In Germany, the process of state formation began with the principalities, so the country's history is marked by a long tradition of particularism and territorial divisions. Designing a sound relationship between federal and national governments has been a continuous and difficult task for German political elites. All conceivable basic formulas have been tried. In the twentieth century, for example, the federal Second German Empire (1871–1918) gave way to a Weimar Republic (1918–33) in which the political dominance of the national government was constitutionally guaranteed.

This unitary state became even more centralized during the Third Reich (1933–45). The norm of some sort of federal arrangement was
reestablished in 1949 with the creation of the Federal Republic of Germany. This happened partially because of foreign policy considerations important to the Western Allies: the more powers rested with the individual states, the less powerful Germany would be as a nation. After 1949, however, German federalism and its single most important institution, the German Bundesrat, developed differently than had been anticipated. The country did not move in a confederal direction, and the states, or Länder, became central actors in shaping national domestic politics.

A Brief Overview

The German Bundesrat [federal council] is, in many ways, a unique legislative body. No representatives of the "people" meet there. Rather, its members are the prime ministers and other cabinet ministers of the sixteen states forming the federal republic. This makes the Bundesrat an assembly unlike those whose members are elected directly by the people. It is also different from upper houses in unitary countries where no subnational entities are represented in their own right. Its closest institutional kinship may well be with the European Council, or Council of Ministers of the European Union, both legislative bodies composed of governmental or departmental executives. Moreover, the federal roots of the Bundesrat are much older and go much deeper than its liberal or democratic roots.

The Bundesrat is, of course, a democratically legitimized body. Its members, state prime ministers and their cabinet colleagues, are elected and retained in office by the elected members of the legislatures in the sixteen states. Depending on the size of the states, from three to six members of each state's cabinet attend plenary sessions of the Bundesrat, and chair the meetings of its seventeen specialized standing committees. Except for these committee chairs, Bundesrat members are usually represented in committees by high-ranking administrative officials who act on the basis of instructions given to them by their state governments. The composition of the Bundesrat sharply contrasts with that of the lower house, the Bundestag, whose members are directly elected and whose committee sessions are open to executive officials only as guests.

The central political actors in the Bundesrat are political parties. Typically, members of parliament are regional party leaders, or are federal or
state cabinet ministers who are almost always high-ranking party leaders. Party cohesiveness shapes the political process in both houses of parliament. In the lower house, the parties making up the coalition supporting the government are clearly confronted by the opposition parties, and party discipline is the order of the day. In the Bundesrat, party confrontation is less clear-cut. Ministers from state governments led by the same party or party coalition cooperate more closely in the upper house than ministers coming from competing parties. But divided party control of the two houses—when the majority party or coalition in the lower house is the minority in the upper house—means that the Bundestag opposition may, and often does, use its Bundesrat majority as an efficient "second opposition."

These political considerations are important because the Bundesrat has substantial legislative power. Slightly more than half of all bills are subject to its absolute veto after having been approved by the Bundestag. For bills not subject to an absolute veto, the Bundesrat can invoke a suspensive veto, delaying action, and an absolute majority of Bundestag votes is required to override the veto. When the two houses disagree, the Bundestag majority may gain the acquiescence of the dissenting Bundesrat by modifying a bill in the permanent conference committee composed of sixteen members of each chamber. In these infrequent but politically consequential circumstances, the Bundesrat's bargaining power is superior to the Bundestag's.

All legislation initiated by the federal government—60 percent of all proposals and 77 percent of all successful bills—must go to the upper house for a "first round of deliberations" before the lower house is formally involved. The Bundesrat's comments on these bills weigh heavily in the legislative process. For this reason, to say that only 6 percent of proposals (5 percent of successful ones) emanate from the upper house is not a valid indicator of the Bundesrat's legislative importance.4

In addition, the Bundesrat plays an important role in federal administration. Because the federal government has few administrative agencies of its own, most federal laws are implemented by the states, and Bundesrat consent is always secured for administrative ordinances or statutory orders. This process gives the chamber detailed control over the administrative process. Finally, the Bundesrat has considerable authority in matters of foreign and European policy, where the jurisdiction or interests of the länder are at stake. The only powers reserved exclusively to the
Bundestag concern federal elections, removal of the federal chancellor and cabinet, and the right to ask federal government officials questions in parliament.

The Bundesrat is a secure, established institution in the German constitutional firmament, and its members are powerful prime ministers of the states, successors to the former German princes. The body never has suffered from any kind of "identity crisis." Indeed, its powers have grown in the last few decades, and it has readily weathered changes taking place in the European Union. Interestingly, unlike senates in many countries the German upper house has not been subjected to calls for its reform or abolition. The strong institutional foundation of the Bundesrat can be best understood in the context of its historical predecessors.

Historical and Constitutional Legacy

The earliest roots of the Bundesrat trace to the "Immerwährende Reichstag" [Everlasting Diet] of the Holy Roman Empire that convened in Regensburg, a city in Bavaria, between 1663 and 1806 (Reuter 1983; Scholl 1982; Wilke and Schulte 1990). This was a congress of ambassadors from the estates of the Empire, consisting of the Committee of the Grand Electors [Kurfürstenkollegium], the Council of Princes [Reichsfürstenrat] with its ecclesiastic and secular members, and the Committee of the Free Cities. The tradition of the Everlasting Diet was continued in 1815 by the German Bundestag. It met in Frankfurt, the site of the Holy Empire's coronation ceremonies.

At the time, the Bundestag formed the only constitutional organ of the German Confederation [Deutscher Bund, 1815–66], being composed of ambassadors from the member states. Its executive council [Innerrer Rat], chaired by Austria, was the body that met most regularly and passed its decisions without consulting the full assembly. Each of the initial 39 German states (that number was later reduced to 33) held at least one, but no more than four votes, with the total number of votes in the Bundestag amounting to 69 (later 64) votes. The votes had to be cast uniformly as block votes per state, as ordered by the respective state governments. Hence, important features of today's German Bundesrat were already shaped and predefined in the nineteenth century.

Among the predecessor institutions of today's Bundesrat was also
the Bundesrat of the North German Federation [Norddeutscher Bund, 1866–71]. A political consequence of Prussia’s victory in the German War of 1866, this federation constituted the first truly federal arrangement in German history. With a few modifications, its constitution also became the constitution of Imperial Germany [Deutsches Reich] between 1871 and 1918.

At that time, the Bundesrat formed the highest constitutional organ of the Empire, which was a federation of kingdoms, principalities, and free cities. It had twenty-five German states as its members, and their votes differed according to their size, ranging from one to seventeen (Prussia). Again, the votes of each state had to be cast en bloc. The chancellor of the Reich served as the Bundesrat’s chairman, even though he was accountable only to the emperor and neither to the Bundesrat nor to a Reichstag [Imperial Diet] that was elected by the adult male population of the Reich. From the perspective of constitutional law, the Bundesrat was more powerful than the Reichstag, but in practice it did not even come near to equaling it. In theory, bills drafted by the government had to be submitted to the Bundesrat first, and their referral to the Reichstag was contingent upon approval by the Bundesrat. Indeed, bills passed by the Reichstag could be enacted into law only if the Bundesrat approved.

The Bundesrat could also issue administrative ordinances concerning the implementation of laws, although their actual implementation was a matter for the states. Finally, if approved by the monarch, the Bundesrat even had the authority to dissolve the Reichstag. In practice, however, these comprehensive powers were never actually exercised, mainly because the chancellor of the Reich, as chairman of the Bundesrat, made sure that serious disturbances in relations between the two chambers did not arise.

The monarchical principle that, together with its federal counterpart, shaped Imperial Germany and the political role of its Bundesrat came to an end with the revolution of 1918. In both practical and normative terms, the Weimar Republic’s new guiding principle of popular sovereignty shifted political authority from its federal institution—the Reichsrat—to its national legislature, the Reichstag. On balance, the role of federalism was strongly diminished when the Reichsrat was stripped of its legislative veto power. Its reservations could now be overridden by a two-thirds majority of the Reichstag or by a popular referendum ordered by the president. Composed of members of the state governments or their
deputies, Reichsrat committees were even chaired by members of the national government. But not all links to the past were lost. The sixty-six votes in the Reichsrat (in 1930) were assigned to the states roughly in proportion to their size, and with the exception of Prussia, bloc votes were cast.

Unlike Imperial Germany's Bundesrat, however, the Reichsrat actually exercised the powers it had and became more influential in policy making than had been anticipated when the constitution was adopted. The Reichsrat was dissolved in 1934 after the Nazis had seized power. But even before the dissolution, the powers of the states had been transferred to the Reich, state legislatures had been dissolved, and state governments had been subordinated to the national government.

The rebirth of Germany after its defeat in World War II started when its länder were created or reestablished. Most former states suffered some significant territorial changes, and some were even incorporated into "new" and "artificial" states (e.g., North Rhine-Westphalia). Still, the founding philosophy included the principle of federalism so that, much like in 1815, 1848, 1867, 1871, and 1919, a national representative institution for the states had to be created and many federal traditions were continued. One of the major objections to the reestablishment of a Bundesrat, voiced mainly by the Social Democratic Party (SPD), was that the participation of state governments in the national legislative process contradicted classic principles of the separation of powers. Moreover, a Bundesrat whose members were state government appointees would hold less democratic legitimacy than a directly elected Senate. The Christian Democrats (CDU and CSU) for the most part supported establishing an upper house. They argued that state administrative expertise would allow for both more effective control of the national government and more effective representation of state interests on the national level than would a Senate dominated by party politics. A compromise was finally reached and a Bundesrat emerged that was both similar to and significantly different from its predecessors.

The Bundesrat and Federalism Today

The German states preceded the nation-state in legal as well as historical terms. When they decided to form a permanent federation, they
transferred many of their powers to the national government so that the latter is not "superior" to the states, since its powers are derived from them. Article 79 (3) of the Basic Law prohibits any "amendments ... affecting the division of the Federation into Länder, [or] their participation in the legislative process." Article 30 states: "Except as otherwise provided or permitted by this Basic Law the exercise of governmental powers and the discharge of governmental functions shall be incumbent on the Länder," and Article 70 (1) dictates that "the Länder have the right to legislate in so far as this Basic Law does not confer legislative powers on the Federation."

According to Articles 70 (2) through 75, some legislative powers rest exclusively with the states, others exclusively with the national government. In some areas, "the Länder have the right to legislate as long as and to the extent that the Federation does not exercise its legislative powers" (concurrent legislation; Article 72 [1]). In still other areas of politics, the national level of government can enact framework laws whose details the states can thereafter fill in by means of their own state laws (framework legislation, Article 75). Whenever a law is enacted nationally, the states participate in the legislative process, often with absolute and always with suspensive veto powers. Hence, the federal states are active participants in national politics and are by no means limited in their participation to merely articulating state interests.

Articles 50–53 and 76–81 of the Basic Law are the main constitutional provisions concerning the German Bundesrat. It is equal in rank to the four other constitutional organs of the Federal Republic—the Bundes tag, the federal government, the federal Constitutional Court, and the federal president—and has its seat in the federal capital. Constituted independently of the other constitutional organs, administering its own affairs autonomously, the Bundesrat is not, strictly speaking, the second chamber of a bicameral national parliament. Rather, composed of länder ministers, including premiers, it is the "institutional adversary" of a Bundestag that, being democratically elected, is the sole national parliament. Nonetheless, the two houses cooperate closely "in the legislative process and administration of the Federation and in matters concerning the European Union" (Article 50). This cooperation gives state governments a substantial voice in national politics in two respects. First, the länder as governmental entities (as opposed to elected representatives of the public) take part in framing legislation through the Bundesrat. Second, the states
have a share in the implementation of legislation, since most of the administrative responsibilities of the national government are carried out by the bureaucracies of the states. Moreover, nearly all administrative ordinances issued by the federal government need Bundesrat approval.

However, the development of the constitution and the ongoing process of European integration have eroded länder sovereignty and changed the political role of the Bundesrat. Neither development was foreseen when the constitution was enacted. Meeting little resistance from the states, the Bundestag from the outset made such extensive use of its legislative powers that the states' ability to determine their own policies was significantly limited. State powers were even transferred to the European Union. The Bundesrat quite unexpectedly shifted its focus from preserving länder sovereignty to securing for the state cabinets an active and effective role in determining national policy. Over the last couple of years, in contrast, the states have begun to use their considerable potential for political pressure in Bonn to win back some of the powers ceded in previous decades.

The actual political role the Bundesrat plays is to a large degree shaped by the "cooperative federalism" predominant in Germany (see Fabritius 1976; Fröchling 1972; Kisker 1971; Lehmbruch 1976). This takes the form partly of institutionalized conferences and meetings between länder prime ministers, departmental ministers, heads of state chancelleries, and administrative and legislative policy experts. It also entails extensive routine cooperation between the national and state governments that far exceeds the minimum standards set by the constitution. The federal chancellor meets with the state prime ministers, and federal departmental ministers meet regularly with their länder counterparts. There are hundreds of joint committees composed of officials from both levels of government, and there is an even larger number of treaties and executive agreements between them.9

Thus, contrary to the expectations of the framers of the constitution, German federalism has not developed as a "dual federalism," with strictly separated rights and responsibilities for the two levels of government. Instead, it has taken the form of a system of cooperative, or even linkage, federalism characterized by an extraordinarily high degree of policy overlap [Politikverflechtung] that is extremely complex and virtually impossible to disentangle. The political evolution of the Bundesrat can only be properly understood when seen in this light since cooperative federalism
worked to ease its burdensome responsibility of alone representing länder interests on the national level. Precisely this shared responsibility allowed the Bundesrat to seek to increase its influence in national politics.

Because Germany is a parliamentary system, policy debate is dominated by the clash between government and opposition, a clash that is usually cross-cut by disputes between national and state governments. Whenever an important partisan issue is on the agenda, however, the Bundesrat mimics the Bundestag's dualism as state governments take the position of the parties in government in their respective länder. Hence, state governments do not always place highest priority on representing state interests in the Bundesrat. Instead, they choose to take a party position and thereby create the same alignments and disputes as are found in the Bundestag. Thus, nationwide party competition is, on average, more important than policy conflict between levels of government in shaping Bundesrat behavior. Legislative opinion formation and decision making are thereby standardized nationally, and this has made Germany a "unitary federation."

This situation hardly conforms to a simple doctrine of a vertical separation of powers. Nor does the Bundesrat fit a conventional horizontal separation-of-powers model, inasmuch as it is a legislative body formed by officials of the state governments. Because länder interests are usually different from federal interests, and more often than not the Bundestag's major opposition party is, in fact, the dominant party in the Bundesrat, the two houses may move in quite different directions. If the concept of separated powers is understood mainly as entailing checks and balances to control government, then the performance of the German Bundesrat cannot be viewed as deficient. However, the way the Bundesrat exercises its role in a system of checks and balances is not always apparent to the outside observer.

Structure of the Bundesrat

Membership

Composed of members of the sixteen länder governments, the Bundesrat knows no legislative terms; it sits permanently. Its members are appointed and recalled by their respective state governments so that the composition
of the Bundesrat changes when the partisan composition of state governments does. The number of members appointed by each state is determined roughly by both its population size and the principle that no single state should again play the hegemonic role Prussia did between 1871 and 1918. The Bundesrat is, thus, a representative body of the länder that also reflects the power constellations among the political parties in the states. The distribution of its sixty-nine votes, a number that became effective after unification, is presented in table 3.1.

The Bundesrat membership usually comprises states’ prime ministers, their federal affairs ministers (sometimes called commissioners to the Federation), finance ministers, and as many others as are required to match the number of votes to which the state is entitled. The remaining state cabinet ministers usually become deputy members of the Bundesrat, and they enjoy equal rights when sitting in for the permanent members. Prime ministers attend plenary sessions when important political issues are on the agenda. Otherwise, state departmental ministers show up at the sessions when issues affecting their specialized subject areas are discussed.

### Table 3.1. Distribution of Votes in the German Bundesrat

<table>
<thead>
<tr>
<th>Federal State</th>
<th>Population in 1995 (millions)</th>
<th>Votes in the Bundesrat</th>
<th>% of Total Population</th>
<th>% of Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Rhine-Westphalia</td>
<td>17.89</td>
<td>6</td>
<td>21.9</td>
<td>8.7</td>
</tr>
<tr>
<td>Bavaria</td>
<td>11.99</td>
<td>6</td>
<td>14.7</td>
<td>8.7</td>
</tr>
<tr>
<td>Baden-Württemberg</td>
<td>10.32</td>
<td>6</td>
<td>12.6</td>
<td>8.7</td>
</tr>
<tr>
<td>Lower Saxony</td>
<td>7.78</td>
<td>6</td>
<td>9.5</td>
<td>8.7</td>
</tr>
<tr>
<td>Hesse</td>
<td>6.01</td>
<td>5</td>
<td>7.3</td>
<td>7.2</td>
</tr>
<tr>
<td>Saxony</td>
<td>4.57</td>
<td>4</td>
<td>5.6</td>
<td>5.8</td>
</tr>
<tr>
<td>Rhineland-Palatinate</td>
<td>3.98</td>
<td>4</td>
<td>4.9</td>
<td>5.8</td>
</tr>
<tr>
<td>Berlin</td>
<td>3.47</td>
<td>4</td>
<td>4.2</td>
<td>5.8</td>
</tr>
<tr>
<td>Saxony-Anhalt</td>
<td>2.74</td>
<td>4</td>
<td>3.3</td>
<td>5.8</td>
</tr>
<tr>
<td>Schleswig-Holstein</td>
<td>2.73</td>
<td>4</td>
<td>3.3</td>
<td>5.8</td>
</tr>
<tr>
<td>Brandenburg</td>
<td>2.54</td>
<td>4</td>
<td>3.1</td>
<td>5.8</td>
</tr>
<tr>
<td>Thuringia</td>
<td>2.50</td>
<td>4</td>
<td>3.1</td>
<td>5.8</td>
</tr>
<tr>
<td>Mecklenburg-Western Pomerania</td>
<td>1.82</td>
<td>3</td>
<td>2.2</td>
<td>4.3</td>
</tr>
<tr>
<td>Hamburg</td>
<td>1.71</td>
<td>3</td>
<td>2.1</td>
<td>4.3</td>
</tr>
<tr>
<td>Saarland</td>
<td>1.08</td>
<td>3</td>
<td>1.3</td>
<td>4.3</td>
</tr>
<tr>
<td>Bremen</td>
<td>.68</td>
<td>3</td>
<td>.8</td>
<td>4.3</td>
</tr>
<tr>
<td>Total</td>
<td>81.81</td>
<td>69</td>
<td>99.9</td>
<td>99.8</td>
</tr>
</tbody>
</table>
The ministers for federal affairs are always present at the plenary sessions. They also cast the votes of their state if the prime minister is absent.

High-ranking administrative officials can, and usually do, represent their states in Bundesrat committees where specialized policy experts or senior officials of the state bureaucracies meet. The committee sessions are always chaired by a state minister whose competence falls within the sphere of the committee's policy area. In practice, administrative officials take turns in attending committee sessions to ensure that the most qualified to discuss the issue at hand are present. The states are regularly represented by their prime ministers only on the "political" committees of foreign affairs and defense.

Bound by the instructions of their ministers, administrative officials serving on Bundesrat committees do not exercise a free mandate. Ministers must, in turn, follow the political guidelines set by their state governments, guidelines that as members of the state government they themselves have helped to construct. Thereafter, though, their room for individual action is limited since each state's votes must be cast as a single bloc. Just as an MP cannot ignore party policy when deciding how to vote, Bundesrat members must be attentive to the decisions passed by their state government and the political parties constituting it. Only a prime minister can come close to exercising a "free mandate," because he is usually entitled to determine the policy guidelines of his state.\textsuperscript{11} Even here, however, a premier's unannounced deviation in the Bundesrat from an agreed state policy position will usually lead to a crisis within the governing coalition in his state. Accordingly, such deviations are extremely rare and tend to occur only if overriding considerations of national party politics dictate such behavior.

Unlike their Bundestag counterparts, members of the Bundesrat are representatives not of the German people as a whole but of their states and state cabinets. Their decision-making processes can only be fully understood if account is taken of the complexity of their obligations. First, as members of länder cabinets, they play an important role within their states. Second, as members of the Bundesrat they hold national office and must pay heed to the interests of the Federation. Finally, as usually high-ranking state or even national party leaders, they take party positions and have to satisfy the expectations of party supporters. In effect, Bundesrat members have to balance and to reconcile three different, sometimes
conflicting, sets of demands. Two of these are especially hard to combine. Whereas Bundestag members are obliged only to act within the framework set by their parliamentary party groups, members of the Bundesrat have to promote both state and party interests. In promoting state interests, cooperation with the federal government is required; in fostering party interests, members must cooperate with their party’s parliamentary group in the Bundestag. These requirements can be hard to reconcile when the two houses are under the aegis of different party majorities.

Simultaneous membership in both the Bundesrat and Bundestag is not allowed. When such a situation arises as a result, for example, of a member of the former being elected to the latter, Bundesrat rules require the person to vacate one or the other seat “within due time.” Nevertheless, each individual member of the Bundesrat has the right to attend, and to be heard at, the plenary sessions and the committee meetings of the Bundestag at any time.12 This being an individual right, no single member of the Bundesrat exercising it can claim to represent the house as a whole. Rather, only individual state, or even party, interests may be pursued in its exercise.

For purposes of institutional representation, the Bundesrat formally delegates members to attend the Bundestag’s plenary and committee sessions on a continuous basis, mainly to support the Bundesrat’s own legislative initiatives. The Bundesrat can also have state administrative officials attend Bundestag committee meetings so that they can keep their ministers up to date. On special occasions, and at the request of the Bundestag committee itself, these state officials can even address it on specific policy issues. In this way, very close cooperation between the two chambers is assured.

Being composed of officials of the executive branch of state governments, the Bundesrat as a legislative body is sometimes criticized for having a lack of “democratic legitimacy.” That this is overstated is indicated by the fact that the state cabinets, whose members are present in the Bundesrat, are themselves an outgrowth of democratically elected state parliaments (see Friedrich 1975; Scholz 1990). Moreover, state cabinets must remain continuously attentive to these parliaments insofar as choices they make in Bundesrat matters may jeopardize their majority support in the state legislature.13 Criticism of the Bundesrat’s lack of legitimacy has become even harder to sustain as state elections have increasingly become barometer elections for national politics and are perceived in this way by
the public. At the same time, state government activities in the national political arena of the Bundesrat rarely become contentious issues in the state parliaments, largely because these bodies can only recommend Bundesrat actions to their state cabinet. Binding directives would represent interference with the latter's sphere of political competence, as defined by German constitutional law.

_Institutional Structure_

Like any parliament, the Bundesrat is composed of a plenary and specialized policy committees. All the chamber's important work is done by its committees during preparation for their sessions and through state government cooperation. Just as with the relationships between parliamentary groups within a legislature, cooperation in committee work is especially close between state governments supported by the same political parties. The central role of committees in the legislative process means that plenary sessions mostly involve the taking of votes and the issuance for the record of political declarations. Seldom do newsworthy floor debates occur in the Bundesrat because contested issues are usually debated for the public in the Bundestag.

The Bundesrat has seventeen standing committees, essentially matching the departmental structure of the federal government. To debate very complex subjects, the Bundesrat can establish special committees. It can also form subcommittees if certain matters require extraordinarily thorough discussion. This is why a number of committees, including those on finance and agriculture, have formed standing subcommittees. Each state has only one vote per committee, so that the majority constellation within the committees may differ from that in the chamber as a whole. The plenary of the Bundesrat elects the committee chair for a term of one year. While the Committee on Foreign Affairs has a rotating chair, each of the other sixteen committees is chaired by a minister from one of the sixteen länder. The reelection of chairs leads to high levels of expertise and continuity on these committees. The downside is that committees come to be viewed as belonging to certain states, parties, or individual chairs.

The Bundesrat's EU-Chamber was established in 1988 with a view to avoiding the extraordinary plenary sessions that would otherwise be needed if the Bundesrat were to keep abreast of European Union decisions. It comprises one member from each state government, usually the
commissioner to the Federation, and that person commands as many votes in it as he or she would in the plenary of the Bundesrat. Thus, the EU-Chamber acts as a "small Bundesrat," and its decisions are binding just like those of the plenary. It becomes active when the Bundesrat president sends it items for decision and its sessions are usually open to the public. In the event that an actual meeting is considered unnecessary, the EU-Chamber may canvas its members' opinions by mail. In many cases, the decisions of the EU-Chamber are prepared by more specialized committees of the Bundesrat.

The plenary, and the Bundesrat as a whole, is chaired by a president or one of three deputies; these are recruited from the ranks of the state prime ministers and, unlike the practice in Imperial Germany and the Weimar Republic, are elected by the Bundesrat itself. This election has lost its political importance, however, since the 1950 decision of prime ministers to rotate the presidency among themselves, with the first vice president always being the president of the previous year and the one-year term always beginning in early November. Should a sitting president lose his position as state prime minister, his successor automatically replaces him as president of the Bundesrat.

In addition to convening and chairing plenary sessions, the president is responsible for representing the Bundesrat whenever the need arises. The president is also the employer of the Bundesrat's staff. Finally, he or she stands in for the federal president should the latter be unable to carry out the duties of his office or be removed from it before his term expires. In this case, the first vice president becomes the Bundesrat's president. The president of the Bundesrat, however, does not hold the second highest political position in Germany. This honor belongs to the president of the Bundestag, a contradiction that illustrates the complexity of the institutional arrangements needed to combine Germany's federal tradition with its democratic principles.

The actual work of the Bundesrat is prepared by an office managed by the director of the Bundesrat, who, given that there is a new president each year, has to lend nonpartisan continuity to the institution. The director heads a staff of some 180 members. The work of the committee secretaries in particular requires efficient and output-oriented work routines, since deadlines are usually tight. After all, committee chairs serve simultaneously in state government and travel to the capital only for short periods to attend the sessions. Other Bundesrat offices include a parlia-
mentary service responsible for organizing plenary sessions, a president’s office providing support for his everyday administrative work, a press office, shorthand writers, and a documentation service. In contrast to the Bundestag, the Bundesrat can manage without a reference and research service because its members have unrestricted access to their specialized and highly competent state ministries.

In addition, there is a standing advisory board to the presidium of the Bundesrat, composed of the länder commissioners to the Federation. Its weekly sessions are also attended by the director of the Bundesrat and by a high-ranking representative of the federal government, normally the head of the Chancellory. The first task of this board is to assist the president in preparing the plenary sessions. Its second task is to constitute a permanent institutional link between the Bundesrat and the federal government. The opportunities it provides for informal communication contribute significantly to a positive work atmosphere, enabling the Bundesrat to fulfill its role in the political service of both nation and state.

This same role is also played by the permanent delegations all sixteen länder have established in Bonn. Among their main tasks is the maintenance of good relations with the other states, with the departments of the federal government, and with the Bundestag. Close and continuous contact of this kind is a crucial ingredient in the successful representation of state interests in the capital and in efforts to influence specific pieces of federal legislation.

Procedures and Lawmaking

Procedures

The Bundesrat works under tremendous time constraints. Its participation in the federal legislative process is bound by narrow time limits defined by the Basic Law. On the other hand, its members also have to fulfill their demanding state government obligations. The number of plenary sessions is therefore kept as low as possible, about fifteen per year. Separated by three-week intervals, they are normally held on Fridays, with all of the dates set in advance annually. Federal ministers participate if the issues on the agenda fall within their policy areas; the chancellor rarely shows up. Committees convene in private at least two weeks prior to the plenary session. The items they have to deal with, as well as the relevant
documents and materials, are submitted to them by the president of the Bundesrat or, on order of the president, by the director. If a particular item is forwarded to more than one committee, one of them will be given principal responsibility for handling it. Unlike in the Bundestag, the role of principal does not give the committee a privileged position in terms of procedural rights. This is why it is not uncommon for different Bundesrat committees dealing with the same item to come up with different and even conflicting policy recommendations.

Even more than in the Bundestag, Bundesrat committee sessions are characterized by an atmosphere of open-mindedness and mutual trust. Committee members strive not just to represent their state or the parties forming the state government, but also to analyze thoroughly the matters before them while paying attention to both their substantive content and their political implications. Additionally, meetings are characterized by an ongoing dialogue between federal and state officials, since federal government ministers have the right (and, on demand, the obligation) to attend them, as do their civil servants. Moreover, since they attend regularly, the outcome is an ongoing, fruitful exchange of opinion and practical experience between federal and state policymakers and implementers.

The work of the Bundesrat starts with proposals that require political debate, consultation, and decisions to be distributed to members as early as possible, normally via the state delegations in the federal capital. Preparations for committee consideration then begin in the state capitals. These preparations include both coordination between the different departments affected by the proposal and coordination between states. Cooperation will be especially close between states whose cabinets are composed of members of the same political party or coalition.

These preparations are followed by committee meetings in the Bundesrat, which must result in recommendations for state government decisions at least two weeks prior to consideration in a plenary session. In contentious cases, state governments may have to reconcile divisions within their own departments or among the parties supporting the state cabinet itself. Such differences notwithstanding, they have to decide to approve, reject, or abstain when the proposal comes up for a vote in the Bundesrat. They may also, of course, decide to table amendments or discuss support-building strategies should it be felt that the proposal needs to be altered before it can be endorsed.

Two days before the plenary session, the Standing Advisory Board of
the Bundesrat, or the leading officials in its secretary's office, set the rules for plenary debate. This includes the identification of the speakers, the motions to be tabled, and the sequence in which votes are taken. Frequently, intensive consultations between the state chancelleries become necessary at this stage to finalize arrangements and to ensure the desired majorities in the Bundesrat. Shortly before the plenary session, a brief and confidential meeting of the Bundesrat members is held to prevent possible surprises arising during debate. If this meeting reveals continuing differences on substantive or procedural questions, the prime ministers or their deputies, the commissioners to the Federation, will gather informally to try to iron them out.

This meticulous preparation has meant that "real" plenary debate has become a thing of the past in the Bundesrat. Indeed, given the chamber's heavily crowded agenda, for things to be otherwise would be impossible. Consequently, plenary sessions are formally required but necessarily highly staged events. In the final analysis, their purpose is not to provide a forum for debate but to pass a multitude of bills and administrative ordinances and to provide a stage for the last explanation and justification of policy proposals that are about to pass into law. This time pressure and premium on results makes for plenary sessions that are characterized by an orientation toward facts, by a pervasive lack of political passion, and by a concentration on the issues at hand. In particular, fiery parliamentary rhetoric is absent as Bundesrat members focus instead on efficiently working their way through the agenda. Applause is uncommon, and calls to order are unknown. Indeed, there are hardly any interruptions at all.

The net result is that the usual plenary session of the Bundesrat is even less attractive to the general public than its counterpart in the Bundestag. The Bundesrat's dull and routine sessions discourage media attention. Accordingly, media coverage of its plenary sessions, and of the political positions voiced there, is deficient. But the cost of reducing this media deficit would be a severe cutback in legislative output, and this is a tradeoff that the Bundesrat is even less willing to contemplate than is the Bundestag.

Legislation

In Germany, the right to initiate legislation rests with the federal government, the Bundesrat, or a group of at least 5 percent of the Bundestag
membership. Since 1949, about 60 percent of all legislative proposals on average have emanated from the government, about 34 percent from Bundestag members, and the remaining 6 percent from the Bundesrat. (Quantitative data on all aspects of the legislative process in Germany can be found in Schindler 1994.) If only bills subsequently enacted into law are considered, 77 percent had their origins in the federal government, 18 percent in the Bundestag, and 5 percent in the Bundesrat. Obviously, the initiation of legislation is not one of the Bundesrat's principal legislative functions, but nonetheless the chamber's overall importance in the legislative process should not be underestimated.

Any bill initiated by the federal government must initially be sent to the Bundesrat for a "first round of deliberations." The Bundesrat can comment on the bill within six weeks, a period that can be extended to nine weeks. Along with this comment and the government's response, the bill is then introduced into the Bundestag. Traditionally, the Bundesrat has paid careful attention to the comments it makes in the first round of deliberations, and takes them very seriously. Quite frequently the government will incorporate the Bundesrat's recommendations and amendments into the final version of bills. Inasmuch as most federal legislation is initiated by the government, and it can be assumed that bills are written in anticipation of comments from the states, the Bundesrat's considerable influence becomes readily apparent. Moreover, if a legislative proposal requires the consent of the Bundesrat, the comments and demands it articulates in the first round of deliberations cannot be circumvented or ignored.

The Bundesrat also has the right to initiate legislation itself. Such an action may be taken by its plenary, based on a motion from at least one federal state. Then the federal government must introduce the bill, together with its own comments on it, into the Bundestag within three months. Although Bundesrat-initiated proposals average only 6 percent of all bills, their number increases at the beginning of periods where the Bundesrat and Bundestag majority parties or party coalitions differ. This is because, like opposition bills in the Bundestag, the spate of Bundesrat activity publicly demonstrates its dissent from views of the federal government and its majority in the Bundestag. This is another reason why the number of proposals is not a valid indicator of the Bundesrat's actual impact on federal legislation. It needs to be recognized that this impact
stems from the persuasiveness of the chamber's comments and from its potential for applying political pressure through its absolute or, at least, suspensive veto powers.

After three readings and passage of a bill in the Bundestag, it must be sent to the Bundesrat for a "second round of deliberations." The critical distinction at that stage is whether the bill requires consent [Zustimmungsgesetz] or whether the Bundesrat only has the right to lodge an objection [Einspruchsgesetz]. In the first case the Bundesrat's right to veto the bill is absolute; in the second case it is suspensive. The purpose of this distinction is to prevent lopsided Bundestag legislation from encroaching on the powers of the states or from altering their political competencies. According to the Basic Law, bills requiring active Bundesrat consent include those amending the Basic Law, affecting states' rights in the areas of finance and taxation, and touching on the states' administrative responsibilities.

When there is doubt, the Bundesrat has to prove that a given piece of legislation requires its consent. There have been some, but not many, disputes, even bitter controversies, between the two chambers on which of these categories a certain piece of legislation falls into. In such instances, the federal president will decide the issue as a condition of his signing the bill into law. In very rare instances, the president may choose not to make such a decision at all, thereby effectively killing the bill.

Contrary to the expectations of the framers of the Basic Law, today slightly more than half of all bills turn out to require Bundesrat consent. The reason is the chamber's aggressiveness whenever a credible argument can be made that a bill affects states' rights. Moreover, consent must be obtained for the bill as a whole even if only a single paragraph of it requires consent. In particular, Article 84 of the Basic Law broadens the scope of Bundesrat intervention by making the states' implementation of federal laws their own responsibility. This is why the Bundesrat has interpreted this provision as implying co-responsibility for a bill's entire content ("theorem of shared responsibility") since 1952. Even if rooted in nothing more than partisan politics, conflicts over this issue can, and have, developed into confrontations before the Constitutional Court.

In fact, such conflicts have had important consequences. The first was a far-reaching Constitutional Court ruling in 1974. The Court held that legislation changing existing law that had required Bundesrat consent must
also receive that consent. Moreover, this is required even if the amended paragraphs per se do not affect the rights of states, but contain only changes that significantly alter the meaning or the importance of affected administrative procedures that may themselves remain unchanged. This ruling strengthened the Bundesrat’s legal position. Therefore successive federal governments have sought to split new and controversial legislative proposals into two parts, one containing policy details, and the other containing the procedural provisions for implementation. It is only the latter that needs consent. Hence, a political grey area has been created and no one has thus far appealed to the Court to clarify it for fear of precipitating a marked shift in the balance of power between the Bundesrat and the federal government.

If the Bundesrat refuses consent, the Bundestag, the government, or the Bundesrat itself can request that the conference committee meet in the next three weeks (Bardenhewer 1984; Niemann 1978). There is only one such committee. It is composed of thirty-two members, sixteen elected by each house, serving for the duration of the Bundestag’s legislative term. Proxies may not be substituted for its members, members are not bound by mandates from their states’ respective parliamentary groups, and its sessions are not open to the public. Making decisions by simple majority vote, it can recommend modification or rejection of bills referred to it [Einigungsvorschlag, or settlement recommendation]. This recommendation must then be accepted or rejected by each house as a package. The Bundestag votes first on the package. If the Bundestag approves, the package must then be approved by the Bundesrat. Only then has the legislative process come to fruition.

Having a veto power generally gives the Bundesrat a weightier bargaining position than the Bundestag, but customarily a compromise agreement is reached. Such an outcome is made easier because, in contrast to committee sessions of either house, the administrative officials responsible for the first draft of the bill and the politicians who committed themselves to it in public are not present at conference committee deliberations. In practice, the conference committee has not been convened many times, tending to meet only when different majorities have prevailed in the two houses and when important government policies have been at stake. Between 1980 and 1990, the Bundesrat approved more than half of the bills submitted to it without calling for mediation. Over the same period, another 40 percent of bills passed the Bundesrat without
objection, while it asked the conference committee to convene in the case of less than 3 percent of the bills adopted by the Bundestag. About 70 percent of these compromise bills were then approved. Thus, the Bundesrat rejected only 88 out of a total 4,389 bills between 1949 and 1990, and there were only 40 instances of bills not promulgated despite the mediation efforts of the conference committee.

Bills not requiring Bundesrat consent [Einspruchsgesetz] are sometimes called “ordinary bills.” The Bundesrat is consulted on them, and although it has no absolute veto power, it can voice its intent to object to such a bill. If the Bundesrat decides to object, it has to call for the conference committee to be convened. Seldom are objections raised, and when they are, it is most often the result of party rivalry. If the objection is then overridden by the Bundestag, the bill will be enacted into law against the will of the Bundesrat. If, however, the Bundestag fails to override the objection, the bill is defeated. Between 1949 and 1990 there were twenty-six such objections, nineteen of which the Bundestag subsequently overrode.

If a Bundesrat objection is passed by an absolute majority, it can be overridden by an equivalent majority in the Bundestag and, under normal circumstances, a government easily commands that level of support there. But if the Bundesrat majority reaches two-thirds, its objection can only be overridden by the same majority in the Bundestag. Only a “grand coalition” of the two largest parties, the Christian Democrats and Social Democrats, would normally command that kind of support. So far the need for such a majority has not arisen, but it remains possible that a hostile two-thirds majority in the Bundesrat could effectively paralyze a federal government supported by a “normal” majority in the lower house. If, under such circumstances, new Bundestag elections do not yield an appropriate majority or at least a coalition with which the Bundesrat is willing to cooperate and if the federal government or its supporting Bundestag majority remains unwilling to cede its authority to the Bundesrat, then the German political system could be faced with a severe crisis that would not be amenable to solutions provided for in the constitution.

A different kind of systemic crisis, reminiscent of those so common during the Weimar Republic, is susceptible to constitutional solution. Article 81 of the Basic Law empowers the federal president to declare a state of “legislative emergency” with regard to a specific piece of legislation when the following conditions are met: the chancellor has lost a vote of confidence in the Bundestag, the federal president has nonetheless
refrained from dissolving the Bundestag, and the government has failed to win a parliamentary majority on a piece of legislation it has labeled urgent. A request for an emergency declaration must be made by the federal government and have Bundesrat approval. With these conditions met, the legislation becomes law without majority support in the Bundestag if it is approved by the Bundesrat. For the next six months, this same procedure can be applied to other legislation turned down by the Bundestag. After six months, there can be no further "legislative emergencies" as long as the same chancellor is in office. Hence, the Bundesrat's role as "substitute legislature" temporarily replacing the Bundestag will be ended until another chancellor faces a similar crisis.

Foreign Policy

As an important institution in the German constitutional system, the Bundesrat has a voice in the country's foreign policy (see Bos 1977). International treaties, for example, are referred to the Bundesrat as well as to the Bundestag and, depending on the substance of the treaty, the same distinction between issues susceptible to an absolute or to a suspensive veto applies as in domestic matters. Because no line-item veto of treaty provisions is possible when the Bundesrat becomes involved in the process of debating a ratification law, it is imperative that the chamber demand detailed information from the federal government at the earliest possible stage.

Yet with the exception of European politics, where the Bundesrat with its EU-Chamber has probably become the single most active national legislative body among all EU-member countries, the Bundesrat has always practiced great restraint in the foreign policy area. Nevertheless, there have been instances when its preferences ran counter to those of the federal government. The first major controversy arose in early 1953 in regard to the ratification of the establishment of the European Defense Community. This brought the Bundesrat's significant foreign policy role to public attention for the first time. It became the same focus of public attention in the 1970s. In 1974, the Bundesrat even lodged an objection to ratification of an international agreement when it opposed a treaty with Czechoslovakia.

In addition, a new Article 23 of the Basic Law, adopted in 1992, gives considerable authority to the Bundesrat in foreign policy matters, including
the European Union, if the exclusive jurisdiction or interests of the German states are affected (Lang 1997; Oschatz and Risse 1995; Schede 1994; Schmalenbach 1996). Article 23(5) provides that “Where in an area in which the Federation has exclusive legislative jurisdiction, the interests of the Länder are affected, or where in other respects the Federation has the right to legislate, the federal government shall take into account the opinion of the Bundesrat.” In regard to European Union decisions affecting the states’ constitutionally defined legislative jurisdiction, the same article rules that “the exercise of the rights of the Federal Republic of Germany . . . shall be transferred by the Federation to a representative of the Länder designated by the Bundesrat” provided that this transfer happens “with the participation of, and in agreement with, the federal government.” This constitutional provision clearly reflects Germany’s strong federal tradition.

Administration

The Bundesrat also plays an important role in regard to the public bureaucracy in Germany, not least because the federal government has very few administrative agencies in its own right. Instead, most federal laws are implemented by the state government bureaucracies, albeit under federal oversight. To protect the states against the potential erosion of their authority that such oversight might entail, nearly all administrative ordinances issued by the federal government require the consent of the Bundesrat, giving it an absolute veto in such matters. Of course, this arrangement considerably increases the workload of the Bundesrat. For example, between 1983 and 1990 the Bundesrat had to act on about 500 administrative regulations issued by the federal government, whereas it considered only about 350 bills during the same period.

Such regulations constitute the most important cases of administrative law with which the Bundesrat is concerned. In addition, federal statutory orders that take the form of instructions to state bureaucracies to carry out federal laws or ordinances are subject to Bundesrat approval. Their number amounted to a little over 130 between 1983 and 1990. Should the Bundesrat amend federal draft administrative ordinances or statutory orders, they can only be enacted as approved by the Bundesrat. The Bundestag is not involved in this process, so that outcomes are profoundly shaped by the administrative expertise of government departments on the
state level. Theoretically, the Bundestag has the right to repeal administrative regulations that affect the budgetary process, although the need to exercise this right has not yet arisen.

Finally, the Bundesrat is consulted if one of the federal states fails to comply with its obligations as described in the Basic Law or in federal law. According to Article 37 of the Basic Law, the federal government may, under these circumstances, take the steps necessary to ensure compliance. When enforcing this so-called federal coercion [Bundeszwang], the federal government or its authorized agent even has the authority to issue binding directives to the delinquent state and its administrative agencies. However, such actions require the consent of the Bundesrat.

**Other Bundesrat Prerogatives**

Other prerogatives of the Bundesrat include the right to elect, by a two-thirds majority, half of the judges serving on the federal Constitutional Court. In addition, the Bundesrat takes turns with the Bundestag to elect the president and the vice president of the same court. The nominees of the federal minister of justice for appointment to the office of federal prosecutor or federal prosecutor general also need Bundesrat approval. Furthermore, the Bundesrat can file lawsuits with, and be sued before, the federal Constitutional Court. This may happen in cases of jurisdictional disputes within the federal government, of disputes between federal and state governments, and in matters of judicial review concerning the observance of constitutional norms with or without reference to a specific case. Finally, the plenary of the Bundesrat appoints from among its ranks (or from among the state governments) representatives to serve on various appointed bodies and organs, e.g., on the presidium or administrative board of the Federal Institute for Employment.

The political role of the Bundesrat becomes especially compelling when there is a national emergency. Should Germany be attacked, or threatened with attack, the federal government may request that a "state of defense" be declared by the Bundestag, with the agreement of the Bundesrat. If this action is not possible, a state of defense may be determined by the Joint Committee. It includes thirty-two members of the Bundestag (elected each legislative term, and in proportion to the number of seats held), and sixteen members of the Bundesrat (one per state). The Committee is chaired by the president of the Bundestag, with a member of the
Bundesrat serving as its first vice president. During a state of defense, the Joint Committee can even assume the functions of both the Bundesrat and the Bundestag if two-thirds or more of its membership determines that insurmountable obstacles exist to the Bundestag's convening in time, or that the Bundestag is in a state of complete disarray or dysfunction. Under such conditions, the Joint Committee could even elect a successor to the federal chancellor.

**Parliamentary Functions**

This very federal house, the Bundesrat, has clear parliamentary functions, including passing legislation, controlling the government, and maintaining communication between the society and its political system. Parliamentary systems of government also need to provide a majority to elect and support the executive branch of government. The Bundesrat performs, or is at least entitled to play a role in performing, all these functions.

First, in a state of defense, the Bundesrat can take part, via its representation on the Joint Committee, in making or unmaking the federal government. Second, in cooperation with the Bundestag it holds comprehensive and significant powers in shaping federal legislation. It is influential in the "first round of deliberations," and can exert absolute or suspensive veto powers in the second round.

Third, and perhaps most important, the Bundesrat does exercise control over the federal government. A key weapon in its armory in this regard is the constitutional provision that the "Bundesrat shall be kept informed by the federal government about the conduct of business" (Article 53). After a hesitant start in the early years of the Republic, the routine information flow is now so smooth that the Bundesrat rarely makes use of its right to summon members of the federal government.

One mechanism of Bundesrat control is governmental anticipation of the members' policy preferences and the house's reaction to government initiatives. Additionally, leading members of the Bundesrat make frequent use of their right to take the floor in the Bundestag, especially prior to elections. Not being obliged to represent their home state or the Bundesrat as a whole, they can use this opportunity to advocate the policy positions of their parties, and this is exactly what they are expected to do. Thus, they can confront federal government leaders and hold them
publicly accountable for their actions or inactions. This right to address the Bundestag directly is especially important for party chairmen or chancellorial candidates who are not themselves members of the Bundestag. Their membership in the Bundesrat as länder ministers or prime ministers provides them with access to a highly visible forum, the floor of the Bundestag, from which they can address the public. Finally, state administrators cooperate very closely with their federal counterparts in Bundesrat committee sessions, thereby effectively controlling government by influencing the decisions and actions it takes.

The fourth parliamentary function of the Bundesrat is relatively weak and underdeveloped. It is the cultivation of direct communication links with the general public (Patzelt 1996). The problem for the Bundesrat is that its members are state prime ministers or cabinet ministers. Typically they are also members of the state legislature, or they are national party leaders. But they definitely are not perceived as “members of the Bundesrat.” The point is that the Bundesrat can attract national attention as an institution, but it cannot win such attention from the public visibility of its members. The institution hits the headlines only when it engages in contentious, visible, and highly partisan conflict with the federal government or supporting parties. But this kind of confrontation is not usually compatible with the Bundesrat’s constitutional and political role. Indeed, it is exactly this role which is the source of its weak communication links with the public. Representing the state cabinets, it maintains no direct relations with the national electorate. As a result, the privilege of direct democratic legitimation by the nation as a whole is reserved exclusively for the Bundestag.

Informal Role in Political Decision Making

Theodor Heuss, Germany’s first federal president, is said to have labeled the Bundesrat a “parliament of bureaucrats.” It may be true that, compared with the Bundestag, the Bundesrat is overly preoccupied with issues of administrative and technical feasibility. But this description is unfair. From the beginning the Bundesrat has taken on an important political role as well. This has inspired the bon mot that the Bundesrat is not a “second chamber” but a “second government.” It is said to provide a forum for complex negotiations between federal and state govern-
ment experts and to some extent serve as a “board of internal oversight” of the federal government. Given its frequent clashes with the federal government, the Bundesrat might be better characterized as a “second opposition.”

The Bundesrat’s oppositional role is a function of the different structural principles at work simultaneously in the German political system. Two of them relevant to this discussion are properly expressed by the term federal party state (see Lehbruch 1976). The German parliamentary system engenders a central dualism between a government camp, consisting of the federal cabinet and its supporting Bundestag majority on the one side, and the parliamentary opposition on the other side. Both camps cooperate closely with their state and national party organizations. This dualism, fostered and enforced by the electoral system of proportional representation, gives shape to all processes of public policy making. Moreover, it applies to national and state politics. However, in the states the voters often prefer parties in opposition in the Bundestag. Consequently, time and again the opposition in the Bundestag controls a majority of state governments and hence of the votes in the Bundesrat. The national-level opposition parties are readily tempted to seek and fight political battles in a Bundesrat that comes to serve as a “second arena” of national party politics.20

For this purpose, state prime ministers act in the Bundesrat mainly as party leaders, using the chamber’s veto powers to stop, or at least modify, legislation passed by the “hostile” Bundestag majority. The strong position of the upper house in the legislative process is used to balance their party’s minority position in the lower house. This is an especially attractive strategy when, as in 1997–98, federal elections loom. This strategic behavior may interdict the federal government’s legislative program. If so, the Bundestag’s majority can be blamed in public for losing its policymaking capacity, which might provide party contestants with convincing arguments to use in the election campaign.

Conflicting majorities of this type may be detrimental not only to the federal government and its supporting parties but also to the major opposition party in the Bundesrat. It can lead to tension within the party because policy positions appropriate to its federal role in opposition may not be reconcilable with the deals and compromises it has to accept in its länder role in government. Moreover, the confrontational tactics that parties routinely and reasonably employ in the Bundestag often do not sit
easily with the effective representation of state interests in the more consensual Bundesrat. Therefore, overarching nationwide party competition is often at odds with the states' need for cooperation in the Bundesrat and with the federal government.

Indeed, a great deal of criticism has been leveled at the Bundesrat for functioning as a partisan "second opposition" to the federal government. Most of it has been motivated by considerations of political expediency as partisan groups seek to discredit competitors in the public eye. Some of it goes to the heart of the proper role of the Bundesrat in the German political system. Its essence is that the Bundesrat should serve the interest of the states and not those of their governing parties. But this argument does not stand up to close inspection since democratic elections vest the authority to define a state's interests in the parties constituting its government. Thus, it would violate the principles of democracy to seek to regulate, or otherwise restrain, state governments' oppositional behavior in Bonn simply because of a preference for "friendly conduct" in national level Bundestag-Bundesrat relations or because of a belief that such conduct better demonstrates states' allegiance to the federation. In addition, it must be remembered that Bundesrat members achieved their qualifying positions as state cabinet ministers precisely because of their party leadership functions. These party ties cannot be expected to be forgotten when individuals cross the Bundesrat threshold. In short, it misses the point to criticize the Bundesrat for its members' acting in accord with the functional logic of a federation run by powerful parties in the framework of a parliamentary system.

Party considerations cannot be the only ones, however. Partisan politics would be widely considered to have gone too far should the Bundesrat attempt to paralyze the federal government. After all, it is this government, commanding majority support in the Bundestag, that represents the German people as a whole and the Bundesrat has no legitimate right to bring it to its knees. Until now, the Bundesrat has exercised self-restraint in this regard and, despite its numerous heated exchanges with the Bundestag, it has not yet resorted to overt obstructionist tactics. Nonetheless, the internal cohesion of the governing coalition in the Bundestag has been put to the test over and over again as federal governments, faced with Bundesrat opposition, have been forced to exercise their constitutional right to impose policy guidelines. Such assertions of authority,
though, have usually come at high political cost in the sense that the price paid has been far-reaching concessions to the Bundesrat's, that is to say, the political opposition's, policy demands. But compromise of this kind is to be expected in a federal system that actively practices pluralism under majority rule.

The final consideration in regard to the Bundesrat's role in the making of federal policy decisions is that its close cooperation with the federal government clearly strengthens the concordance (or consociational) element that has always characterized German democracy. Highly public and partisan disputes between the two houses notwithstanding, decision-making processes are managed by de facto grand coalitions whose leaders may not even hold state or federal governmental positions, but who are the leaders of the political parties whose support is needed to reach binding compromises. Frequently, their informal meetings even include policy experts or interest group representatives. Obviously, these consociational or neo-corporatist ways of securing cooperation and support entail advantages and often make the machinery of government work more smoothly. At the same time, however, they can obfuscate who is responsible for decisions and enormously undermine the fundamental democratic principle of political accountability. As a result, voters are deprived of their right to make deliberate choices between distinguishable policy alternatives. This weakening of the linkage between voters, elected representatives, and policy outputs is the main problem with the Bundesrat's frequent performance of the role of "second opposition."

Toward Reform?

In contrast to the continuous debates on reforming the German Bundestag, there have been few serious discussions of reform of the Bundesrat. The political parties' practice of utilizing the Bundesrat as a "second opposition" to the federal government has repeatedly led to public criticism, but it is a criticism that inevitably vanishes as soon as its immediate catalyst does. There having been no extreme cases of Bundesrat misuse for partisan purposes, it has not been possible to make a convincing case for reform. The Bundesrat is simply not an institution that enjoys high levels of public visibility, and in the absence of such disaffection public interest
in the question of its reform cannot be stirred. Inertia is only compounded by nobody's really wanting to undermine the compromises that were agreed upon in 1948–49 and that appear to have worked reasonably well. Finally, the Bundesrat has adapted to new situations by taking preemptive measures when the clear need for reform has arisen. The best example has been the creation of its EU-Chamber in response to the growing volume and importance of European legislation. For all these reasons, the Bundesrat is a widely accepted and valued part of the constitutional setup, not being an issue even during the debates on amending the Basic Law after German unification in the early 1990s.

Being an institution much older than the Federal Republic itself, the Bundesrat has indeed stood the test of time. No one really doubts that it will also stand the challenges of the future. Certainly, it remains an open question what impact ongoing European integration will have on the German states and, hence, on the role of the Bundesrat. But experience suggests that this centuries-old institution will not change very much.

Notes

1. This challenge has been complicated by Germany's geopolitical location in the center of Europe. Time and again, a unitary Germany led by a strong central government became a political powerhouse that disrupted the European balance of power. By contrast, a divided and weak Germany allowed for an effective balance of power. The price, however, was damaged German self-esteem, which encouraged the exaggerated German nationalism of the nineteenth and twentieth centuries. The issue of German federalism and its institutional design, therefore, is closely connected with the issues of political stability in Europe and German national identity.


3. Christian Democrats (CDU/CSU) and Social Democrats (SPD) with an average of 45 percent and 37 percent, respectively, in federal elections between 1949 and 1994; Free Democrats (FDP) with a declining average of 9 percent in the same period; the Green Party (GRÜNE) with a growing average of 6 percent since 1984; and the Democratic Socialists (PDS), successor to the former GDR's Communist Party (SED), with a national average of barely 4 percent since 1990. The PDS has a significant political basis only in the former East Germany, with percentages reaching 20 percent or more.
With the exception of the PDS, all parties, especially the FDP, are much weaker in the former East Germany than in the former West Germany.

4. The remaining 34 percent of proposals and 18 percent of bills, respectively, are initiated by members of the Bundestag. Bills emanating from the opposition usually are voted down by the governing majority coalition.

5. The main outcome of the war was Austria’s exclusion from further German history and federalism.

6. The former monarchical principle remained present in the institution of a Reich president [Reichspräsident] elected by the people and endowed with considerable powers.

7. In the course of German unification later, the last East German parliament (re)established five federal states on its territory in 1990. When the GDR ceased to exist on October 3, 1990, those five states joined the Federal Republic of Germany.

8. These articles define the functions (50), the composition (51), the presidency and the rules of procedure (52) of the Bundesrat as well as the attendance of members of the federal government (53). Articles 76–78 regulate the legislative process. Article 79 deals with amendments to the Basic Law. Article 80 prescribes the way statutory orders are issued, and Article 81 defines the role of the Bundesrat in cases of so-called legislative emergency.

9. This is why the type of federalism found in Germany is also commonly described as “administrative federalism.”

10. One reason states follow party lines in these circumstances is that their prime ministers are at the same time leading party politicians, sometimes even the chairs of the political parties represented in the Bundestag.

11. The exception is Bundesrat members who also belong to conference committees (usually comprising sixteen members of the Bundesrat and sixteen members of the Bundestag). These exercise a free mandate within the conference committee.

12. The same rights do not apply to members of the Bundestag vis-à-vis the Bundesrat. Only members of the federal government enjoy unlimited access to the Bundesrat and its committees.

13. If a state government is sustained by a parliamentary coalition, rules for voting in the Bundesrat are normally fixed in an agreement negotiated before the election of the prime minister.

14. Just as with the Bundestag, the Bundesrat meeting as a whole reserves the right to make the final decision on matters referred to it by committees. The only exception is the Bundesrat’s EU-Chamber.

15. The president and his deputies form the Bundesrat’s presidium, but this body seldom meets.

16. One secretary usually serves several committees.

17. In the past, some governments in Bonn have had a minister for Bundesrat affairs. At present, the head of the federal chancellory is often given the rank of a cabinet member as, for example, minister for special tasks.
18. If the federal government declares a bill "urgent," however, the Bundesrat has only three weeks to comment on it.

19. In a typical period, between 1983 and 1990, a little less than 1 percent of the laws promulgated by the federal president as requiring the consent of the Bundesrat were considered not to require this consent by the Bundestag. In the same period, the president declared 2 percent of promulgated laws not to require consent when the Bundesrat had argued that they did. Presidential decisions can be challenged in the federal Constitutional Court, and reversed. There have been a few instances where such reversals have led to the relevant law being declared null and void.

20. The Bundesrat does not enjoy equal rights in regard to the conference committee. If one of its bills is rejected by the Bundestag, it cannot demand the convening of a conference committee.

21. The government and the Bundestag have demanded mediation even less frequently than the Bundesrat.

22. The Basic Law cannot be amended, suspended, or repealed under conditions of legislative emergency.

23. The disputes in question concerned ratification of treaties with the Soviet Union, Poland, and Czechoslovakia in the context of the government’s new “eastern policy” [Neue Ostpolitik].

24. Two of the more significant of them involve the armed forces and the diplomatic service.

25. In 1988, 95 percent of Germans knew about the existence of the Bundesrat as an institution, but only 42 percent gave correct answers about its composition. Thirty-two percent offered no response at all. Public knowledge of its tasks and functions was even worse, with only 32 percent giving right answers and 36 percent none at all (Noelle-Neumann and Köcher 1993, 65). While still far from perfect, Germans’ knowledge of the Bundestag is clearly more comprehensive (Patzelt 1996, 1997).

26. This constellation of political forces reigned from 1969, when a Social Democrat–Free Democrat coalition government came into existence in Bonn until its demise in 1982. It also characterized German politics between July and November 1990, and again from June 1991 until today. In 1994, there was even a possibility that the federal government, led by the Christian Democrats, would face a Social Democratic Party controlling two-thirds of the votes in the Bundesrat.

References


