

## Conclusion: Policy Diversity in Germany's Federalism

MANFRED G. SCHMIDT

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### ABSTRACT

This paper will examine the extent to which the narrative of policy diversity is characteristic of German federalism, using findings from comparisons of policies in the individual Länder and with a special focus on the period since the German reunification. The first part of the paper presents findings supporting the view that there is a significant degree of policy diversity in the states (Länder) of the Federal Republic of Germany (Section 1). Longitudinal studies also indicate an increase in policy diversity (Section 2). On the other hand, there are also some indicators that point to policy convergence, that is, to decreasing policy diversity (Section 3). On the whole, though, there are major differences between the German Länder, as is evident from even a cursory comparison with the Swiss cantons, the United States of America and the Austrian Länder (Section 4). The causes of the policy diversity and its limits must still be clarified. For this purpose four explanatory variables will be discussed in the final section of this paper (Section 5): the partisan composition of government in the Länder, which increases the likelihood of policy diversity, and three other factors which tend to reduce the possibility of policy diversity: the competition between the two large pro-welfare state parties; then the division of powers between the federal state, the Länder and the European Union; and finally the institutional constraints on fiscal policy in the Länder.

### INTRODUCTION

Germany's federalism takes a special form, namely, that of a "unitary federal state"<sup>1</sup>, one that has such a high degree of equivalency in its living standards and in its political regulation that the assumption could be made that it is a decentralised unitary state. Moreover, Germany is a "social federal state", as defined in Article 20 of the Grundgesetz, the Basic Law for the Federal Republic of Germany. The end result is that Germany is one of those rare federalist states which exists, counter to the liberal theory and practice of federalism, alongside an expansive welfare state.<sup>2</sup>

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<sup>1</sup> Konrad Hesse, *Der unitarische Bundesstaat* (Karlsruhe: Müller, 1962).

<sup>2</sup> Herbert Obinger, Stephan Leibfried and Francis G. Castles, *Federalism and the Welfare State. New World and European Experiences* (Cambridge: Cambridge University Press, 2005).

Furthermore, Germany's Bundesrat, the Federal Council, which represents the executive branches of the individual Länder at the federal level, could be considered a second legislative chamber, one which plays a central role in federal legislation: amendments to the Constitution require a two-thirds majority in the Bundestag and in the Bundesrat; consent bills (*Zustimmungsgesetze*) are subject to the approval of the Bundesrat by a majority vote; and bills which do not require the approval of the Bundesrat (*Einspruchsgesetze*) can still be blocked, under certain conditions<sup>3</sup>, by a two-thirds majority in the Bundesrat.

Germany's federalist state is also a "party state"<sup>4</sup>, one in which democratic party competition is of central importance and in which the parties play a significant role not only in political decision-making but also in selecting and controlling the government. In the light of the impact of parties, one might expect that Germany's federalism is characterised by policy diversity. On the other hand, the unitary federal state and the extensive degree of joint decision-making between the federal and state executives lend support to the view that policy uniformity is more important than policy diversity. Between these two poles are found the analyses of C. Jeffery, C. Rowe and E. Turner, both in this Special Issue and in their earlier work. Jeffery, Rowe and Turner have undertaken a systematic comparison of these two positions – the "narrative of uniformity" and the alternative "narrative of policy diversity".<sup>5</sup>

While there is much to argue in favour of the narrative of policy diversity, there are also countermovements and limits to this narrative. These topics will be discussed in the following sections of this chapter. Its first section supports the view that policy diversity is of considerable significance in the German Länder. This is evidenced by cross-sectional analyses of politics in the Länder before and after the reunification of East and West Germany (Section 1). Longitudinal studies also indicate an increase in diversity in several major policy areas (Section 2). On the other hand, there are also indicators that point to policy convergence, that is, to decreasing policy diversity (Section 3). Looked at as a whole, though, there are major differences between the German Länder, which is evident in comparisons with the Swiss cantons, the American states and the Austrian Länder (Section 4). The causes of the policy diversity and its limits in Germany's federalism must still be clarified. However, four variables prove to be potentially powerful explanatory factors. The first is the partisan composition of government in the Länder, which increases the likelihood of

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<sup>3</sup> Grundgesetz Article 77 paragraph IV.

<sup>4</sup> According to one influential view, the German case embodies a "Parteienbundesstaat", that is, a federal state which is deeply pervaded by political parties (Frank Decker, *Regieren im "Parteienbundesstaat". Zur Architektur der deutschen Politik* (Wiesbaden: VS, 2011); Klaus von Beyme, *Das politische System der Bundesrepublik Deutschland. Eine Einführung* (Wiesbaden: VS, 2010, 11th ed.), p. 373.

<sup>5</sup> See, for example, Charlie Jeffery (ed.) *Recasting German Federalism. The Legacies of Unification* (London and New York: Pinter, 1999); Ed Turner, *Political Parties and Public Policy in the German Länder* (Basingstoke: Palgrave MacMillan, 2011).

policy diversity. The other three determinants tend to reduce the possibility of policy diversity: the competition between the two large pro-welfare state parties; the division of powers between the federal state, the Länder and the European Union; and finally the institutional constraints on fiscal policy in the Länder.

## I. Significant policy diversity

Germany is a unitary federal state with a high degree of joint decision-making between the federal and state executives<sup>6</sup>. It is constitutionally required to ensure both interregional distribution and "uniformity of living standards"<sup>7</sup>, as stated in Article 72 of the version which was in effect until 1994 and in Article 106 of the Grundgesetz. In 1994, the wording of Article 72 was changed. In place of "uniformity of living standards", a new standard – "the establishment of equivalent living conditions throughout the federal territory" – was instituted as a precondition for federal regulations in areas with concurrent legislative powers.

But despite the trend towards becoming more unitary, the requirements for uniformity and equivalency and the large degree of joint decision-making, neither policy diversity nor the differences in the socioeconomic resources available to the Länder should be neglected. It is not only the demographics and the level of economic development of the individual Länder that are evidence of diversity, but also their policy outcomes. Take, for example, the following four findings. First, due to a strong health care system and a high level of wealth, the proportion of Germany's aging population is growing, to a similar extent as in Italy and Japan, but with important differences between the Länder: In East Germany, the population is older than in most of the western Länder.<sup>8</sup>

Second, the differences in the level of economic development in the various Länder are even larger. For example, the per capita GDP in Germany is substantially higher in the western part of the country than in the east – despite the trend after 1990 towards more equalisation. With that being said, there are also considerable differences between the economically strong southern Länder such as Baden-Wuerttemberg, Bavaria and Hesse, on the one hand, and the less economically strong Länder in the north and west, on the other.<sup>9</sup> These differences in the level of economic development are also quite important for immigration policy, because the

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<sup>6</sup> Scharpf, Bernd Reissert and Fritz Schnabel, *Politikverflechtung: Theorie und Empirie des kooperativen Föderalismus in der Bundesrepublik* (Kronberg i.Ts.: Scriptor Verlag, 1976).

<sup>7</sup>"Equal" does not mean completely uniform or the same; rather it serves as a standard according to which equivalency of living conditions is called for as a precondition for federal intervention.

<sup>8</sup> Statistische Ämter des Bundes und der Länder [Federal Statistical Office and the Statistical Offices of the Länder], *25 Jahre Deutsche Einheit* (Wiesbaden: Statistisches Bundesamt, 2015), p. 21.

<sup>9</sup> Statistische Ämter des Bundes und der Länder, *25 Jahre Deutsche Einheit*, p. 35.

so-called "Königstein Scheme" sets acceptance quotas for the distribution of asylum-seekers among the states in proportion to the population numbers and the volume of per capita tax receipts in each of the Länder.

Third, a breakdown of the services provided to the population of the Länder by the welfare state also signals large differences in policy outputs. One major example is the size of the welfare state clientele – that part of the population which finances at least half of its living expenses from transfer income. The size of the welfare state clientele is especially large in the new Länder, followed by the city states, with Berlin in the lead, and is smaller in all other states. Meanwhile, approximately 40 per cent of the population in eastern Germany belongs to the welfare state clientele. In the federal city states – Berlin, Bremen and Hamburg – the number is right at 35 per cent of the population, and in the western Länder, it is right at 29 per cent.<sup>10</sup> There are similar differences between eastern and western Germany and between the city states and the other Länder when it comes to the data, sorted by Land, on poverty levels and minimum benefit levels, that is, data on that part of the population which lives mainly from services and benefits provided by means-based minimum benefit systems, such as the basic social protection for job seekers, social allowance or social assistance and the social benefits provided in accordance with the Asylum Seekers Benefits Law.<sup>11</sup>

Finally, the data on government debt also indicates a substantial diversity in policy. To take one example, the per capita government debt, calculated for each of the Länder, is highest in Bremen, Saarland and Berlin, and lowest in Bavaria; the level in the eastern Länder is generally somewhere in the middle.<sup>12</sup>

## **II. Increasing diversity in socioeconomic conditions and public policies in the Länder**

The reunification resulted in five new eastern German Länder joining the Federal Republic of Germany. All of the new Länder were financially and economically weak and remain so today, if not to such an extreme degree as in the early 1990s. This was momentous – never before had there been such a wide cleft between the economically strong and economically weak regions within the federal territory as occurred in 1990 and the years that followed. There is one indicator of the economic divide between the east and the west that is especially politically charged: the

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<sup>10</sup> Statistische Ämter des Bundes und der Länder, *25 Jahre Deutsche Einheit*, p. 68.

<sup>11</sup> Statistische Ämter des Bundes und der Länder, *25 Jahre Deutsche Einheit*, p. 68, 73, 77, 114; Statistisches Bundesamt [Federal Statistical Office] (ed.), *Statistisches Jahrbuch 2014. Deutschland und Internationales* (Wiesbaden: Statistisches Bundesamt, 2014), Tab. 8.4.1.

<sup>12</sup> Uwe Wagschal, Ole Wintermann and Petersen Thieß, *Konsolidierungsstrategien der Bundesländer* (Gütersloh: Verlag Bertelsmann Stiftung, 2009), p. 39.

unemployment rate. During the time of the socialist German Democratic Republic, full employment was a trademark of the East German economy. However, since reunification, the unemployment rate in East Germany has been high – and, worse yet, higher than the rate of unemployment in western Germany. No less important are the differences between east and west in their economic and financial strength for political decision-making processes at the state and federal levels. The admission of the five eastern German Länder to the Federal Republic of Germany raised the number of Länder which were entitled to receive contributions under the horizontal fiscal equalisation system from 6 or 7 to 11 or 12, and in some years even 13. In contrast to this a small minority of the Länder were obligated to pay contributions under the horizontal fiscal equalisation programme – Bavaria, Baden-Wuerttemberg and Hesse, and, in some years, also North Rhine-Westphalia and Hamburg.. This division between the financially and economically weak majority of Länder and the financially and economically strong minority not only impedes the search for compromise within the Bundesrat, where the poor states control the majority of the votes, but it also reduces the chances that German federalism will be reformed in favour of a dual, competitive federalism.

Despite these restrictions, there is still leeway in unified Germany for revisions of the constitution. This is further evidenced by the 1994 reform of concurrent legislation. A major part of the reform concerned Article 72 of the Grundgesetz, which defines the criteria for federal regulations within the scope of the concurrent legislative powers. Prior to 1994, Article 72 bound federal regulations in the area of concurrent legislation to the standard of "the preservation of legal and economic unity, particularly the preservation of equal living conditions beyond the territory of a state". In practical terms, though, this requirement proved to be a gateway for the federal government to encroach on domains which had previously been the purview of the Länder. The wording "equal living conditions" was replaced in 1994 by the standard "establishment of equivalent living conditions throughout the federal territory" as a requirement that legitimizes a federal regulation as long as it is "in the national interest".

The reform of federalism in 2006 amended this regulation by changing the division of powers between the federal state and the Länder. This reform also included the transfer of several legislative matters from the concurrent legislative powers to the exclusive legislative powers of the Länder, such as the penitentiary system and the salaries and social benefits of the civil servants and judges within the Länder. This gave the Länder more scope for action, not only in the penitentiary system, as shown in the paper by Rowe and Turner in this volume, but also for developing autonomous salary and pension policies with respect to their civil servants. This opportunity was made active use of. Here is one example: In the highest salary group for university professors, the difference between the highest gross base salary (in Baden-Wuerttemberg) and the lowest gross base salary (in Hesse) now amounts to

873 euros per month, which equals 14 per cent of the maximum.<sup>13</sup> The salaries of mid- and upper-level civil servants are marked by similar differences.<sup>14</sup>

There are additional indicators of policy outputs and policy outcomes which suggest an increase in policy diversity. The analyses in this volume make it clear that the Länder are certainly using the "*potential* for policy outputs to diverge from one Land to another"<sup>15</sup>. This has led to occasionally surprising differences in policies, as shown, for instance, by comparative analyses of educational policy in the Länder; when it came to financing education in the 1990s, it was not the wealthy western German Länder that were at the top of the field, but rather one of the eastern German Länder, Thuringia, both in its per capita spending on education and in its education spending as a percentage of gross national product (GNP).<sup>16</sup>

But when it comes to spending on research and development, the western German Länder continue to have a clear lead over the eastern German Länder, but with one additional difference: In the eastern German (non-city state) Länder, research and development receives its funding in large part from the government budget, but in the western German (non-city state) Länder, it comes from business<sup>17</sup>.

After 1990, many social policy differences between the Länder became even larger. This is evidenced by the size of the welfare state clientele; it grew faster in the eastern than in the western German Länder as a result of the higher level of unemployment there and the more elderly population. The scope of the poverty risk also attests to the increasing differences in social policy. As measured by the current risk-of-poverty rate<sup>18</sup>, the difference between the Land with the highest risk of poverty – Bremen with right at 25 per cent – and the Land with the lowest risk of poverty – Bavaria with right at 12 per cent – is higher than the first time this rate was measured in 2005.<sup>19</sup>

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<sup>13</sup> Calculations were based on the so-called W-salary scale and on ranking after implementation of the reform of the W-salary scale (*Forschung & Lehre* 22/ 5 (2015), p. 384). Before the Federal Constitutional Court in Karlsruhe had called for the reform of the salary group for university professors, the difference was almost one and a half times larger, cf. Deutscher Hochschulverband, *Besoldung in der Wissenschaft 2015. Besoldungstabelle W-Besoldung mit Stand: Januar 2015*, p. 1.

<sup>14</sup> N.N., *Die Höhe der Beamtenbesoldung in den Ländern*, unpublished manuscript, 2015.

<sup>15</sup> Introduction to the Special Issue, p. 1 (manuscript).

<sup>16</sup> Frieder Wolf, *Die Bildungsausgaben der Bundesländer im Vergleich: Welche Faktoren erklären ihre beträchtliche Variation?* (Berlin: LIT, 2006), p. 143, 147; Statistische Ämter des Bundes und der Länder, *25 Jahre Deutsche Einheit*, p. 50.

<sup>17</sup> Statistische Ämter des Bundes und der Länder, *25 Jahre Deutsche Einheit*, p. 50.

<sup>18</sup> As measured by the proportion of individuals whose equivalised income is less than 60 per cent of the median equivalised household income of the population. Equivalised income is an indicator of demand-weighted per capita income per household member; it is calculated on the basis of net household income.

<sup>19</sup> Statistische Ämter des Bundes und der Länder, *25 Jahre Deutsche Einheit*, p. 73.

### III. Countermovements: decreasing policy diversity in the Länder

According to an oft-cited view, the capacity for policy making in Germany's federalism has been marked by "political immobilism"<sup>20</sup>. This view found a rigorous foundation in the theory of "political interweaving", the theory of *Politikverflechtung*<sup>21</sup>. The diagnosis of immobilism has been contested, though, and so, too, has been the theory of "political interweaving". Moreover, an analysis of joint decision-making in reunified Germany<sup>22</sup> has demonstrated that, under certain conditions, joint decision-making has also made major policy changes possible. The theory of dynamic federalism<sup>23</sup> had already drawn attention previously to the adaptability of German federalism. The increasing level of political diversity in German federalism since reunification which was discussed in the previous section supports not only the theory of dynamic federalism, but also the view that policy in Germany is more flexible than either the theory of joint decision-making or the theory developed later developed from it, the theory of the "joint-decision trap"<sup>24</sup>, would suggest.

Increasing policy diversity is a subset of political change. But "change" can mean many different things. "Change" can be taken to mean an abrupt break in a trend which radically alters the direction of change. "Change" can also refer to a dramatic change in the level or volume of X. A radical change could also be the result of a series of incremental alterations which bring about a "transformative change"<sup>25</sup>. Finally, a change can also occur through a process of dynamic continuity. In this case, change means the progression of a previously laid out direction of movement, such as the continuation of a trend. There are two sub-types of this meaning of change: A trend can indicate an increase or a decrease. For example, it could indicate increasing policy diversity or decreasing policy diversity. Both sub-types have played a significant role in German federalism since reunification, whereas changes of the transformative type were rare and only one abrupt break in a trend occurred, namely, the admission of the new Länder to the Federal Republic of Germany.

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<sup>20</sup> Fritz W. Scharpf, *Politischer Immobilismus und ökonomische Krise. Aufsätze zu den politischen Restriktionen der Wirtschaftspolitik in der Bundesrepublik* (Kronberg, Ts.: Athenäum, 1977).

<sup>21</sup> Scharpf, Reissert, Schnabel, *Politikverflechtung*.

<sup>22</sup> Ute Wachendorfer-Schmidt, *Politikverflechtung im vereinigten Deutschland* (Wiesbaden: VS, 2005, 2nd ed.)

<sup>23</sup> Arthur Benz, *Föderalismus als dynamisches System. Zentralisierung und Dezentralisierung im föderativen Staat* (Opladen: Leske + Budrich, 1985).

<sup>24</sup> Fritz W. Scharpf, Die Politikverflechtungs-Falle: Europäische Integration und deutscher Föderalismus im Vergleich, *Politische Vierteljahresschrift* 29/2 (1985), pp. 323-356. Scharpf later made major modifications to his influential diagnosis: Fritz W. Scharpf, The Joint-Decision Trap Revisited, *Journal of Common Market Studies* 44/4 (2006), pp. 845-864.

<sup>25</sup> Wolfgang Streeck and Kathleen Thelen, Introduction: Institutional Change in Advanced Political Economies. In: Wolfgang Streeck and Kathleen Thelen (eds.), *Beyond Continuity. : Institutional Change in Advanced Political Economies* (Oxford: Oxford University Press, 2005), pp. 1-39, p. 9, 19, 31.

In contrast to the widely held view that the reform of federalism that took place in 2006 resulted in more autonomy of the Länder and in increasing policy diversity, the 2006 reform had the double effect of increasing and decreasing policy diversity. The federalism reform of 2006 did provide the Länder with more regulatory options, but their additional powers were set off by significant losses<sup>26</sup>. The reform did widen the federal government's range of priority legislative powers, but it also curtailed the necessity test<sup>27</sup> for federal regulations; the new version of Article 72 II of the Grundgesetz, revised as part of the reform, provides for the application of the necessity test to a federal regulation, but the number of legislative materials this applies to is now smaller. A new course was set which was to have consequences because it "renounced the criterion of the necessity test as a standard prerequisite for federal legislative action in areas with concurrent legislative powers and introduced 'priority or core legislative powers' with no prerequisites"<sup>28</sup>. This provision weakened the position of the Länder and set them back "even beyond the level they had attained after the constitutional revisions of 1994"<sup>29</sup>.

Economic convergence processes were responsible for another part of the decrease in policy diversity. The level of economic development and the structures of the eastern German economy began to approach those of the western German economy. Chancellor Kohl had hoped that the eastern German economy would develop into a "blooming landscape", but this hope was not realized. Nevertheless, the level of economic development of the Länder in eastern Germany (as measured, for instance, by per capita gross domestic product) has gotten closer to that of the western German Länder, starting at a fast pace in the 1990s, but since then the rate of change can only be described as low. The structures of the eastern and western German economy also indicate a moderate degree of convergence. In both parts of Germany, the service sector is gaining ground<sup>30</sup>, and eastern German industry has managed to recover somewhat from its post-reunification economic crisis. To this can be added the structural changes taking place in agriculture; in the new Länder, large-scale farms continued to operate while farming in the old Länder underwent a process of concentration.<sup>31</sup>

Two additional convergence processes are associated with these changes in the economy: While the unemployment rate in eastern Germany remains significantly higher than in the western part of the country, both rates are at a lower level than previously; and the distance between the unemployment rate in the east and the west has also decreased. The incomes of workers also show evidence of convergence

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<sup>26</sup> Grundgesetz-Kommentar Band II (Art. 20-82) Supplementum 2007, ed. by Horst Dreier (Tübingen: Mohr Siebeck, 2007), p. 50.

<sup>27</sup> Grundgesetz-Kommentar, p. 50.

<sup>28</sup> Grundgesetz-Kommentar, p. 50.

<sup>29</sup> Grundgesetz-Kommentar, p. 50.

<sup>30</sup> Statistische Ämter des Bundes und der Länder, 25 Jahre Deutsche Einheit, p. 33.

<sup>31</sup> Statistische Ämter des Bundes und der Länder, 25 Jahre Deutsche Einheit, p. 33.

processes; wages and salaries of employees in eastern Germany are moving somewhat into line with those in western Germany.<sup>32</sup>

Convergences are also to be found in various policy areas, including education and social policy. The eastern German Länder were in first place when it came to education spending during the first decade after reunification but have since lost that position, according to recent calculations. The western German Länder had acted more cautiously than their counterparts in the east when it came to financing their educational systems, but they have now caught up.<sup>33</sup> Although there are indicators of increasing policy diversity in social policy, there are also hints of decreasing diversity; one example of this is the increasing density of physicians in eastern Germany, leading to a appreciable decrease in the gap between east and west.<sup>34</sup>

#### **IV. Policy diversity in German federalism in cross-national comparison**

Cross-national comparisons serve to highlight the considerable differences between the German Länder. Take, for example, public spending on education, which is a policy area where the Länder have considerable scope for action. The largest proportion of public spending on education in Germany comes from the Länder, with important differences in spending as a percentage of GDP and per capita spending. If we only consider the non-city states with the highest and lowest per capita spending on education in 2011, we see that the Land with the lowest level of spending, Mecklenburg-Western Pomerania, was only spending 66 per cent of what Baden-Wuerttemberg, the Land with the highest level, was spending.<sup>35</sup> The data on education spending as a percentage of GNP reveals, at least in the first two decades after reunification, larger differences. In this case (once again disregarding the city states), the Land with the lowest proportion of education spending, Hesse, had a rate in 1992 that was only 35 per cent of the proportion of the Land with the highest, Thuringia, and after 10 years (2001), the rate had only reached 45 per cent.<sup>36</sup>

Interestingly, the differences in education spending in the Länder, at least until the early 2000s, are similar in size to those in the states of the USA. According to Busemeyer's study of education spending in the United States of America in this period, the gap between the percentage of GDP spent on education varies from a

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<sup>32</sup> Statistische Ämter des Bundes und der Länder, *25 Jahre Deutsche Einheit*, p. 69.

<sup>33</sup> Frieder Wolf and Dominic Heinz, *Schulpolitik. Neue Koordination und neue Unterschiede*. In: Achim Hildebrand and Frieder Wolf (eds.), *Die Politik der Bundesländer* (Wiesbaden: VS Springer: 2016, 2<sup>nd</sup> ed., in print).

<sup>34</sup> Statistische Ämter des Bundes und der Länder, *25 Jahre Deutsche Einheit*, p. 93.

<sup>35</sup> Calculations based on Wolf and Heinz, *Schulpolitik*, p. 12. The data for 1992 and 2001 indicate similar differences between high spenders and low spenders (calculated from Wolf, *Bildungsausgaben*, p. 143).

<sup>36</sup> Wolf, *Bildungsausgaben*, p. 140. However, revised data on spending for 2011 indicate a convergence process: the lowest proportion of spending on education (as a percentage of GDP) corresponds to 67 percent of the maximum (calculated from Wolf and Heinz, *Schulpolitik*, p. 12).

high of 8.7 per cent in Vermont to a minimum of 3.0 per cent in Connecticut<sup>37</sup>. Moreover, the policy diversity in German federalism is not too far removed from the differences in the education spending in the Swiss cantons. In 2014, the canton with the lowest level of spending, Obwalden, reached 47 per cent of the maximum level of spending per pupil that the canton of Basel-Stadt had achieved.<sup>38</sup> There is an even larger difference between the varying levels of education spending in the German Länder and the more homogenous level of education spending in the Austrian Länder.<sup>39</sup>

Altogether, a cross-national comparison of the data on education expenditure reveals a clear pattern: There is a considerable degree of diversity in German federalism, which is an argument in favour of the narrative of policy diversity.

## **V. Partisan and financial structural determinants of policy diversity and their limits**

To sum up what has been discussed so far, German federalism both before and after reunification cannot be understood without reference to the narrative of policy diversity. But the underlying background, sources and causes of this policy diversity have only partially been clarified, as have the limits to this diversity. There is still a considerable need for further research in this area, but one group of variables promises to contribute to robust explanations; these include the partisan composition of the government, together with the "partisan theory"<sup>40</sup> of public policy, and the impact of institutional constraints on fiscal policy in the Länder (Sections 5.1 and 5.2).<sup>41</sup>

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<sup>37</sup> Marius R. Busemeyer, *Die Bildungsausgaben der USA im internationalen Vergleich. Politische Geschichte, Debatten und Erklärungsansätze* (Wiesbaden: Deutscher Universitäts-Verlag, 2006), pp. 97-98, dataset from 2000.

<sup>38</sup> Source: <http://www.bfs.admin.ch/bfs/portal/de/index/themen/04/02/05.html> (Neuchatel: Bundesamt für Statistik, 2013), Download on 13.10.2015. Similar results can be found in R. Nikolai's analysis of Switzerland's education spending: Rita Nikolai, *Die Bildungsausgaben der Schweiz im intranationalen und internationalen Vergleich* (Berlin: dissertation.de, 2007), p. 270.

<sup>39</sup> Source: [WKO.at/Statistik/Bundesland/BMP\\_ABS\\_Einwohner.pdf](http://WKO.at/Statistik/Bundesland/BMP_ABS_Einwohner.pdf) Download on 13.10.2015. dataset from 2013.

<sup>40</sup> Douglas A. Hibbs, Jr. Political Parties and Macroeconomic Policy. *American Political Science Review* 71/4 (1977), pp. 1467-1487; Douglas A. Hibbs, Jr., Partisan theory after fifteen years. *European Journal of Political Economy* 8/3 (1995), pp. 361-373.

<sup>41</sup> The contributions to this volume make it clear that other factors also play a sizable role in determining policy in the Länder; these factors include the size of institutions and the politico-cultural context (Hildebrand/Wolf and Rowe/Turner, this volume), public opinion (Reus, this volume) and the effect of the European Union on the member states.

## 5.1 Partisan determinants of policy diversity in the Länder

One of the findings of both recent and less recent research on German federalism is that party politics at the federal level also makes a difference within the Länder. According to Schmidt (1980)<sup>42</sup>, whether a social democratic party or a Christian democratic party governed made a significant difference in the policies of the West German Länder. This study showed that this was especially true if a hegemonic party, one which had participated vigorously in government for a long period of time, took action within the context of a high level of economic development. Under these conditions, social democratic governments, to take one example, were successful in their pursuit of the political regulation of the capitalist economy and "politics against markets"<sup>43</sup> to a remarkable degree. Party effects were also attested in later analyses, such as articles in Hildebrandt and Wolf (2008)<sup>44</sup> on the systematic comparison of policies in the various Länder. It is also to be expected that major changes of government, such as the 2011 transition in Baden-Wuerttemberg from a CDU government to a green-red coalition government, would have significant effects, which was confirmed by subsequent changes in educational, environmental and participatory policies in a green-social democratic direction.<sup>45</sup> Studies on education spending after 1990 in the western and eastern German Länder also revealed significant party effects, albeit in a surprising direction: Education spending was higher under Christian democratic governments than under SPD-led governments<sup>46</sup>. Jutta Stern (2000), on the other hand, found varying spending practices, depending on education sector; in her dissertation, she showed that SPD-led governments made above-average investments in primary and secondary education, while Christian democratic governments were more generous when it came to funding tertiary education.<sup>47</sup> Studies on the structures of education policy for primary and secondary education also reveal distinct worlds of education policy according to political camp.<sup>48</sup> A new analysis of the structure of and changes in the

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<sup>42</sup> Manfred G. Schmidt: *CDU und SPD an der Regierung. Ein Vergleich ihrer Politik in den Ländern* (Frankfurt-New York: Campus Verlag 1980).

<sup>43</sup> Gösta Esping-Andersen, *Politics against markets* (Princeton: Princeton University Press, 1985).

<sup>44</sup> Hildebrandt and Wolf (eds.), *Die Politik der Bundesländer*.

<sup>45</sup> Uwe Wagschal, Ulrich Eith, Michael Wehner (eds.), *Der historische Machtwechsel: Grün-Rot in Baden-Württemberg* (Baden-Baden: Nomos, 2013).

<sup>46</sup> Wolf, *Bildungsausgaben*, Aline Schniewind, Markus Freitag and Adrian Vatter, Die Staatstätigkeit großer Koalitionen. Eine Analyse der Bildungs- und Sicherheitsausgaben im Vergleich der Bundesländer, in: Markus Freitag and Adrian Vatter (eds.), *Vergleichende subnationale Analysen für Deutschland. Institutionen, Staatstätigkeiten und politische Kulturen* (Münster: LIT, 2010), pp. 179-202.

<sup>47</sup> Jutta Stern, *Programme versus Pragmatik. Parteien und ihre Programme als Einfluss- und Gestaltungsgröße auf bildungspolitische Entscheidungsprozesse* (Frankfurt a.M.: Lang, 2000).

<sup>48</sup> Rita Nikolai and Kerstin Rothe, Konvergenz in der Schulstruktur? Programmatik von CDU und SPD im Vergleich. *Zeitschrift für Politikwissenschaft* 23/4 (2013), pp. 545-572.

education systems in the German Länder going back to 1949 has brought to light similar findings.<sup>49</sup>

Party differences, whether in their party programmes or the content of their policies, also shaped the policies for the advancement of women in the western German Länder before 1990, as Anke Schuster's comparison of the Länder makes clear.<sup>50</sup> Schuster's analysis of gender equality policies in the education system, in labour market policy, in the advancement of women, in childcare and child education, in family policy, in the institutionalization of policy on women's issues and in women's participation in political leadership also served to support the party differences theory. Accordingly, SPD-led governments favoured policies with the goal of integrating women into the workplace and thus preferred an "emancipatory gender politics" that was oriented along a classical left–right axis. The gender policy of the CDU and CSU-led governments was more traditional. On the one hand, their policies regarding the advancement of women also kept open the option for women to have their work in the home, for their families, recognised and supported. On the other hand, they promoted the employment of women, particularly in the public service sector and by encouraging the expansion of part-time work in the market economy.

Environmental policy in the Länder is also characterised by partisan effects, as Bertram Seeger's comparison of the western and eastern German Länder shows. Red–green coalitions are distinguished by their ecocentric environmental political objectives, while conservative–liberal coalitions set store by business-friendly environmental policies in their party programme. Admittedly, the differences in the party programmes were only implemented to a moderate extent because the environmental situation and the need for environmental protection ultimately proved to be stronger determinants<sup>51</sup>.

Partisan effects also come into play in the fiscal policy of the Länder, as established by both older research<sup>52</sup> and newer analyses.<sup>53</sup> Other party effects include the significant correlation between the debt level and the political complexion of the Länder governments: The more actively the SPD has been involved in the government over a long period of time (as measured by the proportion of cabinet seats held by the party from the founding of the Land to the end of 2006), the higher the public debt per capita of the Länder. The federal city states of Berlin and Bremen, which have been governed predominantly by the SPD and have high debt levels, are

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<sup>49</sup> Marcel Helbig and Rita Nikolai, *Die Unvergleichbaren. Der Wandel der Schulsysteme in den deutschen Bundesländern seit 1949* (Bad Heilbrunn: Klinkhardt, 2015).

<sup>50</sup> Anke Schuster, *Frauenpolitik zwischen parteipolitischer Programmatik und Wirklichkeit: Ein Bundes-Länder-Vergleich* (Sinsheim: Prouniversitate Verlag, 1997).

<sup>51</sup> Bertram Seeger, *Umweltpolitik in den 16 Ländern: Wahlprogramme und Regierungshandeln. Ein Bundes-Länder-Vergleich* (Universität Heidelberg: Dissertation, 2003).

<sup>52</sup> Schmidt, *CDU und SPD an der Regierung*.

<sup>53</sup> Wagschal, Wintermann, Thieß, *Konsolidierungsstrategien*.

at one extreme, and Bavaria, Baden-Wuerttemberg and Saxony, which have been dominated by the CDU or CSU and have lower debt levels, are at the other extreme.<sup>54</sup>

Moreover, the willingness and ability of the Länder to "streamline" public administration since the 1990s is also characteristic of party effects. According to Götz, Grotz and Weber (2015), coalition governments formed by the CDU and FDP "are the most active reformers (...) In contrast, SPD-led governments are significantly less likely to enact reforms, with leftist coalitions (SPD-PDS) achieving the lowest score".<sup>55</sup> There are additional contextual effects: "The reform activity of leftist governments varied with contextual constraints, but tends to be quite sizable under high economic pressure or institutional opportunities. In contrast CDU-FDP reforms have apparently been motivated by ideological reasons and where thus implemented on a more persistent level irrespective of variations in the socioeconomic and institutional environment."<sup>56</sup>

Ed Turner, with his thorough analysis of education, family and labour market policy in the Länder, deserves the credit for finding party effects in these areas as well.<sup>57</sup> Unlike the findings in Schmidt (1980), it was not only under hegemonic governing parties that these party effects appeared, but rather already during the first legislative period of a new government. While the SPD-led governments strove to reach the goals of the social democratic "World of Welfare Capitalism"<sup>58</sup> in their educational, childcare and family policy, the CDU/CSU-led governments tended to favour policies which made it possible to choose between work in the family and paid work, and also an educational system that eschewed the comprehensive school and instead fostered the secondary school system with three types of schools.

The proof that political parties have an impact on public policy in the German Länder cannot come as a surprise, because Germany is a federal state as well as a "party state". In this context, competition is occurring between political parties which share some important characteristics regarding their domestic and foreign policy, but which also exhibit important differences in their party programmes and in their policy positions.<sup>59</sup> We can illustrate these differences by plotting them on a graph defined by the left-right axis (defined by the division of labour between the state and the market, extending from a state-centred to a market-centred approach) and having

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<sup>54</sup> Wagschal, Wintermann, Thieß, *Konsolidierungsstrategien*, p. 39.

<sup>55</sup> Alexander Götz, Florian Grotz and Till Weber, Party Government and Administrative Reform: Evidence From the German Länder. *Administration & Society* I-34, Online First, August 5, 2015, p., 2014), p. 24

<sup>56</sup> Götz, Grotz & Weber, *Administrative Reform*, p. 25.

<sup>57</sup> Turner, *Political Parties*, 2011.

<sup>58</sup> Gösta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (London: Polity Press, 1990).

<sup>59</sup> Benoit, Kenneth/Laver, Michael, *Party Policy in Modern Democracies* (London–New York: Routledge, 2006); Matthias Bianchi, Steffen Bender, Karina Hohl, Andreas Jüschke, Jan Schoofs, Susanne Steitz and Jan Treibel, *Der Duisburger-Wahl-Index (DWI) zur Bundestagswahl 2013. Policy-Positionen von CDU/CSU, SPD, Grünen, FDP, Linke und Piraten zur Bundestagswahl 2013 im Vergleich* (Duisburg: NRW School of Governance, 2013).

a y-axis whose values range from conservative to emancipatory. On this graph, the Union parties would be found midway along the left–right axis and closer to the conservative end of the y-axis. The SPD, though, would be plotted left of centre and would have a moderately emancipatory position along the y-axis. The Left Party would be in a similar position, but farther to the left of the SPD. The Greens, on the other hand, are characterised by a leftist orientation and emancipatory values, and the FDP by a market-oriented position along the state-market axis and a liberal position along the y-axis.

The different party positions are likely to become most evident in regional politics if a particular party assumes a dominant or hegemonic position, as measured by its participation in the government. For the Union parties, this is the most likely scenario in Bavaria and Saxony, and until 2011, it also applied to Baden-Wuerttemberg. The SPD-dominated Länder include the two city states of Bremen and Hamburg and the non-city state of Brandenburg.

## **5.2 Limits to policy diversity: pro-welfare state parties, the division of powers between state and federal governments, and institutional constraints on fiscal policy in the Länder**

Policy in the German Länder, both before and after reunification, has been characterised by party effects. However, the theory that parties make a difference must have several constraints placed on it. One constraint arises from the fact that the policy differences between the CDU-, CSU- and SPD-led governments are mostly first- or second-order differences, while third-order differences are rather rare.<sup>60</sup> The main cause of the mostly moderate policy differences is the fact that the two largest parties in Germany today, the CDU/CSU and the SPD, are pro-welfare state parties. Thus, the two parties have much in common in their social policy, a policy area of paramount importance and significant financial consequence, particularly in their support for the maintenance and, if necessary, expansion of a strong, financially expansive welfare state. This reduces the importance of the policy differences between the SPD- and CDU/CSU-led governments, other things being equal.

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<sup>60</sup> The differentiation of policy differences into first-, second- or third-order differences is analogous to Peter Hall's differentiation of reforms into first-, second- or third-order reforms (Peter Hall, *Policy Paradigms, Social Learning, and the State. The Case of Economic Policymaking in Britain*, *Comparative Politics* 25/2 (1993), 275-296.) First-order policy differences are the result of incremental adjustments to existing policy instruments in response to changes in the environment or the inner world of politics. Second-order differences arise from the types of policy instruments and their use. Third-order policy differences encompass both the differences in the policy instruments and the differences in the underlying philosophies of taxation, such as the differences between Keynesian and monetarist economic policy or the differences between an educational policy that is based on a school system of comprehensive schools instead of a system divided into three types of secondary schools.

Additional institutional factors also tend to reduce the scope for action available to the governments of the Länder. Two things are important here: the division of powers between the federal government and the state governments, and the institutional constraints on fiscal policy in the Länder.

It is common knowledge that the division of powers between the state and federal governments, as well as between the European Union and Germany, leaves the Länder with but little scope for autonomous action. The most important areas for action are found in education policy, in internal security and, since the 2006 reform of federalism, in the regulation of the salaries and social benefits of civil servants and judges of the Länder. The Länder are only one of many coregents in all other policy areas, provided that they do not fall under the exclusive legislative powers of the federal government or the European Union. There is no question that these divisions of power drastically reduce the scope of the Länder to autonomously design their own policies.

Moreover, the institutional constraints on fiscal policy under which the German Länder must govern also act as a barrier. The following two points are particularly important. First, the extensive horizontal and vertical distribution flows within the Federal Republic of Germany result in major redistribution from the west to the east and generally from the wealthy states to the poor Länder. There is such a high degree of redistribution that the financially weaker Länder end up with a similar level of financial resources as the economically and financially stronger Länder. The mechanisms of distribution and redistribution in German federalism thus increase the scope of the originally weaker Länder to shape their own policies but decrease it for the wealthy Länder, thereby also reducing the policy differences between the wealthy and poor Länder to a considerable extent.

A second institutional constraint on fiscal policy also serves to reduce the scope for policy diversity in the Länder. These governments must act within the framework of narrowly circumscribed fiscal policy. Their scope for action is rather limited because the Länder finance their policies primarily from taxes. The most lucrative taxes, though, are part of the revenue-sharing arrangements between the states and the federal government; legislatively, these arrangements can only be modified with approval of both the Bundestag and the Bundesrat. While it is conceivable that state revenues could be increased by raising taxes, legislatively, this is difficult and is therefore seldom pursued; tax increases require either the passage of a consent bill or a revision of the constitution. In both cases, the obstacles to finding consensus are particularly large because higher taxation is very unpopular with voters.

A further constraint on fiscal policy in the Länder is found in the limited volume of tax-based expenditure. The share of government activity financed with taxes is

currently approximately 23 per cent in Germany<sup>61</sup>, both for the federal and state governments, which is small even when compared to other countries<sup>62</sup>, and which was not much larger in the past. This has been largely due to the fact that a major proportion of government activity in Germany is financed from the social security contributions paid in by workers and their employers. These contributions equal roughly two-thirds of the total social security budget in Germany, which accounts for about 30 per cent of the gross domestic product (GDP). The leeway for policy-making in policy areas financed from taxes is therefore narrowly constrained in Germany.

In conclusion, it can be said that the institutional conditions of fiscal policy on the part of the Länder governments places rather narrow limits on the Länder as a whole. Moreover, extensive redistribution to the benefit of the financially weaker Länder greatly reduces the possibility of large policy differences between the Länder when it comes to costly undertakings. Both developments act to reduce the potential range of differences in policy in the Länder.

## 6. Conclusion

As shown by the articles in this volume and other comparative studies of the Länder, the narrative of policy diversity is extremely helpful and provides an indispensable corrective to a perspective which has primarily emphasized the uniformity of living conditions in Germany. But as is the case in all instances of social change, there is one lesson from comparative research that should not be ignored: Major changes in political, social or economic structures are usually accompanied by a high degree of continuity. This also applies to the analysis of policy diversity across the German Länder. While it is incontrovertible that there is a great deal of policy diversity, there are also considerable similarities between the competing parties as well as a significant degree of continuity in their policies, not least due to the competition between two welfare state parties and also as a consequence of the institutional constraints on fiscal policy in the Länder.

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<sup>61</sup> Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung: *Mehr Vertrauen in Marktkräfte. Jahresgutachten 14/15* (Wiesbaden: Statistisches Bundesamt, 2014), p. 29.

<sup>62</sup> Frieder Wolf, *Bildungsfinanzierung in Deutschland* (Wiesbaden: VS, 2008), p. 41.