

Where Is the Power?



POLITICAL POWER IN THE FEDERAL REPUBLIC OF GERMANY IS FRAGMENTED and dispersed among a wide variety of institutions and elites. There is no single locus of power. As we discussed in the previous chapter, the Federal Republic is Europe's most decentralized large country.

Policymaking Institutions

At the national level, Germany has three major policymaking structures: (1) the federal parliament (Bundestag), the lower house of parliament; (2) the Federal Council (Bundesrat), which represents the states and is the German equivalent of an upper house; and (3) the federal government, or executive (the chancellor and cabinet). In addition, the sixteen states that constitute the Federal Republic are important in decision making, especially in education and internal security. The states also have a direct influence on national policy-making through the Bundesrat, which is composed of delegates from each of the states.

The Federal Constitutional Court, which has the power of judicial review, is an important actor as well in the policy process. At the national level the federal president, indirectly elected but with little independent responsibility for policy, serves as the ceremonial head of state and is expected to be a unifying or integrating figure, above the partisan political struggle.¹

The Federal Republic, like other members of the European Union, has transferred some policymaking power and responsibility to European-wide institutions. Monetary policy is now largely the province of the European Central Bank (ECB) in Frankfurt; and the European Commission, the Council of Ministers, and the European Parliament (which divides its sessions between Strasbourg, France, and Brussels) make most agricultural policy. In recent years, the European Court of Justice (Luxembourg) has also issued rulings that have been accepted as binding on German courts. National political institutions, however, still hold veto power over many of the decisions of EU bodies.

Formal power is vested in these institutions, but their integration and effectiveness are also very much functions of the party system that has emerged in the postwar period and the well-organized, concentrated system of interest groups (see Chapter 3.3).

The Federal Parliament (Bundestag)

Constitutionally, the center of the policymaking process is the Bundestag, a legislative assembly currently consisting of 631 deputies who are elected at least every four years. They are the only political officials in the national constitutional structure directly elected by the people. The constitution assigns to the Bundestag the primary responsibility for (1) legislation, (2) the election and control of the government, (3) the supervision of the bureaucracy and military, and (4) the selection of judges to the Federal Constitutional Court.

Parliamentary government has a weak tradition and a poor record of performance in German political history. During the empire, or Bismarckian Second Reich (1871–1918), effective control over important areas such as defense and foreign affairs and the supervision of the civil service was in the hands of a chancellor appointed by the monarch. In addition, because Prussians controlled the upper house, important legislative proposals of the parliament could be blocked at the will of the Prussian ruling elite. Parliament had the influential power of the purse, but it could not initiate any major policy programs. Its position toward the executive, bureaucracy, and military was therefore defensive and reactive. While parliament “debated,” the government “acted.”

Under the constitution of the Weimar Republic (1919–1933), the powers of parliament were expanded. The chancellor and his cabinet were directly responsible to it and could be removed by a vote of no confidence. But the framers of the constitution made a major error when they also provided for a strong, directly elected president independent of parliament, who could in “emergency situations” (i.e., when the government lost its parliamentary majority) rule by decree. The Weimar parliament, especially in its later years, was also fragmented into many different, ideologically oriented parties, which made effective lawmaking difficult. The institution became immobile—there were frequent majorities against governments but rarely majorities in favor of new governments. In the last elections of the republic, most voters elected parties (Nazi, Nationalist, and Communist) that were in one way or another committed to abolishing the institution. The parliament then became identified in the public mind as weak and ineffective. By approving the Nazi Enabling Act in 1933, it ceased to function as a legislative institution.

In the postwar parliament, this pattern of legislative immobility has not been repeated. Although important initiatives remain the province of the restructured executive, the parliament’s status as an instrument of supervision and control has grown.

The Bundestag, similar to other parliaments, has responsibility for electing and controlling the government. After each national election, a new parliament is convened, and its first order of business is the election of the federal chancellor.² The control function, however, is much more complex and occupies a larger share of the chamber’s time. Through Question Time, a procedure adopted from English parliamentary practice, a member may make direct inquiries of the government either orally or in writing about a particular problem. A further control procedure is the parliament’s right to investigate government activities and to demand the appearance of any cabinet or state official.

The main organizational unit of the Bundestag is the *Fraktion*, the parliamentary caucus of each political party. Committee assignments, debating time, and even office space and clerical assistance are allocated to the *Fraktionen* and not directly to individual deputies. The leadership of these parliamentary parties effectively controls the work of the Bundestag. Freshman deputies soon discover that a successful and influential parliamentary career is largely dependent on the support of the leadership of their parliamentary *Fraktionen*.

The committee system of the Bundestag is more important to lawmaking than those in Great Britain and France yet less powerful than the committees in the US Congress.

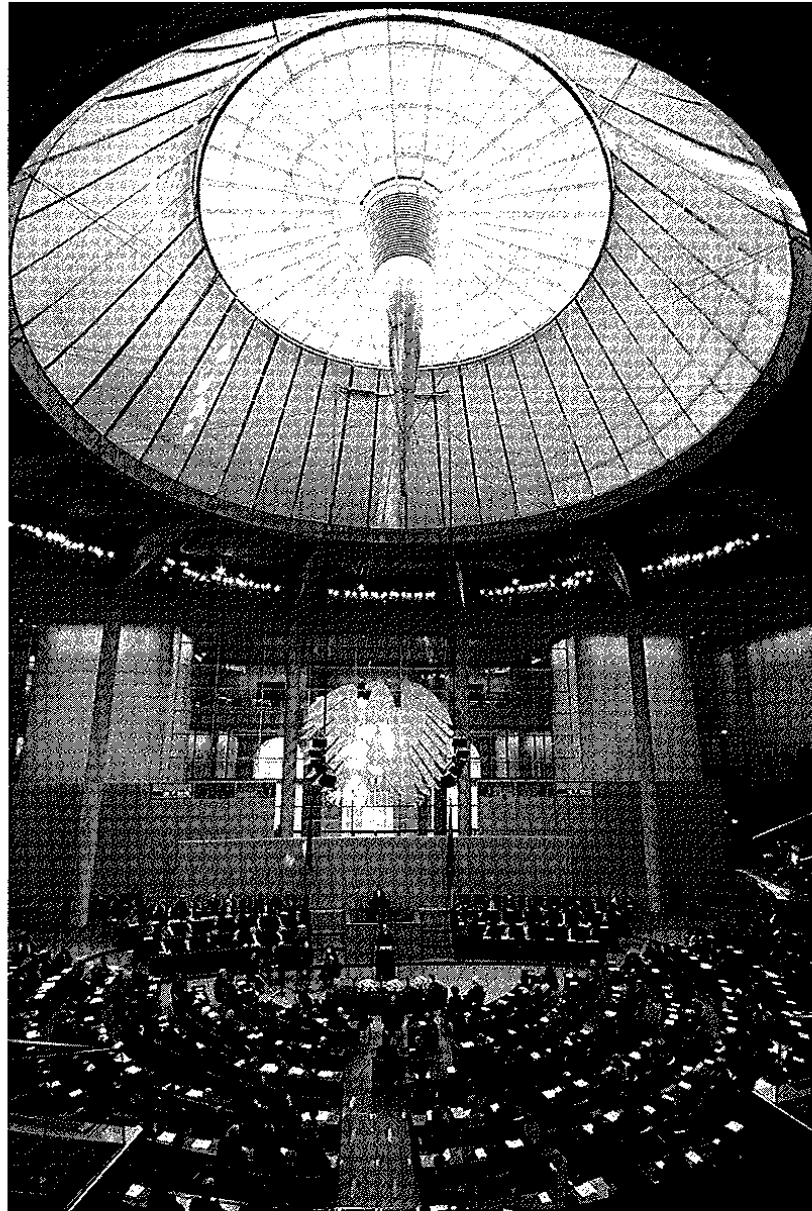
Plenary chamber of the remodeled Reichstag building. Visitors can walk up and around the transparent dome and look down on their representatives at work. The redesigned parliament was the work of British architect Sir Norman Foster. It has become Germany's second most popular tourist attraction, behind "Cinderella's Castle" in Bavaria.

Source: Bernd Settnik/EPA/Landov.

The twenty-three standing committees, like their US counterparts, mirror the partisan composition of the Bundestag, but committee chairmanships are allotted proportionately, according to party strength. Therefore, the minority opposition party or parties chair several of the standing committees. These committees have become more significant in recent years because of the introduction of US-style hearings and the greater use of committee meetings as forums by the opposition. But German committees, like those in other parliamentary systems, are still reluctant to

engage in the full-blown criticism of the executive associated with presidential systems. This reluctance reflects the generally higher level of party discipline in the German system and the government's dependence on a parliamentary majority for continuance. Committee criticism, if comprehensive enough, could be interpreted as an attempt to bring down the chancellor. This is a major problem with strong committee systems in parliamentary governments.

Because many committee members specialize in various subject areas, the day-to-day committee sessions tend to concentrate on the details of proposed legislation and rarely



produce any major news. As for reporting out bills, committees cannot pigeonhole them—all must be reported out. About four of every five bills submitted by the government are reported out with a favorable recommendation, albeit with a variety of suggested revisions and amendments. Outright rejections are rare. When the government discovers a bill is in trouble, the bill is usually withdrawn “for further study” before a formal committee vote.

The Bundesrat, or Federal Council, represents the interests of the states in the national policymaking process. It is composed of sixty-nine members drawn from the sixteen state governments. Each state, depending on the size of its population, is entitled

Germany at a Glance

Type of Government

Federal republic

Capital

Berlin

Administrative Divisions

Thirteen states and three free states*: Baden-Württemberg, Bavaria*, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg–West Pomerania, North Rhine–Westphalia, Rhineland–Palatinate, Saarland, Saxony*, Saxony–Anhalt, Schleswig–Holstein, Thuringia*

Independence

January 18, 1871 (German Empire unification). Divided into four zones of occupation (British, U.S., Soviet Union, and later French) in 1945, after World War II. Federal Republic of Germany (FRG or West Germany) proclaimed on May 23, 1949, and included the former British, U.S., and French zones; German Democratic Republic (GDR or East Germany) proclaimed on October 7, 1949, and included the former Soviet zone. West Germany and East Germany were unified on October 3, 1990; all four powers formally relinquished rights on March 15, 1991.

Constitution

Adopted on May 23, 1949, and known as Basic Law; became constitution of the united German people on October 3, 1990

Legal System

Civil law system with indigenous concepts; judicial review of legislative acts undertaken in the Federal Constitutional Court. Has not accepted compulsory International Court of Justice jurisdiction

Suffrage

Eighteen years of age; universal

Executive Branch

Chief of state: president

Head of government: chancellor

Cabinet: cabinet or Bundesminister (Federal Ministers) appointed by the president on the recommendation of the chancellor

Elections: president elected for a five-year term by a Federal Assembly including all members of the Bundestag and an equal number of delegates elected by the state parliaments; chancellor elected by an absolute majority of the Bundestag for a four-year term

Legislative Branch

Bicameral parliament: Federal Parliament and Federal Council. Federal Parliament (Bundestag): 622 seats. Members elected by popular vote under a system combining direct and proportional representation; a party must win 5 percent of the national vote or three direct mandates to gain representation. Term: four years. Federal Council (Bundesrat): sixty-nine votes. State governments are directly represented by votes; each has three to six votes, depending on population, and is required to vote as a bloc.

Note: There are no elections for the Bundesrat—composition is determined by the composition of the state-level governments. Composition of the Bundesrat has the potential to change any time one of the sixteen states holds an election.

Judicial Branch

Federal Constitutional Court (Bundesverfassungsgericht): half the judges elected by the Bundestag and half by the Bundesrat

Major Political Parties

Greens; Christian Democratic Union (CDU); Christian Social Union (CSU); Free Democratic Party (FDP); Left Party; Social Democratic Party (SPD)

Source: U.S. Central Intelligence Agency, *The World Factbook*: 2010, <https://www.cia.gov/library/publications/the-world-factbook/geos/gm.html>.

Source: The Federal Council (Bundesrat)

to from three to six members. Most Bundesrat sessions are attended by delegates from the state governments and not the actual formal members, who are state-level cabinet ministers.

The framers of the Basic Law envisioned the Bundesrat as an administrative watchdog over the political process in the Bundestag. It was not intended to become a politicized institution but rather was to “protect the country from excessive partisanship.”³ Indeed, the Bundesrat rarely initiates legislative proposals. Because the states implement most national legislation, the Bundesrat has tended to examine proposed programs from the standpoint of how they can be best administered at the state level.

Since 1969, when, alas, the Bundesrat lost its political innocence, Germany has frequently had a form of “divided government”—that is, the party in power in the Bundestag has not had a majority in the Bundesrat. When the chambers are not controlled by the same party or coalition, the party or coalition controlling the Bundesrat can cause many problems for the government. From 1969 to 1982 the Christian Democrats were the majority party in the Bundesrat. During this period, the frequency of Bundesrat

objections to government legislation increased to the point that the leaders of the government accused it of becoming an “extended arm” of the Bundestag opposition. It was even suggested that the Christian Democratic Union (CDU)/Christian Social Union (CSU) was seeking to obstruct the government’s electoral majority by turning its majority in the Bundesrat into a politicized countergovernment. The Bundesrat blocked or forced compromises on the government on issues such as divorce law reform, speed limits on autobahns, higher education reform, tax policy, and a controversial “radicals” in public employment law.

In 1991 the Social Democratic Party (SPD), now the opposition party, gained control of the Bundesrat after a series of victories in state elections. The party promptly used its majority to force the government to change some provisions of a new tax law designed to finance the costs of unification. The 1993 Solidarity Pact, which restructured the financing of unification, was passed only after SPD objections were met. In 1997 the SPD Bundesrat majority blocked a major tax reform proposal of the Kohl government. This SPD veto became an issue in the 1998 federal election.

In 1999, less than a year after their victory in Bundestag elections, the governing SPD–Green coalition lost its majority in the Bundesrat, and Germany once again had divided government. Before passage of landmark citizenship legislation in 1999, the government, headed by Gerhard Schröder, had to make concessions to the Bundesrat or the legislation would have failed. In 2000 the government’s tax reform program passed only after Schröder made a host of last-minute “concessions”—that is, promises of extra money to several states. The Schröder government’s Agenda 2010 reform program was passed in 2004 only with the consent of the Christian Democratic majority in the Bundesrat. Less than a year after its victory in the 2009 national election the Merkel government lost its majority in the Bundesrat and Germany once again had divided government.

To become a genuine second chamber, however, the Bundesrat’s delegations, still controlled by state leaders, must be willing to accept direction from the opposition party’s national leadership in the lower house. So far, support for the opposition has emerged on only some issues. Generally, the more remote an issue supported by the opposition is from the concerns of state leaders, the more likely they are to go along with the national leadership in the lower house and try to block the bill in the Bundesrat. Conversely, state leaders can quickly forget their party loyalty if the issue directly affects their region.

A Bundesrat veto of a proposed bill by a majority of two-thirds or more can be overridden in the Bundestag only by a two-thirds majority of the members present and voting. Therefore, if a minority party in the Bundestag controls forty-six or more delegates in the Bundesrat, it can, because a two-thirds majority in the Bundestag is very rare, bring the legislative process to a halt, and force new elections. Such a development, however, would run counter to the intentions of the framers of the Basic Law, who did not envision the Bundesrat as a party-political body. Yet because the respective state governments determine the composition of the Bundesrat, political and electoral developments at the state level can have direct national political consequences. State elections have indeed become Germany’s version of “midterm” elections at which national issues and personalities dominate the campaign.

This national role for state elections was demonstrated dramatically in 2005. After elections in Schleswig-Holstein and North Rhine-Westphalia, the ruling SPD–Green coalition

no longer had any corresponding support in the states—that is, none of the sixteen states had an SPD–Green government. The opposition CDU/CSU and Free Democratic Party (FDP) had a lopsided majority in the Bundesrat and probably could have vetoed any legislative proposal of the government. In response to this unprecedented case of “divided government,” Chancellor Schröder announced he would ask for new elections before the end of the normal legislative period. A few months later, Germany had a new national government headed by a new chancellor, Angela Merkel.

The Chancellor and the Cabinet

The chief executive of the Federal Republic is the chancellor. The powers of this office place it somewhere between those of a strong president in the United States and the prime minister in the British parliamentary system. Constitutionally, the German chancellor is less powerful than a US president, yet a chancellor has more authority and is more difficult to remove than a prime minister in the British model.

The Weimar constitution provided for a dual executive: a directly elected president and a chancellor chosen by the parliament. The president, who was head of state and commander in chief of the armed forces, could in an emergency dismiss the chancellor and his cabinet and rule by decree. The president during the final years of the Weimar Republic, former field marshal Paul von Hindenburg, misused especially this latter power and helped to undermine public support for democratic institutions. During 1932, the last year before the Nazi seizure of power, the parliament passed only five laws, but the president issued sixty-six decrees. The framers of the Basic Law sought to avoid a repetition of this problem by concentrating executive authority in the chancellor.

The power of the chancellor in the Federal Republic derives largely from the following sources: the constitution, the party system, and the precedents established by the first chancellor, Konrad Adenauer. With the chronic instability of Weimar governments in mind, the framers of the postwar constitution made it difficult to remove an incumbent government before the end of the normal four-year legislative term. In contrast to most parliamentary systems, a government cannot be brought down by a majority of opposition votes. This “negative majority” must also represent a “positive majority” for a new chancellor. In the absence of a positive majority, the incumbent government remains in office. If a new majority cannot be mobilized within twenty-one days, the incumbent chancellor can ask the federal president to request the dissolution of parliament and new elections. This positive or constructive vote of no confidence increases the power of the executive at the expense of the parliament.

Under the constitution, the chancellor is also responsible for determining the main guidelines of the government’s policies. This responsibility places chancellors above their ministers, although the ministers are, in turn, responsible for policy within their specific areas. In selecting cabinet members, chancellors must consider the demands of their coalition partners as well as the various factions and wings of their own party. The qualifications and expertise of potential members also play a role in selection, but they are not as important as political considerations. For example, in 2005 in the Merkel government the first minister of agriculture really wanted to be the minister of health, but that position was already claimed by the other party in the coalition. The new minister of agriculture readily admitted that he had little expertise or interest in agricultural questions. The 2009–2013

Merkel cabinet had sixteen members—eleven from the CDU/CSU and five from the Free Democrats. Once in office, an individual cabinet member can be removed only by the chancellor. If the parliament wants a particular cabinet member dismissed, it must vote no confidence in the whole government, including the chancellor.

The constructive vote of no confidence has been tried only twice—in April 1972 when the CDU/CSU opposition attempted (unsuccessfully) to bring down the Brandt government and in October 1982 when Helmut Kohl replaced Helmut Schmidt as chancellor. The rare use of this procedure has reflected the strength of the postwar party system. Chancellors in the Federal Republic, unlike their Weimar predecessors, can usually count on the firm support of a majority of the parliament throughout the four-year session. Because there are fewer but larger parties in the Federal Republic than in the Weimar Republic, the political ties between government and parliament are much stronger. The concentration of electoral support in two large, disciplined parties and two or three smaller parties has assured most chancellors of firm parliamentary majorities.

Article 68 of the constitution also allows the chancellor to ask the parliament for a vote of confidence. Unlike the “constructive vote of no confidence” (Article 67) that can be initiated by the opposition in order to replace the chancellor with its own candidate, this vote enables chancellors to strengthen their position by stabilizing the governing majority—that is, compelling dissidents in the chancellor’s party and perhaps the coalition partners to support the government or risk new elections. The vote can, however, also be used to trigger new elections. If the chancellor loses the confidence vote, whether deliberately or not, he or she can resign, ask the president to dissolve the parliament, and then remain in office as the head of a minority government until the end of the legislative term or be removed through a constructive vote of no confidence. A few months after the successful use of the constructive no-confidence vote in 1982, Chancellor Kohl, in an effort to legitimate his government and quell criticism of a power grab, deliberately lost a confidence vote. With the help of the CDU federal president, he was then able to secure the dissolution of parliament, and new elections were held in March 1983. Chancellor Gerhard Schröder invoked the same procedure in 2005, but he, unlike Kohl, wanted new elections. Schröder was faced with a large opposition majority in the Bundesrat, and his own party seemed unwilling to support further cuts in social programs.

“Chancellor Democracy”

The first chancellor of the Federal Republic, Konrad Adenauer, set the standards by which future chancellors would be evaluated. His performance in the office and the substance he gave to its constitutional provisions influenced all of his successors. Indeed, Adenauer’s presidential-like control over the cabinet, bureaucracy, and even parliament soon became known as “chancellor democracy,” a parliamentary system with a strong, quasi-presidential executive. Since Adenauer’s departure, the Federal Republic has had sixteen governments headed by only seven chancellors, a record of stability that compares well with that of other European democracies.

From Adenauer to Kiesinger

Konrad Adenauer assumed the office of chancellor in 1949 at the remarkable age of seventy-three, and he remained in power until 1963. Before the Third Reich, he had been lord

mayor of Cologne, but he held no national political office during the Weimar Republic. Shortly after the Nazis seized power in 1933, he was removed and allowed to retire. Although he had some contact with anti-Nazi resistance groups and was arrested, imprisoned, and nearly executed in 1944, he essentially sat out the Third Reich.

From the beginning, Adenauer's chancellorship was characterized by a wide variety of domestic and foreign political successes: the postwar "economic miracle," the integration of 10 million refugees from the eastern territories, membership in the European Community, and the alliance with the United States.

He used to the fullest extent the powers inherent in the chancellor's office. In firm control of his party, he was out front on all major foreign and domestic policies and usually presented decisions to his cabinet and the parliament as accomplished facts. Under Adenauer, there was no extensive consultation within either the cabinet or the parliament before important decisions were made. The chancellor led: he initiated policy proposals, made the decisions, and then submitted them to the cabinet and parliament essentially for ratification. He did not always succeed in this approach, but on most issues, such as rearmament and membership in the North Atlantic Treaty Organization (NATO) and the Common Market, his views prevailed. During his tenure, the office of the chancellor clearly became the center of the policymaking process. Since then, all his successors have benefited from the power Adenauer gave to the office.

In governing, Chancellor Adenauer was pessimistic about the capacities of the average German to measure up to the demands of democratic citizenship. Through his authoritarian-paternalistic style, he encouraged Germans to go about rebuilding their private lives and leave politics to the "old man," as he was often termed. Most citizens probably agreed with this approach, but it meant that his successors would encounter a host of unfinished business, particularly in the area of citizen involvement in public affairs. In retrospect, Adenauer's major contribution was to demonstrate to many Germans, who were indifferent if not ignorant of democratic norms and values, that a liberal republic could be efficient and successful in Germany.

Adenauer's first two CDU/CSU successors, Ludwig Erhard (1963–1966) and Kurt Georg Kiesinger (1966–1969), assumed the office at a time when support for the CDU/CSU was on the decline. Erhard, a successful economics minister, never had control of his party. As long as conditions remained favorable, he could attract voters and was tolerated by the Christian Democrats. But when the Federal Republic suffered its first economic recession in 1966 and 1967, he was promptly dropped, with his own party taking the lead in urging his departure. Kiesinger then became chancellor of the "grand coalition" government with the SPD, a novel arrangement that called for a leader adept at compromise and mediation with a record of good relations with the Social Democrats. Because no one in Bonn had met these requirements, the CDU/CSU had to look farther afield, recruiting Kiesinger from Stuttgart, where he had been chief executive of Baden-Württemberg. When the CDU/CSU failed to gain enough votes in the 1969 election to form another government, Kiesinger passed from the national scene.

The First Social Democratic Chancellors: Brandt and Schmidt

The first two Social Democratic chancellors, Willy Brandt (1969–1974) and Helmut Schmidt (1974–1982), offer a contrast in personality, political style, and policy emphasis. Willy Brandt's two governments were characterized by the introduction of a new foreign

policy of reconciliation with Germany's eastern neighbors and the acceptance of the permanence of postwar boundaries in eastern Europe. This Ostpolitik (eastern policy) involved negotiating and ratifying treaties with the Soviet Union (1970), Poland (1970), East Germany (1972), and Czechoslovakia (1973). This policy put West Germany at the forefront of the worldwide trend toward détente and made Brandt one of the world's most respected political leaders. For this policy of reconciliation, he was awarded the Nobel Peace Prize in 1971, only the fourth German ever so honored. For many, he personified the "other Germany"—a man of peace and goodwill accepting moral responsibility for the acts committed in Germany's name by the Nazis. As the first chancellor with a record of uncompromising opposition to Nazism, he contributed greatly to the republic's image abroad as a society that had finally overcome its totalitarian past.

The fifth chancellor, Helmut Schmidt, assumed the office with more successful national-level experience than any of his four predecessors. An academically trained economist, he had been the leader of the SPD parliamentary party (1966–1969), defense minister (1969–1972), and finance minister (1972–1974). In these posts, Schmidt acquired the reputation as a very capable political decision maker. But he also was criticized for what some regarded as an overbearing, arrogant, "cold" personal style.

Schmidt became chancellor in the midst of the worldwide economic recession that followed the 1973 Arab oil embargo and subsequent astronomical rise in oil prices. His expertise and experience in national and international economic affairs and his ability to take charge in crisis situations, such as a 1977 terrorist hijacking and commando raid, soon became apparent. Within two years, inflation was brought under control and unemployment was reduced, although unemployment would remain well above pre-1973 figures.

Unlike Brandt, Schmidt had little patience with the left wing of his party. He was a strong supporter of a mixed economy, and he maintained a close relationship with the Federal Republic's economic and industrial elite. Indeed, even many CDU voters saw him as more capable than their own party's candidates. Schmidt's policy successes, however, were not matched by his performance as the leader of the Social Democrats. He was unable to overcome and integrate the opposition of the SPD left to many of his policies, especially the 1979 NATO decision, which Schmidt initiated, to station a new generation of mid-range nuclear missiles in the Federal Republic should negotiations with the Soviet Union fail. He also overestimated the intensity of opposition within his own party and in the country as a whole to nuclear power as an energy source.

Germany was unable to avoid the worldwide recession that followed the second oil price shock in 1979. By 1981, unemployment had risen to 7.5 percent, up from less than 4 percent in 1979. The worsening economy coupled with increasing conflict within the Schmidt government over budget cuts for social programs took their toll, and in September 1982 Helmut Schmidt lost his parliamentary majority when the Free Democrats, the junior partner in the coalition with the SPD, left the government. Shortly thereafter, the leader of the CDU, Helmut Kohl, became the republic's sixth chancellor, heading a new coalition composed of the CDU and the Free Democrats.

Helmut Kohl and German Unity

Helmut Kohl (1982–1998) was the dominant figure in German politics for almost two decades. He first attracted national attention in 1973 when he assumed the leadership of

a divided and weakened CDU. He is credited with initiating a thorough modernization and revitalization of the party's organization. In 1976, as the chancellor candidate, he conducted a well-planned and well-executed campaign, which almost toppled the SPD-FDP government.

More than any of his predecessors, Kohl, as the first chancellor who did not experience the Third Reich as an adult, attempted to appeal to patriotic symbols and national pride. The evocation of national themes remains a very sensitive subject in the political culture. Terms such as *Vaterland* (fatherland) and nation and an emphasis on post-1945 German history as an object of pride were frequent themes in his speeches. While not denying Germany's responsibility for the Third Reich and World War II, Kohl, together with some conservative intellectuals, urged Germans in general and postwar generations in particular to develop a positive sense of German history.

The collapse of the East German communist regime in 1989–1990 and the desire of most East Germans for unity with West Germany provided Kohl with the greatest opportunity and challenge of his political career. Seizing the initiative in late November 1989, just weeks after the opening of the Berlin Wall, Kohl outlined a ten-point plan for unity within five years. But when faced with the continuing exodus of East Germans to the west, the government had to accelerate this timetable. Kohl's personal intervention in East Germany's first free election in March 1990 was a major factor in the victory of the "Alliance for Germany," a coalition of three center-right parties put together by Kohl only a month earlier. A few months after this vote, the two states completed a treaty that unified their currencies, economies, and social welfare systems. The opposition parties and some foreign governments, especially Britain and France, criticized Kohl's "rush to unity," but he continued to press for the complete unification of the two states, including all-German elections and the end of all four-power (France, Great Britain, the Soviet Union, and the United States) rights in Germany and Berlin, by the end of 1990. When his governing coalition dominated the December 1990 election, the first free vote in all of Germany since 1932, Kohl became Germany's "Unity Chancellor."

The breakneck pace of the unification process was prompted by both political and policy factors. Kohl was, in fact, more popular among East German voters than those in the west. His promises of rapid economic prosperity corresponded with East German desires to catch up with their cousins as soon as possible. The drive for unification, however, also reflected the fear that any delay could prompt millions of East Germans to stage a massive exodus to the west, resulting in the collapse of the East German state and an unbearable burden for the West German political, economic, and social system.

In 1994 Kohl became the first chancellor since Adenauer to win four straight elections. His government's majority in the parliament, however, fell from 134 seats to only 10. The slow pace of economic and social unification in the east, coupled with an economic recession and voter discontent in the west over the higher taxes needed to finance unification, took their toll on the chancellor's majority. In short, after profiting from the upside of unification in the heady days that followed the 1990 unification, Kohl experienced in the early 1990s the downside of this issue as Germans struggled with the day-to-day frustrations of putting their country back together.

The elder statesman among Europe's major political leaders, Kohl became in 1997 the longest-serving chancellor since the legendary Otto von Bismarck. Looking ahead to his

last major task—the successful completion of the Economic and Monetary Union (EMU), Kohl decided to run in 1998 for an unprecedented fifth term. But it was to be his last hurrah. After a record sixteen years in power, Kohl and his Christian Democrats were told by the voters that it was time to go. The government was soundly defeated by the Social Democrats and Greens led by Gerhard Schröder and Joschka Fischer. A weak economy, high unemployment, and continued discontent in the east with the slow pace of unification were major factors contributing to Kohl's defeat.

About a year after Kohl left office, his legacy as the unifier of Germany and a champion of European unity was tarnished when he was implicated in a major scandal involving the finances of the CDU. Kohl admitted that he had indeed kept secret bank accounts outside of regular party channels to reward favored CDU regional organizers and leaders. He vehemently denied, however, that the funds had come from illegal kickbacks. In the end, Kohl was not charged with any crime, and a few years later he was once again a revered elder statesman.

Gerhard Schröder: First Chancellor of the "Berlin Republic"

Gerhard Schröder, Germany's chancellor from 1998 to 2005, succeeded where five previous SPD candidates had failed. His 1998 victory marked the first time in German history that an entire incumbent government—that is, all parties in the coalition—was replaced. Schröder differed from his unsuccessful predecessors in his single-minded determination to win the election by changing his party's reputation for favoring big government tax and spend programs.

Schröder's childhood spanned the end of World War II, the Allied occupation, and the formative years of the Federal Republic. Born in Lower Saxony, Schröder left school early to work as an apprentice salesclerk. He later earned a law degree and joined the SPD shortly after the completion of his education. Schröder rose quickly in party ranks and was first elected to the Bundestag in 1980. In 1986 he was elected head of the Lower Saxony SPD and a member of the party's national executive.

The May 1990 election in Lower Saxony catapulted Schröder into the national political spotlight. The SPD defeated the incumbent CDU and joined with the Green Party in forming a coalition government with Schröder as minister-president. He utilized his executive status to develop a political profile that distinguished him from most traditional Social Democrats—above all, a reputation for toughness tempered by pragmatism and a savvy sense of public relations. Schröder's effectiveness in office helped the SPD to win a narrow majority in its own right in 1994 and then sweep to an even more convincing victory in 1998. Party leaders honored the latter triumph by choosing Schröder over his chief rival, Oskar Lafontaine, minister-president of Saarland, to oppose Chancellor Kohl in the fall national election.

Borrowing image and tactics from British prime minister Tony Blair, Schröder presented himself during the campaign as a centrist "modernizer" in a calculated effort to mobilize crucial swing voters while retaining the loyalty of the SPD's core supporters. Schröder shrewdly kept his options open about the choice of a potential coalition partner after the election, leaving it to political pundits to speculate whether the SPD might enter into a grand coalition with the Christian Democrats or form a "Red-Green" government with the Greens. In the end, Schröder opted for the Green Party.

The SPD–Green cabinet got off to a slow start during its first year in office, in part because of the inexperience of its members in holding national office but also because of the intense rivalry between Schröder and the more leftist Lafontaine, who had joined the cabinet as minister of finance. Lafontaine's abrupt resignation in March 1999 freed Schröder to concentrate executive power within the party in his own hands and to focus his energies as chancellor on a major tax reform in 2000.

Narrowly reelected in 2002, Schröder could not deliver on his pledge to reduce unemployment and stimulate economic growth. By early 2005 Germany had more than 1 million more unemployed than when Schröder took office in 2002. Although his personal popularity remained high, support for his party plummeted. The signature accomplishment of the Schröder chancellorship was Agenda 2010, the most comprehensive labor market and social welfare system reform in the Federal Republic's history. But neither the chancellor nor his party received much credit. When the economy recovered after 2005 and millions of new jobs were created, it was Merkel who was given most of the credit by the voters.

Angela Merkel: The Face of German Leadership in Europe

In November 2005 Angela Merkel became the Federal Republic's eighth chancellor and the first woman to lead Germany. She was also the first chancellor from the eastern region who joined the Federal Republic in 1990. Before 1990 Merkel had not participated in politics; rather, she had pursued a career as a physicist, a field relatively free of communist political influence. But the fall of the Berlin Wall changed her life, as it did those of many other East Germans. Merkel was appointed secretary general of the CDU in 1998, and her outsider status proved to be a major plus when the 1999 finance scandal threatened the party. In a newspaper op-ed article, she distanced the party from Kohl and called for a thorough reform of the organization.

Under Merkel's leadership (she became party chair in 2000); the CDU recovered from the scandal, and as the 2002 election approached it appeared that she could become the CDU/CSU's candidate for chancellor. But the minister-president of Bavaria and longtime leader of the CSU, Edmund Stoiber, also wanted to run, and Merkel, with no executive experience, was eventually persuaded to defer to Stoiber. It was a wise decision. Stoiber lost a close race, and Merkel, as a loyal supporter, found herself well positioned to be the next candidate.

When Schröder called for early elections in 2005, Merkel was named the CDU standard-bearer. Despite squandering a fifteen-point advantage during the campaign, the CDU/CSU received slightly more votes than Schröder's SPD. The CDU/CSU rallied behind Merkel and insisted that in any coalition with the SPD, the CDU/CSU, as the largest party, should provide the chancellor. Battered but not bowed, Merkel finally prevailed. She assumed leadership of a coalition in which half of her ministers belonged to the Social Democrats. Indeed, her foreign minister was Schröder's former chief of staff.

Like her predecessor, Merkel and her government had to deal with the country's pressing economic problems. She promised cuts in social programs, tax subsidies, and in 2007 a big hike in the country's national sales tax (value-added tax [VAT]), all in an effort to create jobs and reduce the country's soaring national debt. In large part because of the reforms introduced by the Schröder government, Merkel's grand coalition from 2006 to 2008 presided over a significant economic recovery. As chancellor of this coalition, Merkel attempted

to mediate and conciliate between the two roughly equal partners rather than get involved in partisan political conflict—that she left to others. This strategy together with a personal style emphasizing calm deliberation rather than dramatic bold initiatives earned her a high popularity level. Critics, however, charge her with a lack of political courage and conviction.

During the grand coalition (2005–2009) Merkel had to balance her preferences with that of the coalition partner. She personally wanted freer markets, less welfare spending, and lower taxes to spur economic development, but she had to reinvent herself as a consensus builder. This style was rewarded at the 2009 elections. She let surrogates do the hard, partisan campaigning, while she stayed above the fray. Although the CDU/CSU vote declined, its total number of seats increased due to some peculiarities in the electoral system. She now was the undisputed leader of the new government.

Merkel's government got off to a rocky start. The Free Democrats, coming off the biggest win in their history, felt they had received a mandate and had to make up for the eleven years they spent in the opposition. Merkel and the Christian Democrats, however, saw the coalition as largely an opportunity to continue the work they began in 2005, only this time with a smaller and more compliant partner. Merkel was therefore caught in the middle, and the intergovernmental bickering took its toll on her popularity. By early 2010 her approval ratings had dropped from almost 80 percent to just over 50 percent. When both governing parties lost at an important state election in May 2010, she had to reassess her government's priorities. Citing high deficits, she took any tax cuts off the table. Job creation, health care reform, and the stability of the European monetary system moved up on her policy agenda.

Merkel's chancellorship from 2009 to 2013 was indeed dominated by "The Crisis"—the ongoing challenge to the existence of the common European currency and indeed the European Union itself. The euro crisis is by no means confined to Europe. Because of the global nature of modern markets and finance systems, instability in Europe impacts North America and Asia as well. With Europe's strongest economy, low unemployment, and declining debt she has been able to cite Germany as an example of how other countries should deal with its economic problems. No German leader in the postwar period has been in a comparable leadership position. Some media outlets have dubbed her "The Most Powerful Woman in the World."

After two lackluster campaigns in 2005 and 2009 Merkel got it right at the September 2013 national election. She parlayed a strong economy, relative stability on the euro issue and an unprecedented popularity level into a stunning electoral performance. Under her leadership the CDU/CSU increased its vote from 33.8 percent to 41.5 percent—the party's best performance since 1990. The party's campaign began and ended with the chancellor, and there is little doubt that she was the key to the victory. But her coalition partner since 2009, the Free Democrats, could not surmount the 5 percent minimum needed for parliamentary representation. Thus the victorious Merkel needed a new partner to achieve a governing majority. She had only two choices: the Greens or the Social Democrats. The policy differences were significantly greater with the former and after lengthy negotiations, she led with CDU into another coalition with the SPD.

Formal Policymaking Procedures

How do the legislative bodies and the executive come together to produce policy? Most legislation is drafted in the ministries of the national government and submitted to the

parliament for action. Two additional, but relatively minor, sources of legislative proposals are the state governments and both houses of the parliament itself. State governments may submit national legislation via the Bundesrat, but at least nine states (a majority) must support the bill. If at least 5 percent of the Bundestag deputies cosponsor a bill, it also enters the legislative process.

Administrative regulations and legal ordinances that deal largely with the technical, procedural aspects of existing programs are introduced and enacted by the government and do not require the consent of parliament. If regulations and ordinances affect the states, however, they must be approved by the Bundesrat. They also can be challenged in the courts. The president may, in some cases, refuse to sign the regulation or ordinance.

Before a draft bill is submitted to the parliament, it is discussed and approved by the cabinet (government). If the legislation affects several ministries, the chancellor's office coordinates the drafting process and attempts to resolve any interministerial conflicts. At the cabinet level, the states, through the Bundesrat, are asked to submit their reactions to the legislation. Because cabinet approval is needed for all draft legislation coming out of the ministries, a minister will usually have the legislation put on the cabinet agenda only if approval is very likely. Indeed, because the chancellor directs this entire process, most cabinet meetings dealing with legislation already in draft form tend to formalize decisions already taken informally between the chancellor and the relevant ministers.

After government approval, the proposed bill is presented to the Bundesrat for its first reading. The Bundesrat usually assigns it to a committee, which issues a report and recommends acceptance, rejection, or, in most cases, amendment of the legislation. Because the Bundestag can override a Bundesrat veto, it considers the bill regardless of Bundesrat action.

In the Bundestag, the bill is given a first reading and assigned to the relevant committee. Because the government has a majority in each committee, a bill is rarely returned to the floor with a negative report. When the committee report comes before the whole chamber, the second reading is held and any amendments to the proposed legislation are considered. If after the debate on the second reading the bill is approved without amendment, the third and final reading follows immediately. In the Bundestag, a simple majority or plurality (a majority of those present and voting) is needed to pass legislation. For votes in the Bundesrat, however, an absolute majority is required. Constitutional amendments require an absolute two-thirds majority of both the Bundestag and the Bundesrat.

After adoption by the Bundestag, the bill goes back to the Bundesrat for a second reading. If approved there without amendment, the legislation goes directly to the president for a signature and promulgation. If the policy area requires Bundesrat approval and it vetoes the bill, it is dead. At times, however, the Bundesrat proposes amendments to the lower house version, and the two houses form a conference committee to resolve the differences.

The Judiciary

Germany is a law- and court-minded society. In addition to local, regional, and state courts for civil and criminal cases, corresponding court systems specialize in labor, administrative, tax, and social security cases. On a per capita basis, there are about nine times as many judges in the Federal Republic as in the United States. The German legal system, like that

of most of its western European neighbors, is based on code law rather than case, judge-made, or common law. These German legal codes, influenced by the original Roman codes and the French Napoleonic Code, were reorganized and in some cases rewritten after the founding of the empire in 1871.

In a codified legal system, the judge only administers and applies the codes, fitting the particular cases to the existing body of law. A judge, in theory at least, may not set precedents and thereby make law, but must be a neutral administrator of these codes. Counsel for the plaintiff and defendant assist the judge in this search for justice. The assumption behind this system, which is common to other western European societies, is that a right and just answer exists for every case. The problem is to find it in the codes. The judge is expected to take an active role in this process and not be merely a disinterested referee or umpire of court proceedings. Court observers accustomed to the Anglo-American system would be surprised by the active posture assumed by the judge. Indeed, at times both judge and prosecution seem to be working against the defendant. Unlike the Anglo-American system, the process is not one of advocacy, with both sides presenting their positions as forcefully and persuasively as possible and with the judge or jury making the final decision; it is more inquisitorial, with all participants, defense attorneys, the prosecution, and judge expected to join together in a search for the "truth."

This approach to law has been termed *legal positivism* or *analytical jurisprudence*. Some critics of the legal system consider positivism to be a basic cause of the scandalous behavior of judges during the Third Reich, when most judges disclaimed any responsibility for judging the content of laws they were to administer.

The independence of judges, protected by law, is limited by their status as civil servants. All judges, with the exception of those on the Federal Constitutional Court, are under state or national ministers of justice. Moving up in the judicial hierarchy, then, requires that judges perform their duties in a manner consistent with the standards set by their superiors. This bureaucratization of the judiciary, common to all continental European societies, discourages the type of independence associated with judges in Anglo-American systems. Judges are also a tightly knit, largely middle- and upper-class group. Hardly radicals, their attitudes and values (as determined in a number of studies) are quite conventional and conservative. Some critics have charged that many judges dispense "class justice," because they know little about the problems or lifestyles of the working-class and lower-middle-class defendants who come to their courts.

Justice in East Germany

During the forty-year reign of the Communist Party in East Germany, the rule of law was generally subordinate to the ideology and demands of the party. All East German judges were members either of the Communist Party or of the puppet parties associated with it in a pseudo-democratic "National Front." They were instructed to consider, above all, the interests of the "working class" and its party, the communists. Once again, then, Germany had to deal with judges who administered political justice for offenses such as "fleeing the republic" and "behavior damaging to the state," which resulted in numerous political prisoners and questionable legal judgments.

In the years after unification, most of the 1,500 East German judges and prosecutors either retired or were dismissed, with West German judges and recent graduates of West

German law schools filling the gap. But eastern law schools are now producing graduates and the differences between the two regions are diminishing.

The Federal Constitutional Court

The practice of judicial review—the right of courts to examine and strike down legislation emanating from popularly elected legislatures if it is considered contrary to the constitution—is alien to a codified legal system. Nevertheless, influenced by the American occupation authorities and the tragic record of the courts during the Third Reich, the framers of the postwar constitution created a Federal Constitutional Court and empowered it to consider any alleged violations of the constitution, including legislative acts. Similar courts also were established at the state level.

This court, located in the southwestern city of Karlsruhe, has in its first fifty years built an impressive record of constitutional interpretation. In doing so, it has also become an increasingly powerful political institution. Unlike other courts, it is independent of any justice ministry. Both houses of parliament select its members, and its budget and other administrative matters are dealt with in direct negotiations with the parliament's judiciary committees. The court achieved this independence only after several years, however; the government and others had to first recognize that it was an indispensable prerequisite for the performance of the court's constitutional responsibilities.

The Federal Constitutional Court has rendered decisions on various controversial political cases such as the Ostpolitik treaties, abortion reform, university governance, the powers of the Bundesrat, the employment of “radicals” in the civil service, codetermination in industry,⁴ the deployment of German military forces in non-NATO areas, the right of Bavarian school authorities to display a crucifix in public school classrooms, the constitutionality of same-sex unions, the rights of same-sex couples vis a vis married couples,⁵ and major EU treaties. As the importance of EU law increases in policymaking, the court has emphasized that EU treaties and laws must conform to the German Constitution. In 2009 it approved the Lisbon treaty only on the condition that the parliament pass supplementary legislation affirming the inviolability of the Germany's federal structure and the civil liberties and rights contained in the first twenty articles of the Basic Law. In decisions in 2012 and 2013 it admonished the Merkel government that it must consult the parliament before making decisions in the euro crisis that will impact German taxpayers.

Like the US Supreme Court, the Federal Constitutional Court has also been criticized for becoming “too political,” for usurping the legislative and policymaking prerogatives of parliament and the government, and for not exercising sufficient “judicial restraint.” To students of judicial review, this is a familiar charge and reflects the extent to which the court since its founding has become a legitimate component of the political system. Indeed by 2012 it had become the most trusted institution in the entire political system.⁶

NOTES

1. In 2009 Horst Köhler, the former head of the International Monetary Fund (IMF) was elected to a second term. (See Chapter 3.1.) A year later he abruptly resigned over media reaction to comments he had made about the Federal Republic's military action in Afghanistan. In a radio interview he had linked Germany's involvement to its position as a leading economic and trading power. He was roundly criticized in the media for overstepping the

boundaries of the office by making such blatant political statements. Offended by the reaction, he simply quit. According to the constitution, a successor had to be elected by the Federal Assembly within thirty days. The assembly met on June 30, 2010. The CDU-FDP candidate, Christian Wulff, the minister-president of the state of Lower Saxony, had a solid majority of the seats. But the SPD and the Greens went “outside the box” and nominated an easterner, Joachim Gauck, a Protestant clergyman and former director of the office investigating Stasi crimes and abuses. Gauck projected a nonpartisan appeal that attracted a solid majority in public opinion polls. The Gauck nomination also appealed to many eastern delegates, regardless of party. Therefore, this usually pro forma vote had become highly political and was viewed as a challenge to the Merkel government. Indeed, it took three rounds to elect Wulff, but his tenure as president was very brief. In late 2011 press reports alleged that as minister-president of Lower Saxony he had used his office to obtain favors from wealthy supporters. Other reports stated that he had used public funds for the promotion of films and other cultural programs, which benefited other supporters. By early 2012 his position had become untenable. When it was announced that the prosecutors in Lower Saxony were about to begin an investigation, he announced his resignation. Shortly thereafter an embarrassed Chancellor Merkel, with the support of the FDP, SPD and the Greens turned to Gauck as the new nominee. He was easily elected a few days later.

2. Although the chancellor is elected by the parliament, he or she does not have to be a member of the parliament or affiliated with any political party. However, only one of the Federal Republic’s eight chancellors, Kurt Kiesinger (1966–1969), has not had a Bundestag seat and all have clearly been identified with a political party (CDU or SPD).
3. *Der Spiegel*, December 12, 2005, 64.
4. Codetermination is the practice of giving workers’ representatives, usually trade union officials, in large firms up to half the seats on a firm’s supervisory board (roughly equivalent to a board of directors).
5. In June 2013 the court, in a very controversial decision, ruled that same-sex couples in civil unions were entitled to the same tax benefits accorded married “straight” couples. The decision was criticized by church groups and the conservative factions of the CDU.
6. Institut für Demoskopie surveys cited in *Frankfurter Allgemeine Zeitung*, August 21, 2012, p. 2.