

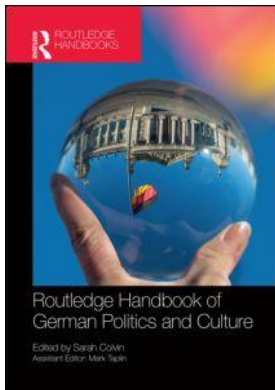
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The making of German European policy

William E. Paterson

European policymaking in Britain and France has always reflected a clear aim of identifying the national interest in European integration and then using a highly centralised state machinery to pursue that aim. Germany's European policymaking has been quite different, reflecting quite different aims. Whereas Britain and France have been concerned to preserve sovereignty, after 1949 the infant Federal Republic lacked sovereignty, and European integration was a way of recovering it. The national interest was European cooperation, and the policymaking machinery was not, therefore, designed to identify an(other) explicit national interest but rather to reflect a 'reflexive multilateralism', privileging European integration. It was, accordingly, notably porous and decentralised, although the decentralisation also reflected the *Ressortprinzip* (departmental principle) that is the core principle of governing in Germany. A final unique feature of German policymaking is the large role played by parapublic bodies such as the Bundesbank and the Federal Constitutional Court (*Bundesverfassungsgericht*).

These internal arrangements were flanked by a close alliance with France where Germany was the horse and France (De Gaulle) the coachman. In more recent years this system has come under pressure. The formerly rather technocratic approach at governmental level has been subject to increasing politicisation, as European integration has entered into the nooks and crannies of German life. As Germany has become ever more central in the European Union, there has also been a perception that the present arrangements lack a strategic capacity. The Franco-German relationship has become damagingly asymmetric as the French economy has weakened; it can no longer serve as the anchor of German European policymaking.

European policymaking at governmental level

Conceptions of sovereignty are linked so closely to domestic structures that it is difficult to untangle the role of ideas from that of political organization and practice.

(Keohane 2003: 322)

To eat well, to sleep well, and never, never to be alone.

(Michael Stürmer)¹

German policymaking machinery reflects the circumstances of its origins. In other states the Foreign Ministry played the central role, but Germany's Auswärtiges Amt (Federal Foreign Office) was only created in 1951, and Konrad Adenauer remained foreign minister (as well as chancellor) until 1955. A single-minded concentration on economic recovery and the status of the incumbent minister, Ludwig Erhard, ensured that the key role was played by the Federal Ministry of Economics (Bundesministerium für Wirtschaft). The establishment of the European Economic Community (EEC) and its subsequent expansion gave urgency to the question of coordination and to a definitive agreement on European policy responsibilities. The Ministry of Economics was entrusted with the task of coordinating day-to-day European policy, while the Foreign Office was left with responsibility for long-term-oriented integration policy, including Franco-German relations, with the chancellor retaining the right to set policy guidelines (*Richtlinienkompetenz*) (Hesse and Goetz 1992). In 1998 a further change took place. The responsibility for coordination of day-to-day policy was transferred from the Ministry of Economics to the Federal Ministry of Finance (Bundesministerium der Finanzen), Division EA 1, with a secondary coordination unit in the Foreign Office (Division E-KR).²

Overall the system was characterised by power-sharing between coalition ministries, the principle of ministerial autonomy (enshrined in Article 65 of the Basic Law), and a relatively weak norm of information-sharing between ministries; Bulmer and Paterson (1987) portray it as a system characterised by coalition politics, federalism, departmental sectorisation, and the role of parapublic institutions reflecting the semi-sovereign nature of the Federal Republic. This internal semi-sovereignty and institutional pluralism meshed well with the reflexive multilateralism (pro-integration bias) of Germany's external stance. Peter Katzenstein stressed the congruence between German institutions and those of the European Union at that time:

Although distinctive, the institutional practices that mark the European polity resemble Germany's on this score. The system of governance in the European polity is based on what one might call 'associated sovereignty', pooled competencies in overlapping domains of power and interest, which is characteristic also of Germany's 'semi-sovereign' state.
(Katzenstein 1997: 33)

Reflexive multilateralism

Reflexive multilateralism was reflected in the weight accorded to the views of European institutions (most obviously when Walter Hallstein was president of the Commission). It was also associated with a 'leadership avoidance reflex' whereby Germany sedulously avoided solo initiatives or a leadership position (Paterson 1993). The exigencies of Germany's institutional pluralism meant that German coordination was post hoc, and a final position emerged very late on in the process, in stark contrast to the British ex ante model, where a tightly unified policy was agreed at the earliest possible opportunity. In an important contribution, Derlien pointed out the advantages of the post hoc strategy, a stance appropriate to the Federal Republic's internal semi-sovereignty and European vocation, over the United Kingdom's defensive stance:

My contention is that the German pattern of ex post coordination, a policy style resembling management by exception, is ultimately superior to a practice of ex ante coordination of all policy matters regardless of their salience. Such a strategy is counterproductive, for it leaves little room for the recurrent multi issue bargaining process at the European level and the informal norm of reciprocity.

(Derlien 2000: 6)

As the European Union enlarged and expanded its policy scope, however, these advantages were less highly valued and there were increasing calls for reform of the system, which was widely perceived as inefficient and confusing. Those complaints failed to bring about a radical change in the system. There was no trigger, not even German unity, strong enough to disturb the pattern of embedded interests. There were some incremental improvements (Beichelt 2007) but some observers queried how successful they were (Große Hüttmann 2007).

If the formal arrangements remained relatively static, there was, however, one massively significant change. The chancellor had always played a key role in ‘historic decisions’, but, in line with the *Ressort* principle, substantive policy was largely a matter for the relevant department. This division was associated with a pattern where German success at the level of ‘historic decisions’ contrasted with a very mixed record in day-to-day politics or *Tagespolitik* (Derlien 2000). From 1998, however, Chancellor Gerhard Schröder chose to intervene at the level of substantive policy: in 1998–9, for example, at the urging of German car producers, he intervened to prevent the implementation of a European directive on the recycling of used cars supported by his environment minister in Brussels. This pattern has continued under Chancellor Merkel, who has played a leading role in attempting to resolve the eurozone crisis alongside her finance minister. Future plans for the governance of the eurozone, involving a significant increase in the number of summits, will ensure a continued central role in these issues for the chancellor. In a speech in Bruges (Merkel 2010), Chancellor Merkel set out her endorsement of the Union method, which involves relying on cooperation between the large member states and signals a decisive break with reflexive multilateralism.

The greater role of the chancellor has been underpinned by a strengthening of the European policy expertise of the *Bundeskanzleramt* (BK; the Federal Chancellor’s Office). Division 2 is responsible for foreign and integration policy and Division 4 is responsible for overseeing *Tagespolitik*. Even with the strengthened personnel of these divisions, the BK cannot hope to rival the specialist ministries in policy expertise. It does, however, possess two trump cards: it represents the chancellor, the dominant figure in the German government; and Chancellor Merkel is a figure whose governmental authority bears comparison with that of Adenauer. In making this authority work, the Chancellor’s Office has in Peter Altmaier (chief of staff in the BK) and Christoph Heusgen (foreign policy adviser), the two leading European policy thinkers in the Federal government. The BK plays the key role in relations with other member states. This has become ever more central as the role of the Commission has declined. A feature of the eurozone crisis is the high number of bilateral disputes that have been handled by the member states without the mediation of the Commission. The BK is the key agency in the preparation of the ever-increasing number of European councils and emergency summits.

The loosely coordinated, rather porous decision-making machinery that characterised European policymaking in Germany meshed well with a European vocation and a reflexively multilateralist policy style. Over time that European vocation has weakened, however. As Thomas de Maizière, the German interior minister at the time of writing, put it: ‘For our European friends, they need to come to terms with the fact that Germany is going to act just as other countries do in Brussels’ (Chaffin 2010). This raises the issue whether the current decision-making machinery can survive the emergence of a ‘normalised Germany’ (Bulmer and Paterson 2010), which – at least in the eurozone – is a potential hegemon. This is an issue to which we will return in the conclusion.

Other actors: the Bundestag

European policymaking in the Federal Republic was a markedly technocratic process centred on the executive. The Bundestag played a key role in treaty ratification but otherwise its role

was fairly limited, with scrutiny of European legislation being exercised through the committee system. Such a quietist role could perhaps have been expected, given the very broad pro-European consensus from the 1960s onwards; more than in any other large state, German hopes were focused on the European Parliament. German hopes for reform were placed in that institution, which was expected to provide the necessary democratic legitimacy. Until the 1980s a number of very prominent members of the Federal parliament (*Mitglieder des Bundestages* or MdBs) held dual mandates in the Bundestag and the European Parliament.

That set of priorities has altered in the Federal Republic. As Germany's European vocation has weakened, there is little enthusiasm for the European Parliament. This development is not without irony, as the European Parliament has accrued through the Lisbon Treaty (2007) the powers that generations of the German political class aspired to, and German political parties and individuals like Martin Schulz and Elmar Brok are seen as the most influential actors in the European Parliament. Slowly at first, the tide has turned in favour of a focus on increasing the control and scrutiny powers of the Bundestag. This development owed most to the successive judgments of the Federal Constitutional Court (notably the judgments on the Maastricht and Lisbon Treaties), which centred on the view that as the European Parliament did not possess a demos (people), democratic legitimacy could reside only in the institutions of the Federal Republic, especially the Bundestag.

The reservations of the FCC were reflected in the amendments to Articles 23 and Article 45 of the Basic Law that followed the adoption of the Maastricht Treaty, which was signed in 1992 and came into force in 1993. Basically these amendments and their implementing legislation required the Federal government to inform the Bundestag and the Bundesrat (upper house) at the earliest possible time of any measure likely to have relevance to Germany, to involve the Bundestag at the earliest possible time in the discussion of any proposed measure, and to 'take account' of Bundestag views. Under the new Article 45, the Bundestag set up a Committee on European Affairs in 1994.

These reforms were of very limited effectiveness. EU proposals are very technical and attract little interest. The Committee on European Affairs struggled to manage the division of responsibilities between it and the long-established specialist committees. Crucially, the time given for the Bundestag to respond to proposals never proved enough. An attempt was made to deal with this weakness by setting up a Bundestag liaison office in Brussels in 2007, which is able to make only a limited contribution to bridging the gap.

The Lisbon Treaty judgment of the Federal Constitutional Court has proved something of a landmark moment. The Lisbon Treaty provides for a considerable expansion in the powers of the European Parliament. In its judgment (2009) the FCC reiterated its view that, in the absence of a European demos, legitimacy was anchored in the nation state. In dismissing the claims of the European Parliament, the FCC used notably harsh and vivid language that resonated strongly with elite opinion (mass opinion had been sceptical for a long time). The Court called for the strengthening of the control powers of the Bundestag, especially in the area of the flexibility clause (Article 352 of the Treaty on the Functioning of the European Union or TFEU), bridging clauses, or any future proposals entailing the transfer of sovereignty. The Court also ruled that the state should have sovereignty in the following areas: criminal law, police, military operations, fiscal policy, social policy, education, culture, media, and relations with religious groups. Whilst ruling that the treaty was in conformity with the demands of the Basic Law, it did require an act spelling out the competences of the Bundestag in those areas. An attempt by the Christian Social Union (CSU) to impose a set of provisions that would have significantly further constrained the autonomy of the executive in this area failed. A series of laws and amendments was adopted, culminating in the Act on Cooperation between the Federal government and the

German Bundestag in Matters Concerning the European Union (Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union or EUZBBG, July 2013).

The Bundestag was used to operating with regard to European matters in a climate of low interest and ‘permissive consensus’. This all changed with the advent of the eurozone crisis. A partial politicisation had already occurred as a result of the Federal Constitutional Court’s efforts to increase the Bundestag’s control power, but the effect of the crisis was to switch attention away from the Committee on European Affairs to the Budgetary Committee (*Haushaltsausschuss*). The move was partially a response to the demands of German public opinion, but it also reflected the insistence of the Federal Constitutional Court in the Lisbon judgment that responsibility for the budget remain exclusively in the Bundestag. Whilst the Bundestag had exclusive responsibility for the German budget, German insistence on looking at other states’ budgets resulted in the Irish budget being publicly available in the Bundestag before it had been presented to the Dáil.

Traditionally the Bundestag has not acted as a major constraint on the executive in European policy, and Chancellor Merkel’s mastery of German public opinion has ensured that this has remained the case so far in the eurozone crisis. She has come under little pressure from the Social Democrats, although both the Free Democrats and, to a lesser extent, the CSU have flirted with euroscepticism. The creation of a grand coalition (no doubt one of its attractions) to some extent removes that threat for the foreseeable future, although Bundestag sensibilities will be important on areas like bailouts. A renewed eurozone crisis would have incalculable effects.

The Länder

The central role of the Federal states or Länder in domestic policymaking in the Bonn Republic contrasted with their low-key role in European policymaking. From a Länder perspective, important elements of their legislative power were being ceded to the European level without their being fully involved. They therefore pressed vigorously for their right to be heard by the Federal government, which was equally insistent on preserving the monopoly of international negotiating rights and fiercely resisted any constitutionally binding agreement. The result was a thicket of predominantly informal and bureaucratic procedures that built up incrementally.

The picture changed dramatically with the necessity of securing Länder support for the ratification of the Maastricht Treaty in 1992. The Länder used this opportunity to make reform of Article 23 of the Basic Law a precondition of their agreement. The revised Article 23 (1992) made possible much greater Länder involvement in the making of European policy, allowed for the Länder to represent Germany directly in the Council on matters where they held exclusive domestic competence, and ‘ringfenced’ federalism from future developments in European integration. The effect of the new Article 23 was to further thicken and complicate decision-making on European policy. This potential for delay was a disadvantage where the Federal government wanted to press ahead, but was a useful prayer in aid when it wanted to slow things up without taking responsibility. Länder representation on the Council was initially bedevilled by the lack of experience of the Länder representatives, and in the domestic debate on reform of German federalism (2006–9) the Federal government tried and failed to restrict the Länder’s right of representation.

The Länder have a dual impact on European policy. The necessity for formal ratification gives them huge influence on constitutional issues. They successfully pressed for the establishment of the Committee of the Regions, blocked Chancellor Helmut Kohl’s desire to extend majority

voting in the Council at the Amsterdam European Council, and were influential in the discussion and decisions leading to the Lisbon Treaty. In terms of *Tagespolitik* they do not possess the nuclear weapon of refusal to ratify, but Article 23 and their key role in the delivery of policies in Germany do confer considerable power.

As European integration penetrated into 'the nooks and crannies' of German economic and political life, the Länder represented a protectionist force. The German economy benefited greatly from the single market programme as it was implemented first in the manufacturing sector, where Germany was strong and had profited from a major influence on standard-setting, but it was now being pursued in the area of services and other areas where Germany was relatively weak. That protectionist force has been especially visible in the attempts by firms and by the Länder in which they are based to evade EU subsidy controls, to protect the regional banks (*Landesbanken*), and to reduce the force of environmental regulations; and, in the attempt by the Länder to redesignate various subsidised regional services as essential public provision (*öffentliche Daseinsvorsorge*), again to evade EU subsidy rules.

In the old Bonn Republic, the Länder (especially Bavaria) benefited greatly from the CAP (Common Agricultural Policy) and the single European market, and they were generally strong supporters of European integration. They were also to some extent observers (their demands were channelled at the European level through the *Länderbeobachter* or Länder observer). Since the revision of Article 23 they are full participants, but in a new and much more competitive EU, where advances in European integration rub up against established privileges and practices. The result is a definite change in Länder preferences, from their pre-Maastricht position of 'let us in' to one of 'leave us alone' (Jeffery 2004).

Franco-German relations: France as the 'outsider insider'

The founding contract of European integration was the European Coal and Steel Community, where the French government proposed that Germany be allowed to recover economic power in a multilateral context. This was an offer that the West German leadership was happy to accept. West Germany needed to escape from a web of discriminatory legislation imposed by the Western occupying powers and to gain access to export markets. On a continuing basis the Franco-German relationship relied on Germany's 'European vocation' and on the assumed objection of other member states to solo German leadership, which required an ally (Paterson 2011). In the absence of the United Kingdom, France became the indispensable partner, with an asymmetrical influence on German preferences.

The Franco-German relationship became part of the European Union's founding myths and resulted in German initiatives normally being presented in Franco-German form. The Franco-German relationship is the most institutionalised bilateral relationship in the world. Yves Boyer calculated that there were 115 meetings between the German chancellor and the French president between 1982 and 1992 (Boyer 1996), and post-Maastricht the number of meetings increased. Links between the German Foreign Ministry and its French counterpart are especially close, but as the role of the European Council increased so did the contacts between the Presidency and the Chancellor's Office. Until relatively recently this intense interaction privileged the French position. The more tightly coordinated French position was normally available at an earlier stage of negotiations than the loosely coordinated, post hoc German machinery could deliver. Moreover, the interaction of the highly centralised French coordination machinery with the institutional pluralism of the German decision-making machinery encouraged increased sectorisation on the part of Germany. The impact of this asymmetry can be seen especially clearly

in the agricultural sector. Protection of French agriculture is the thickest 'red line' in French European policy. The BMEL (German Agriculture Ministry) is also protectionist. Early meetings with their French counterparts in advance of an agreed German position have tended to strengthen the protectionist side of the German decision. This was illustrated by the efforts made by the German government to retain a joint position with France despite divergent preferences (Landau 1998).

Gradually the balance of adjustment has shifted away from Germany towards France. The traditional German reflex of relying on the Franco-German relationship lost traction as the European Union enlarged to 28 members. Traditionally, where Franco-German agreement was reached it was normally accepted by other members: a quality that made France seem indispensable to German policymakers. This quality began to fray when the two states used it not as a motor to promote further integration but as an *arrière-garde* to defend their narrow national interests. The most striking example was the defiance by France and Germany of the Stability and Growth Pact rules in 2001–2.

The expansion of the EU to 28 members has been associated with a loss of traction for the Franco-German relationship that became immediately visible in the Iraq crisis, where a cleavage between 'old' and 'new' Europe left France and Germany largely isolated; only Belgium and Luxembourg rallied to their side. The logic of a 'shrinking core and an expanding periphery' (Dyson and Goetz 2003: 376) has weakened the structural power of the Franco-German relationship. This is clearly visible in both the Council of Ministers and the European Parliament (EP). In the EP their share of MEPs has fallen from 29.7 per cent to 23.4 per cent: in the Council their combined weighted votes no longer constitute by themselves a blocking minority (Schild 2010:1374).

The peculiar quality of the Franco-German relationship rested on the assumption that any attempt at solo German leadership would be resisted by other members of the European Union. This assumption came to look outmoded in the salvage operation for the Lisbon Treaty during the German Presidency of 2007, when other member states looked to Chancellor Merkel rather than the Franco-German duo for leadership. The creation of the eurozone, the greatest achievement of the Franco-German relationship, has proved to be its greatest challenge since the onset of recession in 2008. Somewhat unexpectedly, given the degree to which Germany profited from the eurozone, its ideational leadership in the establishment of the eurozone, and the boldness of Chancellor Merkel's leadership in the Lisbon salvage process, the German government has often preferred to adopt a very cautious and defensive role; France responded with a much greater sense of urgency, but its increasing economic weakness greatly constrained its influence. In the past France had benefited from an embedded institutional asymmetry that gave it the leadership role. Economic asymmetry now robbed France of its former privileged position.

A key strength of the Franco-German relationship, its institutionalised character, while helpful in treaty making, has turned out to be ill adapted to the sort of speedy crisis management needed to respond to the financial markets. Even when a Franco-German agreement is reached, it is invariably oversold, and implementation is delayed by the necessarily time-consuming ratification procedures. These difficulties are increased by the fact that neither the French nor the German government possesses the easy familiarity with the financial markets of their Anglo-Saxon counterparts.

The structural drag inherent in such an institutionalised relationship might have been transcended if there had been a 'dynamic duo' at the helm of France and Germany who were focused on economics. Helmut Schmidt criticised the absence of financial markets expertise

and argued that, had the crisis occurred when he was chancellor, he would immediately have telephoned Giscard d'Estaing and developed a strategic plan.³ Such a relationship depends on a very high degree of trust, which has been lacking. Declining mass support for the EU in both countries and the more critical role of the FCC in Germany have also shrunk the degree of executive autonomy the Federal government now enjoys in this area.

The stuttering performance of the Franco-German couple in the eurozone crisis and the increasing asymmetry of the Franco-German relationship have cast doubt on the continued centrality of the relationship. Paterson (2011) argues that Germany has emerged as 'a reluctant hegemon' owing to the eurozone crisis, where its ever-growing economy and principal creditor status have placed it in the driving seat in relation to crisis management. This argument is buttressed by an examination of the increasingly asymmetric Franco-German relationship. The fading of the objections by other states to German leadership noted above is an important precondition for such a role. The implications of the shrinking of the Franco-German role and Germany's emergence as a potential hegemon are huge and will be taken up in the conclusion to this chapter.

Societal forces: political parties

From the mid-1960s there was a solid pro-European consensus in the established political parties in support of European integration. This support was crucial during the extended debates about entry into the eurozone, when support from the political parties remained solid despite an adverse public opinion. In their early years the Greens opposed some aspects of German European policy, but since the advent of Joschka Fischer as foreign minister they have been strong supporters of European integration; they were, for instance, more sympathetic than any other party to Germany taking on a larger share of debt to deal with the eurozone crisis. The PDS (Party of Democratic Socialism), the successor party to the SED (East German communist party) has been a continual critic of the EU, a tradition that has been continued by Die Linke (The Left), the successor to the PDS (see Chapter 7).

Although the consensus appeared unchanged by 2009, it was to some extent 'hollowed out'. In the 2009 election, European integration played a lesser role than in any election since 1949. As the crisis developed, reactions differed within the CDU/CSU-FDP coalition. The FDP came out strongly against Eurobonds. The chancellor and the finance minister were not keen, but did not rule out their introduction at that time. The FDP's attempt to instrumentalise euroscepticism in the Berlin Land election was a dismal failure, and its vote fell from 7.6 per cent in 2006 to 1.8 per cent in September 2011. The CSU, the Bavarian partner of the CDU, has always been more populist than the CDU, and faced with a Land election in September 2013 it struck a critical note at times. When Chancellor Merkel was faced with mobilising support for bailout measures in the Bundestag, she was persuaded by Peter Altmaier, then the chief whip of the CDU/CSU parliamentary party and a noted European, that a more positive approach was needed, and the European element in the party programme was strengthened in 2011. Chancellor Merkel's position was made easier by the attitude of the opposition. In May 2010, the SPD failed to support the coalition in the Bundestag by abstaining on the legislation putting through the €750 million Greek bailout. Since then the opposition has taken a more generous line, although with the approach of the German election it took a notably ungenerous line on the Cyprus bailout.

Until now Germany has lacked a eurosceptic party defined by its opposition to the EU and to European integration, but the unpopularity of the eurozone has led to the creation of a new party, the *Alternative für Deutschland*, committed to the withdrawal of Germany from the

eurozone, though it favours continued membership of the EU. The AfD polled 4.7 per cent in the 2013 Federal election, a very creditable performance for a new party, and is likely to do even better in future European elections.

German political parties, while remaining broadly pro-European, are much more sensitive to public opinion than in the past and have moved from unconditional support for the EU to much more conditional support. In the coalition negotiations of autumn 2013, both the CSU and the SPD pressed for the introduction of referendums on any transfer of sovereignty to EU institutions. This request is unlikely to succeed, but it reflects a greatly changed attitude towards the EU. This changed attitude is reported on in a recent euroblog by Sonia Alonso (Alonso 2014), where she notes that there is a long-term downward trend in supportive references to the EU in party manifestos.

Internally, party political influence has become something of a constraint on governmental action, as parties become more sensitive to public opinion. Externally, political parties help to project German preferences and power. The German parties play key roles in the European-level party federations and in the party groups in the European Parliament. Within the European Parliament, German influence is likely to increase following the election of Martin Schulz (SPD) as president of the Parliament. In the meetings of party and governmental leaders that take place on the eve of EU summits, where decisions are often pre-cooked, German leaders are normally especially influential. Finally, the party political foundations are a massive repository of influence for German views on Europe. The foundations have offices in most national capitals, where they act as a filter between the state in question and their German parent. The foundations can be especially important where that state has a conflicted view on the EU, as in the case of the United Kingdom and the Czech Republic; the relaunching of British European policy after the fall of Prime Minister Margaret Thatcher in 1990 was marked by a speech by John Major at the Adenauer Foundation headquarters in Sankt Augustin, for example.

Political parties thus play a partially contradictory role in the making of German European policy. At the European level, German political parties are an important element in the projection of German European policy; their influence is reflected in the ascent of Martin Schulz. The expansionary role of German political parties at a European level contrasts with their role in the domestic arena, where the tendency is to act as a constraint on German European policy.

Parapublic institutions: the Federal Constitutional Court

In his seminal work 'Politics and Policy in West Germany: The Growth of a Semi Sovereign State' (Katzenstein 1987), Peter Katzenstein analysed the taming and decentralisation of political power in the Federal Republic. One key element in this 'taming' was the role of two key parapublic institutions, the Federal Constitutional Court and the Bundesbank.

The lawless and arbitrary character of the Third Reich engendered a very strong commitment to the rule of law in the Federal Republic, which was reflected in the wide powers given to the Federal Constitutional Court. The Basic Law allows wide recourse to the Court, and that is an opportunity which citizens, parties, and groups have been keen to take advantage of. As guardian of the Basic Law, the FCC has profited from the growing attachment to it and is a very self-confident body that enjoys widespread public support. It takes its role as guardian of the Basic Law very seriously, and this has on occasion led it to resist the judicial claims of the European Court of Justice (ECJ). The aim of the Federal Constitutional Court is to ensure that ECJ judgments are compatible with the Basic Law, rather than simply to accept the primacy

of European law. A pattern of rivalry with the European Court of Justice developed quite early on, as became clear in the Solange decision of the FCC in 1974, which attempted and over the longer period succeeded in moving the ECJ to adopt its own fundamental rights protection (Davies 2012). The position of the Federal Constitutional Court was strengthened by the revised Article 23 of the Basic Law, adopted after German unification, which prohibited any amendments that would impinge on a number of inviolable constitutional principles that underpin the Basic Law: federalism, democracy, the social state, the rule of law, and human rights.

According to Bulmer *et al.*, ‘This no passaran [sic] rule goes far beyond the mere protection of federalism, to imply more broadly that German constitutional organs have a right and duty to monitor and shape the future development of European integration in a far wider sense’ (2000: 43). On 12 October 1993 the Federal Constitutional Court, in a widely noted judgment on the conformity of the Maastricht Treaty with the Basic Law, insisted on its right as defender of the Basic Law to rule on the balance of competences between the EU and German institutions.

Whilst the Maastricht judgment influenced the European policy of the Federal government (Harnisch 2001), it did not become a major element of public debate in Germany. The Lisbon judgment of 2009 was to have a greater impact on policymaking and the German discourse on Europe. Its tone, which could now be described as eurosceptic, resonated with a changed public and press opinion. Carl Otto Lenz, a senior German euro lawyer, pointed out that the judgment used the term sovereignty 33 times, despite it not being mentioned in the Basic Law that the FCC exists to defend (Proissl 2010). It also, in line with Article 23, stipulated five reserved areas where it saw no scope for further transfer to the EU. Since the Maastricht judgment, the FCC has insisted on the Bundestag being actively involved in key EU decisions, and the ruling created a number of new control powers for the Bundestag, the effect of which has been to create a new domestic opportunity structure for more politicised debate in the Bundestag. The fear of provoking a recourse to the Federal Constitutional Court has instilled even greater caution on the part of the Federal government. It is not the usual practice of the FCC to rule a policy that the Federal government has assented to as unconstitutional, but rather to set out the conditions that would make policy in the area compatible with the Basic Law. In that sense, the FCC has moved from ‘veto player’ to co-shaper of German European policy, and the direction it prefers is limitation of further integration.

The Bundesbank

The trauma of the mega-inflation in 1923 has led to an instinctive commitment to ‘sound money’ and to the strong powers and high public standing of the Bundesbank, the German central bank. As Jacques Delors once quipped, ‘not all Germans believe in God but they all believe in the Bundesbank’. So great was its influence that David Marsh referred to ‘The Bundesbank: The Bank that Rules Europe’ (Marsh 1992). The creation of the European Central Bank threatened to marginalise the Bundesbank and bring the principle of ‘sound money’ into conflict with the European vocation principle (Van Esch 2012). The reservations of the Bundesbank were to some extent stilled by siting the ECB in Frankfurt and adopting a constitution for it based on that of the Bundesbank. At that point, the epistemic community supporting the European vocation (the chancellor, the Foreign Ministry, and German industry) was much stronger than that supporting the Bundesbank, and some expected the Bundesbank to be relegated to the Frankfurt branch of the ECB (Marsh 2013: 212).

The balance of forces has altered visibly over the intervening period. On the European side, the chancellor is not prepared to defy public opinion in the way that Chancellor Kohl did over

the creation of the eurozone. The Foreign Ministry, the key advocate of European integration, has lost influence and under the present incumbent is missing in action and less European than in the past. It has also been replaced in importance by the Finance Ministry. The role of the Bundesbank has been buttressed by ordoliberalism, a liberal German economic philosophy which emphasises the need for the state to ensure the principal role of the free market (see Chapter 24). Ordoliberalism also has a narrow view of the role of central banks. Its adherents argue that they should be independent and should concentrate on pursuing monetary policies with the aim of ensuring monetary stability, while governments should restrict themselves to setting the frameworks for competition and functioning markets. Whereas the support for the European vocation principle is waning, support for sound money ideas remains hugely strong in German public opinion. It is the dominant view among German academic economists and receives strong support from the country's perhaps most respected daily broadsheet, the *Frankfurter Allgemeine Zeitung*. Moreover, while the influence of the Foreign Ministry is shrinking, the Finance Ministry, where support for sound money is most concentrated, is becoming ever more central. This is likely to continue, as Wolfgang Schäuble will remain in the Finance Ministry in the new coalition. What is clear is that the Federal Constitutional Court and the Bundesbank now act as more significant constraints on the taking of decisions in German European policy than at any point in the past.

Conclusion

The past is a foreign country: they do things differently there.

(L.P. Hartley)

I fear Germany's power less than her inactivity.

(Sikorski 2011)

Germany's mode of dealing with European policymaking was created in a divided pre-sovereign polity desperate to find markets for its export-oriented industry (Paterson 2005). This weakness dictated a 'European vocation' and a reliance on the Franco-German relationship. In a sense, France was always in the room when German European decisions were taken, as France was invariably central to the German negotiating position. Internally, the decision-making machinery was both more porous, reflecting Germany's reflexive multilateralism, and more loosely coordinated than in France or the United Kingdom. Germany is now united and fully sovereign, and France the supplicant in the Franco-German relationship. Germany is viewed as the 'reluctant hegemon' of the eurozone – it is truly a different country.

All this raises the question whether the decision-making machinery that was appropriate to the infant Federal Republic's weak position is still fit for purpose. Externally Germany is fully sovereign, perhaps too sovereign for some tastes, while internally Germany remains semi-sovereign, arguably with less executive autonomy than in the past. The other actors – the Länder, the Bundesbank, the Federal Constitutional Court, and the political parties – could always have constrained the executive, but the 'European vocation' ensured that 'permissive consensus' ruled in relation to European policy, although the FCC began to challenge this consensus from 1974 onwards. The more recent pushback by German parapublic institutions (the Bundesbank and the Federal Constitutional Court) and the Länder calls into question the pattern of 'associated sovereignty' (Katzenstein 1997) between German and European institutions. It also sets up a tension with the Federal government, which may wish to deepen the integration capacities of the eurozone.

The institutions of the Federal Republic were shaped by an imperative not to repeat the hegemonial drive that had scarred Europe and ruined Germany in the Nazi era, and to emphasise the decentralisation and limitations of power externally and internally. It is not at all clear that the semi-sovereign pluralist institutions or German public opinion are fitted to play the new central role. There has been a perennial discussion as to whether a new European ministry, either as an independent entity or as part of a reinforced Chancellor's Office, should be created to supersede the current parcelling-out of responsibilities for European policy between a number of ministries. This division, reflecting Germany's multilateral policy style, was combined with a close alliance with France. Coordination of European policy classically occurred late in the process, and was usually referred to as post hoc coordination. It had the advantage that Germany could place itself at the centre of emerging constitutive bargains, but the variation in positions sometimes held by different ministries till late on in the process could lead to confusion in other member states. That is not a situation that can be contemplated easily if Germany is playing the leading role. Germany's new central role entails strengthening its strategic capacity and centralising the European policymaking machinery.

A strengthened strategic capacity is required to meet the challenges of the eurozone, and to hold the European Union together in the face of an emerging north-south split and the fragmentation challenge presented by the United Kingdom. This strategy deficit is new. In the original conception of the European Union, strategic orientation was to be provided by the European Commission; but the Commission is now a shadow of its former self and the Union method (Merkel) does not assign it a central strategic role. For much of the history of European integration, strategic leadership was provided by France in the joint Franco-German leadership, but this has now been superseded by Germany's unquestioned leadership position.

The persistence of semi-sovereignty and the role it gives to powerful veto players greatly constrain the strategic element in German European policymaking. Chancellor Merkel is often criticised for lacking a strategic vision in her *Staatskunst* (statecraft) for managing the eurozone crisis, but this ignores the fact that she has always had to anticipate the response of the Federal Constitutional Court. This chapter has described the increased role of Chancellor Merkel and the BK in the making of German European policy, but it has to be borne in mind that the BK is small and does not dispose of the specialist expertise of the other ministries. The result is that the chancellor's attention has to be selective. In the 2007 German Presidency, environmental policy was a *Chefsache* (a matter to be decided at the top level), and now the eurozone crisis and relations with principal member states are *Chefsachen*. There is simply not enough overarching strategic capacity to deal with the scale of the challenges.

Despite Germany's pre-eminent position in the European Union, worrying dilemmas remain. Its domestic policymaking machinery has long been regarded as suboptimal, but the exigencies of coalition government and the role of the key veto players (Länder, Bundesbank, and Federal Constitutional Court) make radical reform unlikely. Part of this gridlock is produced by the constitutionally anchored role of key actors like the Länder and the Federal Constitutional Court. The Basic Law and its interpretation by the Federal Constitutional Court also impart an element of inflexibility to a German leadership role; for example, if Eurobonds are thought to have become necessary, they would run up against the 'eternity clause' (Article 79(3) of the Basic Law), which precludes any transfers of sovereignty from the Bundestag to the EU level that would prevent the Bundestag from exerting its constitutionally guaranteed competences (Article 20 of the Basic Law). In this and a number of other cases prescribed by the 'eternity clause', the transfer of sovereignty requires constitutional change, which raises the question whether the Basic Law itself is ripe for revision. In the Bonn Republic there was a perfect match between what other member states expected of Germany and what its European

policymaking machinery, including the Franco–German relationship, was able to produce. None of the dilemmas that confront German European policymaking are likely to be resolved quickly, and the spectre of a powerful Germany, unable to meet the expectations of its partners, will remain.

Notes

- 1 Michael Stürmer on the aims of German European policy; author's translation of a remark made in the author's presence.
- 2 For the organisation and responsibilities of divisions in the Ministry of Finance, see www.bundesfinanzministerium.de/Content/DE/Downloads/Ministerium/Organigramm_engl.pdf?__blob=publicationFile&v=7; for the organisation of divisions in the Federal Foreign Office, see www.auswaertigesamt.de/cae/servlet/contentblob/373562/publicationFile/189194/Organigramm-en.pdf (accessed 10 December 2013).
- 3 *Basler Zeitung*, 29 May 2010.

Bibliography

- Alonso, S. (2014) 'German party manifestos are increasingly unlikely to downplay European issues and reflect negative attitudes towards the EU'. Online. Available at <http://blogs.lse.ac.uk/europpblog/2014/01/07> (accessed 20 January 2014).
- Beichelt, T. (2007) 'Over-Efficiency in German EU Policy Coordination', *German Politics*, 16(4): 421–32.
- Boyer, Y. (1996) 'France and Germany', in B. Heurlin (ed.) *Germany in Europe in the Nineties*, Basingstoke: Macmillan, 241–6.
- Bulmer, S. and Paterson, W. (1987) *The Federal Republic of Germany and the European Community*, London: Allen and Unwin.
- Bulmer, S. and Paterson, W. (2010) 'Germany and the European Union: From Tamed Power to Normalized Power?' *International Affairs*, 86(5): 1051–73.
- Bulmer, S., Jeffery, C., and Paterson, W. (2000) *Germany's European Diplomacy: Shaping the Regional Milieu*, Manchester: Manchester University Press.
- Chaffin, J. (2010) 'Why a Fearful Germany is Refusing to Rush to the Rescue', *Financial Times*, 25 May, 10.
- Davies, W. (2012) *Resisting the European Court of Justice: West Germany's Confrontation with European Law, 1949–79*, Cambridge: Cambridge University Press.
- Derlien, H.-U. (2000) 'Failing Successfully?' in H. Kassim, G. Peters, and V. Wright (eds) *The National Coordination of EU Policy: The Domestic Level*, Oxford: Oxford University Press, 54–78.
- Dyson, K. and Goetz, K. (eds) (2003) *Germany, Europe and the Politics of Constraint*, Oxford: Oxford University Press.
- Große Hüttmann, M.G. (2007) 'Die Koordination der deutschen Europapolitik', *Aus Politik und Zeitgeschichte*, 10: 39–45.
- Harnisch, S. (2001) 'Change and Continuity in Post-Unification German Foreign Policy', *German Politics*, 10(1): 135–60.
- Hesse, J. and Goetz, K. (1992) 'Early Administrative Adjustment to the European Communities: The Case of the Federal Republic of Germany', *Jahrbuch für Europäische Verwaltungsgeschichte*, 4: 181–206.
- Jeffery, C. (2004) 'Regions and the Constitution for Europe: German and British Impacts', *German Politics*, 13(4): 625.
- Katzenstein, P. (1987) *Policy and Politics in West Germany: The Growth of a Semi Sovereign State*, Philadelphia: Temple University Press.
- Katzenstein, P. (ed.) (1997) *Tamed Power: Germany in Europe*, Ithaca and London: Cornell University Press.
- Keohane, R. (2003) 'Ironies of Sovereignty: the EU and the US', in J. Weiler, I. Begg, and J. Peterson (eds) *Integration in an Expanding European Union: Reassessing the Fundamentals*, Oxford: Blackwell.
- Landau, A. (1998) 'Bargaining over Power and Policy: The CAP Reform in the Uruguay Round', *International Negotiations*, 3(3): 453–79.
- Marsh, D. (1992) *The Bundesbank: The Bank that Rules Europe*, London: Heinemann.
- Marsh, D. (2013) *Beim Geld hört der Spass auf*, Berlin: Europa Verlag.

- Merkel, A. (2010) 'Speech by Federal Chancellor Angela Merkel at the opening ceremony of the 61st academic year of the College of Europe in Bruges on 2 November 2010'. Online. Available at www.brussel.diplo.de/contentblob/2959854/Daten/ (accessed 10 December 2013).
- Paterson, W. (1993) 'Muss Europa Angst vor Deutschland haben?' in R. Hrbek (ed.) *Der Vertrag von Maastricht in der wissenschaftlichen Kontroverse*, Baden-Baden: Nomos, 9–18.
- Paterson, W. (2005) 'European Policy Making: Between Associated Sovereignty and Semi Sovereignty', in S. Green and W. Paterson (eds) *Governance in Contemporary Germany: The Semi Sovereign State Revisited*, Cambridge: Cambridge University Press, 261–82.
- Paterson, W. (2010) 'Does Germany Still Have a European Vocation?' *German Politics*, 19(1): 41–52.
- Paterson, W. (2011) 'The Reluctant Hegemon? Germany Moves Centre Stage in the European Union', *Journal of Common Market Studies*, 49: 57–75.
- Proissl, W. (2010) *Why Germany Fell Out of Love with Europe*, Brussels: Bruegel Essay.
- Schild, J. (2010) 'Mission Impossible? The Potential for Franco-German Leadership in the Enlarged EU', *Journal of Common Market Studies*, 48(5): 1367–90.
- Sikorski, R. (2011) 'I fear Germany's power less than her inactivity', *Financial Times*, 28 November. Available at www.ft.com/cms/s/0/b753cb42-19b3-11e1-ba5d-00144feabdc0.html#axzz2t0dv7MaC (accessed 11 February 2014).
- Stürmer, M. and Neal, M. (1996) 'Les conséquences de 1989, les objectifs de la politique étrangère allemande', *Politique Étrangère*, 61(3): 513–19.
- Van Esch, F. (2012) 'Why Germany wanted EMU: The Role of Helmut Kohl's Belief System and the Fall of the Berlin Wall', *German Politics*, 10(5): 34–42.