7.4. Leonardy's method

After these schemes for true territorial reorganisation I want to present another method that does not set plan how to restructure the German map. It shows a more subtle approach to this topic. One way to break up the conflict of territorial reform is given in art 29 GG in paragraph 4. Agglomerations that are parted by Länder borders and have more than a million inhabitants have the right to vote that their region shall belong to one Land only. If more Länder autonomy means that regulations differ more between the Länder then this can actually be a motivation. The public opinion would be mobilised. Regions where this applies are definitely Berlin, Hamburg, Bremen, Rhein-Main and Rhine-Neckar as well as Leipzig-Halle.

7.5. Disadvantages and advantages of a territorial reform

The question of a territorial reform is raised again and again. Some politicians see it as an unavoidable precondition for further reforms and a functioning German federal system. Others are strictly opposed to a territorial re-organisation. The GG definitely complicates the restructuring of the German map. Until now no compromise has been found. The long term economic differences between the Länder have manifold reasons, but a strong influences is exerted by the territorial organisation. If they would have a similar size, the differences would be reduced noticeably. A reason for still existing differences can be the economic culture, but also the structure of economy and population. Mentality and tradition cannot be ignored in this respect, they influence the political actors. But regional differences always exist. In extreme cases one branch of industry/ (or/respectively) economy dominates a whole region; these economic regions are affected differently by cyclical

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and structural changes. Bigger Länder include several of these regions. Smaller Länder, especially city states, do not, hence structural crises are more pronounced. The exact delineation of borders is decisive too, the city Länder are cut off from their surrounding territory. Economies of scale are important because a minimum size facilitates certain aspects of planning. Some products need a certain internal market size to be able to develop properly. The economic viability of the Länder has always been doubted. Political inertia and economic prosperity helped the weak states to survive. The German unification gave birth to five more mini-states. Here the problem of viability was solved by 3 means: 1. Putting decision to a later point of time (the merger of Berlin or the decision concerning the financial equalisation system in 1994), 2. There was hope that the fusion would be an economic success, 3. The federal government kept the states with viability problems alive and helped them to be capable of fulfilling their political and administrative functions in Germany. From the viewpoint of regional development this solution is not acceptable, states that are almost completely dependent on the central state do loose their option for regional decision-making and regional economic strategies.

The federal need for a territorial reform is high. The following dangers for the German system prevail: 1. Efficient and comparable abilities of the Länder in fulfilling their tasks are not given. 2. The higher number of Länder makes the coordination even more complicated, complex and non-transparent. 3. Several Länder and parliaments will never have the chance to comply with the EU tasks. 4. Imbalances are becoming more pronounced. The East Länder will be more and more dependent, financially but also economically. 5. The guaranty of equal living conditions can only be reached by the central state, which is against the federal idea. 6. Agglomerations cut cross by Länder borders are hindered in their development. 7. The maximum capacity of the financial constitution is reached already. Leonardy also claims that the reform without territorial reform will lead to drastic consequences: 1. ad hoc solutions additional financing through the central state and intervention in joint tasks. 2. More autonomy in legislative and fiscal matters will lead to disbalances without territorial reform. 3. The asymmetric federal system will only be complemented by legal asymmetries; this is not acceptable from the perspective of equal living conditions. An argument against the territorial reform is that the populations are already too established in their respective Länder. The hyphen-Länder have been quite successful in creating regional identity out of several reasons: 1. time, a process of social learning has reduced the identity problem to a

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non-issue. Tribal loyalties are still recognisable in dialects, but the broader aspect of political identification with one’s state is stronger. The Land is the subunit in charge and recognised as this. 2. After the 2nd WW migration to West Germany from Soviet and Polish territories and internal migration was huge, around 12 million people estimates say. In the 1960s guest workers came as labour forces and in the 1980s ethnic Germans from Russia, Poland, and Romania as well as asylum seekers came to West Germany. In East Germany work migrants from socialist partners were invited, e.g. from Vietnam, Cuba or Angola. Every region has been affected so that Germany has an ethnic diversity now. 3. The relative economic success after the WW 2 was decisive too. The regional policies to support weaker regions could be neglected because of the economic thriving. The economy of Germany was homogeneous and helped to keep the status quo. 4. German nationalism in general had fallen into disrepute after the war. Thus the Länder became the anchor for identification. 111 Regional identity is oftentimes emphasized by a state party or a strong leader (CSU in Bavaria).112 The citizens are not aware of the aspects of the system they live in. Oftentimes they do not make the connection between using state services and the amount of tax they pay. The territorial organisation is not questioned, especially small Länder fight hard against a reorganisation. The population is more homogeneous and has a common tradition which boosts a regional pride. Finally the equally strong wish for exact and central rules in a lot of cases led to the system of joint decision.113

The argument that a reorganisation would lead to artificial products of bureaucracy is not valid. Functioning and efficient structures are accepted by the citizens. Another argument is that the general idea what federalism means has changed. The aim is not the reflecting of regional differences, but the power division in vertical levels. There is not only judiciary, legislative and executive but also different levels that have state power. In Germany the question of reorganisation still has to raised, a certain minimum size is required. Otherwise the Länder are not capable to function within the federal state. To engage themselves there they have to have a working bureaucracy to take care of their legislation tasks. Small Länder cannot deal with cost intensive tasks, they engage voluntarily and happily in giving competences to the central state. They look also to the bigger, richer Länder for legislative solution and copy them because they cannot develop own ones. This counteracts the aim of federalism where different solutions shall be possible. In bigger Länder internal differences can be levelled more easily.114 Oftentimes the

argument that two or three weak Länder together do not make a strong one is heard. The answer is that it is not about forming equal capability, but about creating similar sizes. Synergy effects are neither taken into consideration. Also no one that argues for a territorial reform does want to abolish the equalisations system or the intraregional balancing within the Land. Also the costs would sink, the fusion of administrative, constitutional and judiciary institutions following the argument of economies of scale. More competition in federalism should enhance reorganisation thoughts. Comparisons with the USA are not well chosen because there the Länder have more freedom and can act more flexibly and independently. The USA are bigger, the citizens further away from each other so that bigger differences between the Federal States are not as severely perceived. The competition is less, because the distances are longer.

Still fusions harbour risks, because too much power and money is in the game. The political structures in Germany are orientated on the Länder, for example parties and workers’ unions. Another broad range of arguments against a territorial reorganisation comes from small member states and their spokesmen. Small member states are connected with special advantages and disadvantages: 1. they have a special micro climate that is strongly coined by tradition, historic developments, identity consciousness and typicality. If the population is a minority as well then they feel like a fate society. 2. Simple state structures are found in small member states. There has to be no level between the states and the communal level. This leads to short administrative ways, which leads to closeness to reality. Certain things are dealt with on government level, that in other states run through different administrative levels. 3. Lack of scale effects is another characteristic; the size of small member states is just sub optimum to take care of certain state tasks which are the same as other member states have. Solutions are either the free-rider (use the structures others provide) or cooperation. 4. A need for openness is found in small member states as well. 5. More citizen participation is seen in form of societies, clubs, and organisations. Plebiscitary elements are often stronger. 6. Leader role is a word often heard in this connection: small member states lead the way with a good example and develop new models and procedures. Being small is a disadvantage in the competition for localisation. Decentralisation is definitely a plus of small units but the consequently used subsidiarity principle can give the same effects. Advantages of bigger units (economies of scale) cannot be neglected though. For example the provision of state services is cheaper and within the European localisation

competition a competition of regions has started. International investors will be only attracted by sufficiently big units. Small units have more trouble to pursue their interest at a European level. The size differences are negative, even if competition can exist between differently sized units. Small competitors will have problems, if the differences become too big. This shows in the economic development of the Länder. Hamburg is a good example for small but economically successful Länder. Still the structural risks have to be seen, and they are unavoidable in a development process, the smaller an economic area the more volatile it is to life cycles of products and branches.  

Finally also the EU, a supra-state-level has a share in the German federalism discussion. An idea in the EU is stronger regions, the concept of “Europe of the Regions”. The final aim could be a 3-level system, the member states are between the 2 strong levels of regions and the EU. In many European states a stronger regionalism occurs, but not in Germany. Still the identification with the Länder is huge. But this is exactly the advantage of federalism, the small/ regional structure already exists in form of the Länder. Still “Europe of regions” is an idea of the big member states, the small ones request more competences for the member states itself.  

8. CONCLUSIONS AND SUMMARY

In this final part I am going to answer my research questions from the beginning of this paper. My research questions are:

• What is special about German federalism?
• Why is Germany a federal state?
• Are there differences in the attitude towards federalism between the federal level and the Länder level and between the different Länder?
• Are there differences along the party lines and within the parties concerning the attitude towards federalism dependent on the level of state or the Land they work in?
• What are major problematic issues in the German federal system?
• In which way should German federalism develop? Are changes necessary? Should there be a territorial reform within Germany?

Special about German federalism is its long history as German organisation principle and at the same time its constant contest. The joint decision system and the strong tendency to centralisation are two factors that work against it. Federalism has always had a difficult stand in Germany, it was often only used as means to build a  


state and not out of belief in it being the best organisational principle. Also in Germany the two levels have to work closely together to legislate. This strong cooperative element distorts the original federal structure of the state.

The reason for a federal organisation of the German state lies in history. Of course the allied had their share in re-establishing it again after WW 2. Still the German tradition consists of small territorial states that unite to one common state.

There are considerable differences between the Länder and the federal level and the Länder in their attitudes to federalism. Small and economically weak Länder (which oftentimes goes hand in hand) prefer a stronger central state. They do not have the financial resources and capability to develop according to the federal idea. The bigger and economically stronger Länder tend to a loser organisation of Germany. They wish for more competences and independence and stronger elements of competition. Also in the aspect of problems of federalisms the opinions between the types of Länder differ. The smaller Länder underline the need for a better financial supply for them whereas the counterpart claims that those Länder already receive too much. Also the economically strong Länder see no problem in restructuring the map concerning the small Länder, they state I would mean lessening a burden. The small Länder on the other strongly oppose and are very adamant about their independence, recalling long historical lineage of independence and success. Interesting to see is that all Länder, may they be small or big, new or old, have developed a distinct regional identity. Also all see the reform of federalism more or less critical and utter that major elements of change are missing, like finances. The solutions for these problems do look different though, depending on the size and economic power of the respective Land.

The parties differ in their ideas how federalism should develop. The Grünen for example coined the term “Shaping Federalism” which contains elements of competition. They do not want to call it competitive federalism because it has such a negative connotation. The CDU led Länder are the financially stronger ones and tend to want more competition. The term competitive federalism is heard often. The SPD highlights the importance of solidarity elements and the equality of living conditions in the whole state. Still they are not in favour of cooperative federalism because it blocks reform and legislation processes and hinders Germany to develop. The Länder and the central state have to be able to act independently from each other. The PDS generally wants a stronger central state. The Länder should only keep those competences that are of true regional concern. Education or inner security does not belong there. The FDP votes for a vivid and stimulating competition between the Länder. That leads to the best ideas and solutions for the nowadays problems, in their opinion. Fascinating is that the parties have started to act more Länder specifically within the last years. The conflict lines in the FDP show quite clearly, because the FDP groups in the eastern Länder want a stronger central state which differs from the central state's FDP position of more competition and stronger federalism. The PDS is
not strongly represented in the western Länder, so she tends to take position for the eastern Länder, a stronger central state and solidarity.

Major problematic issues are the financial system, the relation of the central state and the Länder with the EU and the inequality of the Länder. Also the hollowing out of the federal system depicts an actual problem in Germany, the Länder have almost no legislative competences left. Also the joint decision system is disadvantageous because it slows down the legislative process and often even hinders reform and legislation. The last two aspects have been dealt with in the reform. Still many of the interviewees considered the steps taken in the reform as insufficient. The other problems are still to be dealt with.

Ideas how German federalism should develop are manifold. What all interviewees have in common is the concept of capable and independently acting federal levels. How much competences each level should have differs in their respective suggestions. There is consent on the problems of the German system, but some tend to solve them with more centralisation and others with more competition to solve them. Concerning the financial system the suggestions differ also. Some would prefer abolishing the financial equalisation system whereas others liked to strengthen and optimise it. It depends much on general attitude towards solidarity and competition in federalism. Competition is the one possible way in which German federalism can develop, which would mean more legislative competences to the Länder and more openness for regionally differing solutions. That could enhance the competition and hence differences between the Länder. Solidarity stands usually for a stronger central state and equalisation systems between the Länder so that equal living condition and chances within the whole territory of the federal state are in the focus. Legislative competences for the Länder should only cover regionally important matters. It is yet to decide which road the German politicians choose. One last aspect to mention here is the tax system. In Germany the central state sets the tax rates and the most important taxes like Vat and income tax are common taxes which are shared between member states and central state by a certain ratio. Some politicians say that tax competences for the Länder (to set the rates and keep the taxes as income) are necessary. To change only the legislative competences and tasks of the Länder, so to say the spending, is not sufficient. To be able to make use of this freedom concerning spending, the Länder have to be able to control their income, which are taxes.

One point that is mentioned regarding necessary changes in the German system is the restructuring of the German map. Some see this as a necessary precondition for any change. More legislative competences and freedom for the Länder would mean nothing if the Länder are not capable to act upon them. This requires a sound economic system and finances. In many Länder this is not the case. Also from the point of view of more competition it is valid to ask for equality of the partaking actors. This is not given in Germany. The Länder are severely unequal in territory, economic power and finances. Especially if the tax competences should be
given to the Länder the German map has to be made fit for this. As it looks now this would mean the ruin for some Länder, the economic bankruptcy. Thus in the end I have to admit that the idea of re-organising Germany's map is attractive. Each of the presented solutions has its values. I prefer a solution that really changes existing Länder boundaries and not only unifies existing Länder. As we have seen many Länder and their borders are mere results of the allied influence zones and do not follow economic or natural border lines. It seems logical to undo these disturbances of economic areas. Arguably the 17 Länder solution has its advantages because it strictly takes economic zones as the focus but if Germany would be better off with even smaller Länder is questionable. In bigger member states economic differences within it could be balanced more easily. Also the position of the member states against the central state would be strengthened. On the other it is not clear if bigger Länder like in the 6 Länder solution will satisfy the population and the idea of region specific development. Of course it will be difficult for any solution to be accepted by the population because as I stated before, all Länder have been quite successful in establishing a regional identity. This would speak for the 17 Länder solution. From my point of view this would be the best solution because undoing the small member states in itself does not solve many of the problems of the federal system. It is more important to have more or less equal member states which each have their economic zone than big member states. Thus the 17 Länder solution is my preference.
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