1 Introduction: Semisovereignty Challenged

Simon Green and William E. Paterson

The Semisovereign Model of Governance

In political science, every once in a while, a book is published which redefines the way scholars think about a social phenomenon, a policy, a concept or an institution.[1] It is, however, particularly rare for a book on the politics of a single country to have a similar impact: it is notoriously difficult to capture adequately the links between institutions, history, cultural environment and policy outcomes at the same time. More importantly, it is even more unusual for such a book to be accepted by the indigenous community of political scientists as one of the definitive accounts of that country.

Peter Katzenstein's 1987 book, *Policy and Politics in West Germany: the Growth of the Semisovereign State*, is just such a contribution. Conceived of as an illustration of the limits of domestic state power, it locates institutional structures and policy outcomes in the Federal Republic of Germany (or West Germany before 1990) within the country's specific historical and societal context. Its central argument is that policy in West Germany was defined by 'incremental outcomes', a pattern which, moreover, remained broadly constant across changes of government. This stood in direct contrast, for instance, to the much more dramatic changes introduced by Margaret Thatcher after the Conservatives came to power in the UK in 1979. The tendency towards incremental outcomes, so the argument continued, was conditioned by the 'semisovereign' structure of the state, which sees decentralised state institutions pitted, often individually, against strong centralised societal organisations.

How did this relationship between state and society work in practice? For Katzenstein, the decentralisation of the state (or as he calls it, 'The Taming of Power' (1987, p. 1)) was achieved through four main

[1] The authors would like to thank Matthew Allen for his comments and suggestions on an earlier version of this chapter.

structural factors. First, West Germany's federal constitution, with (at the time) eleven federal states (*Länder*), constituted a highly visible and *prima facie* limit on the power of the central government (*Bund*). Although the usual constitutional division of responsibilities, as in other federal states, has tended to favour the federation (cf. Bulmer 1989a), the *Länder* have still managed to retain an essential role in the polity, which is derived from two key sources. On the one hand, the *Länder* have a collective direct input into federal policy-making via the upper chamber of parliament, the *Bundesrat*. On the other hand, the (West) German constitution (the Basic Law) differentiates between the functions of formulation and implementation in federal domestic policy, with the latter role being assigned to the *Länder* in most areas. The *Länder*, certainly collectively, thus constitute an important potential check on the federal government's power, even if there is rarely any doubt over which of the two levels of government is *primus inter pares*.

Second, with its activist remit of competencies, the Federal Constitutional Court (*Bundesverfassungsgericht*) has exercised a strong influence on German policy-making over the decades. Throughout the life of the Federal Republic, its judgments have helped define the terms of debate in a whole range of issues, including in several instances the division of power between the federation and the *Länder*, as well as abortion and party finance. Since unification, the court has continued to hand down path-defining rulings in both domestic and foreign affairs (see Rudzio 2000, pp. 334–7). These have included judgments on abortion (again), the constitutionality of Germany's membership of the EU's Economic and Monetary Union (EMU), the participation of Germany's armed forces in missions abroad, the financial equalisation scheme between the *Länder* (*Länderfinanzausgleich*), fiscal policy and asylum policy. On several occasions, its opinion (which it has rarely been reluctant to give) has even been sought explicitly in order to resolve what elsewhere would be considered strictly political conflicts. Indeed, its influence stretches far beyond its judgments, as policies are frequently formulated with one eye firmly on the possible position that the court might be expected to take on an issue. The court is, therefore, a key and constant shaper of the parameters of the possible in German politics.

The third and fourth factors defining Germany's decentralised state are its strong tradition of bureaucratic independence, and the relative lack of direct power of the federal chancellor. Katzenstein notes both the strong hierarchical nature of the administration and the formal separation between the federal ministerial bureaucracy and the implementing level, which, as already noted, is usually located within the *Länder*. This combination produces a situation where 'federal ministries

lack experience in the details of policy implementation and tend to focus more on policy formulation' (Katzenstein 1987, p. 22). Of course, this increases the reliance of federal ministries on the input of both interest groups and the *Länder* for the evaluation stage of the policy cycle, which in turn creates a symbiotic balance of mutual interdependence.

Finally, the formal power of the federal chancellor (*Bundeskanzler*) is strictly limited to appointing ministers and setting the general guidelines of policy (*Richtlinienkompetenz*) (Articles 64–5 of the Basic Law). Individual ministers, once appointed, are therefore independent in the political and practical leadership of their offices (the so-called *Ressortprinzip*). Certainly, the chancellor has more scope for leadership in foreign and European policy (Paterson 1998). But in domestic politics, the chancellor's scope for setting even the guidelines for policy are limited by his information deficit resulting from the *Ressortprinzip*, the dynamics of coalition politics and the practice for coalition partners to lay down the government's programme in advance in considerable detail by means of a 'coalition treaty' (Katzenstein 1987, pp. 22–3; see also Smith 1991). Indeed, for a chancellor to exploit the *Richtlinienkompetenz* fully and successfully, he would himself need to be able to offer policy solutions that are superior to those of his ministers. So far, only one chancellor has arguably been able to fulfil this criterion: Helmut Schmidt, who also stands out as being the only German political leader to have run both major spending and planning ministries at federal level before acceding to the highest political office.[2] Even the chancellor's powers of patronage within his own party are very limited, given the political need to distribute key offices of state on a regional basis.

By contrast, Katzenstein underlines the fact that societal interests are comprehensively and centrally organised. In particular, the national employers' and labour organisations still wield considerable power and influence in policy-making and cannot be ignored as actors: historically, it has been unthinkable for a federal government to push through radical changes in economic and labour-market policy against the expressed wishes of either of these two groups. Moreover, their role as the main peak organisations means that they can be consulted on policy proposals which go far beyond the formal delineation of their interests. Such large 'class-based' groups are complemented by powerful 'status groups', such

[2] Chancellor Schröder's leadership style in economic reform is discussed in more detail in chapter 6 by Kenneth Dyson. See also Patzelt (2003), as well as *Der Spiegel* (19 July 2004).

as doctors and farmers, who often have 'insider' status by virtue of their central role in policy implementation (Katzenstein 1987, pp. 23–30).

The resulting complex web of relationships, checks and balances both between and within state and society is, so Katzenstein argues, held together by three key institutions, which he identifies as 'nodes of the network': political parties, federalism and parapublic institutions. First, political parties, by virtue of the formal role they are accorded in Article 21 of the Basic Law, occupy a unique position, both in the context of German politics and in a cross-national comparison of party systems. Ever since the foundation of the Federal Republic in 1949, the party system (and hence government) has been dominated by two large parties, the Christian Democratic CDU/CSU and the Social Democratic SPD.[3] But rather than being simple class-based parties, the CDU/CSU and SPD have consciously defined themselves as mass organisations, with relatively large memberships and broad electoral bases, which bridge traditional electoral cleavages, especially class and religion. It is for this reason that these 'people's parties' (*Volksparteien*), but especially the CDU/CSU, serve as a close approximation to the ideal-type of 'catch-all party' identified by Kirchheimer (1966). Precisely because of their broad appeal, the *Volksparteien* must reconcile a wide range of interests within their ranks, including both employer and employee interests. This emphasis on cross-cleavage consensus within the two main parties is complemented by the requirements of coalition politics: not only has almost every government in the Federal Republic's history been a coalition, but the *Ressortprinzip* and the limited power of the chancellor provide the junior partner with a formal power which should not be underestimated.

The second node of the network is federalism, which, far from creating discrete arenas in which actors can conduct their politics independently of other levels, actively binds together the otherwise diffuse range of state actors. By design, (West) German federalism is intrinsically 'co-operative' in nature; in other words, it places a premium on consensus interactions both within the community of *Länder* and between the *Länder* and the federal government (Scharpf et al. 1976). This co-operative function of federalism is epitomised, on the one hand, by the horizontal and vertical financial equalisation schemes for the *Länder*, and, on the other, by the role of the upper chamber of parliament, the *Bundesrat*, in German politics. Via this body, the *Länder* can collectively veto any bill which affects either their direct policy competencies or,

[3] The CSU is the CDU's Bavarian sister party, and although the two parties are formally independent of each other, they operate together at federal level.

crucially, their implementation of policy. As most laws now involve the amendment of existing administrative implementation of policy, rather than the legislation of new areas, the *Bundesrat*'s role in federal policy-making has become gradually more important. In 2004, around 60 per cent of bills were subject to the *Bundesrat*'s absolute approval, making it a formidable veto player in public policy (Tsebelis 2002).

But federalism is important in other ways too. Since the late 1960s, the *Länder* and the federation have together been responsible for the so-called 'joint tasks', mainly consisting of infrastructure projects such as the construction of new universities, which have served to further the dependence relationship of the sub-national on the national level of government. In party-political terms, federalism matters too: all main parties are structured on a federal basis, thereby creating powerful regional leaders (*Landesvorsitzende*), without whose support any party leader at federal level risks becoming a 'lame duck'. Finally, the sub-national level is the main recruiting area for national politics: all five federal chancellors since 1966 had previously been either ministers or minister-presidents at *Land* level. The same goes for opposition parties: since 1972, the opposition party's chancellor candidate has been a serving *Land* minister-president at every federal election except 1983.

Katzenstein's third node of the policy-making network is the range of parapublic institutions that he identified in West Germany (Katzenstein 1987, pp. 58–80). The role of these parapublic institutions was to depoliticise controversial policy areas by turning them into areas of technical and administrative expertise. Key among this range of institutions was, of course, the politically independent *Bundesbank*, which, as guardian over the stability of Europe's largest currency, wielded significant power within both Germany and the European Union (EU). As Katzenstein notes (1987, p. 64), its independence is demonstrated by the fact that its actions have frequently frustrated both CDU- and SPD-led governments, although conversely, the limits of the *Bundesbank*'s power were also revealed when Chancellor Kohl pushed ahead with a 1:1 exchange rate for German Monetary Union in July 1990 against the expressed advice of the then *Bundesbank* president, Karl-Otto Pöhl. But the role of other institutions, including the Federal Labour Office, the Council of Economic Experts ('*Die fünf Weisen*'), and private and Church welfare associations, have also testified to the tradition of 'rationalist consensus' in (West) Germany's policy-making (Dyson 1982).

The importance of these nodes for understanding German politics and policies cannot be stressed too highly. For Katzenstein's nodal concept captures perfectly how the structure-agency debate in political science is played out in the German context. Thus, parapublic bodies

and political parties can be both policy-making agents and part of the institutional structure, depending on the individual context (Hay 2002, p. 127; McAnulla 2002).

Inevitably, neither (West) Germany's institutions nor their patterns of interaction can be separated from the historical and geo-political environment in which they operated. The entire West German political system was constructed out of the physical and moral ruins left behind by National Socialism. In 1949, the year the Federal Republic of Germany (FRG) was founded, the overriding concern was to build a political and party system that would prove more stable than the Weimar Republic had been, while avoiding the centralisation and lawlessness of the Nazi dictatorship. Given the experiences of hyperinflation in the early 1920s, and of a centrifugal party system by the early 1930s, it is hardly surprising that the new republic's political classes were 'learning from catastrophes' (Schmidt 1989).

Equally, West German politics quickly came to be defined by the realities of the Cold War, both in terms of its physical security and, more importantly here, its domestic politics. The physical division of Germany into the capitalist West and communist German Democratic Republic (GDR) in 1949 meant that the challenge of socialism was more direct and immediate in the FRG than in any other western European country. Until the construction of the Berlin Wall in 1961 made travel between the two countries impossible (as opposed to just difficult), the two systems were in direct competition with each other. In consequence, the West German social market economy (*Modell Deutschland*) simply had to be seen to deliver a higher level of social welfare than the GDR. This maxim, which informed the positions of employers, employees and parties alike, persisted deep into the 1980s, when East Germany was still officially being touted as the world's tenth largest economy.

Neither West Germany's historical legacy nor the Cold War environment in which it found itself favoured a confrontational, 'Westminster' type of politics (cf. Lijphart 1984). Instead, what Gordon Smith has memorably described as the 'politics of centrality' was able to flourish (Smith 1976, 1982; also Paterson and Smith 1981). Governance by consensus, with the associated disappearance of the ideological distance between the main parties, became the norm for both the CDU/CSU and SPD. In addition, the role of the liberal FDP, which has formed governments with both the large parties, has been to provide a constant moderating, centripetal influence on policy when necessary (cf. Schmidt 1989). What is more, the pivotal role of parties in the (West) German polity has helped spread this pattern of consensus governance to other institutions, including the Constitutional Court: because its judges

require two-thirds majorities in both houses of parliament, the CDU/CSU and SPD have always co-operated extremely closely in their selection and appointment. This, in turn, has meant that the court has tended to be centrist in its judgments (Rudzio 2000, p. 341).

Overall, the effect of the decentralised state and centralised society, operating in an environment where consensus was the desired mode of governance, was to give a unity of intentions to its actors and institutions (Bulmer 1989b). This had the effect of helping to transform a fundamentally weak state into a strong one. From an early stage, it also facilitated the pooling of sovereignty in the form of the European Economic Community (EEC), which paradoxically contributed to West Germany's strength by aiding its international rehabilitation. Certainly, the pace of domestic policy change has never been breathtaking, as the centrality of the notion of incremental outcomes to the semisovereign model illustrates. Katzenstein himself notes that, 'within the constraints and opportunities that characterise the Federal Republic, incremental policy change . . . is a politically logical choice' (Katzenstein 1987, p. 351). But he also differentiates between incremental outcomes and policy stagnation: 'It is easy to mistake incremental change for incapacity to change . . . There is a world of difference between incrementalism and immobilism' (Katzenstein 1987, p. 350). Indeed, the German polity's capability to innovate from within was clearly demonstrated by the Grand Coalition of 1966–9, and more recently by the successful integration of the environmental agenda into mainstream politics from the mid-1980s onwards, as Charles Lees' analysis in chapter 10 shows. Above all, the events of 1989–90 showed how exogenous pressures could produce change on a massive scale, although, as chapter 2 illustrates, unification was accompanied by a characteristically incremental institutional adaptation.

In terms of policy outputs, the semisovereign model of governance, which in its inclusivity and consensual focus constituted the political equivalent of the 'Rhineland' model of capitalism, served West Germany extraordinarily well (Conradt 2001; Harding and Paterson 2000). West Germany pursued an economic policy of the 'middle way', located between the extremes of Anglo-Saxon market and Scandinavian welfare capitalism (Schmidt 1987, 1989). By the late 1980s, the country was one of the most successful economies with one of the highest standards of living in the world. Driven by the strength of an export-led economy, West Germany could afford generous pensions, enviable health care and excellent public services. Moreover, the relatively high productivity of labour meant that West German employees could enjoy longer holidays, shorter working weeks and more generous pensions than their

counterparts in other industrialised countries: the notion of a thirteenth monthly salary, common in German industry and public service, remains wishful thinking for employees in most other countries. The West German model was seen as a success externally (Paterson and Smith 1981), an achievement made all the more remarkable given the political and economic devastation that the country had suffered as a result of the Second World War. This feature made a huge impression in the UK, where an infinitely smaller scale of devastation was routinely invoked as an explanation of post-war economic failings.

It is this evident success that has made semisovereignty an indispensable point of reference in debates about governance in Europe. This is particularly evident in three respects. First, the institutionalised role for interest groups in (West) Germany as a system of private-interest governance has represented a clear alternative to the privatisation wave of the 1980s. Second, Katzenstein was one of the first scholars to show that federalism in Europe could be a source of strength, and not just a way for heterogeneous ethnic and cultural groups to co-exist under the auspices of the nation-state. Using the West German case, he demonstrated how federalism could produce democratically legitimated policy change, even if this tended to be only incremental. In doing so, the semisovereign model of governance refuted the conventional wisdom of the time about the inherent superiority of the unitary state. It also foresaw the trend towards greater decentralisation of power, either via federalism or via the broader process of devolution, which has taken place over the past fifteen years in previously highly centralised countries such as France, Spain and the UK. Indeed, in his later work, Katzenstein argues forcefully that the benefits from sharing sovereignty at the national and sub-national levels can apply equally to sharing sovereignty at the supranational, European level (Katzenstein 1997a). Finally, the concept and role of parapublic institutions in a political system appears to have been enthusiastically embraced by other European countries in the 1990s. The *Bundesbank*'s model of institutional independence was directly 'exported' to the European level in the form of the European Central Bank (Bulmer et al. 2000, pp. 40–2). Even the Bank of England's operational independence, granted in May 1997, was influenced by the perceived success of the *Bundesbank* model of central bank autonomy.

Among scholars, Manfred Schmidt (2002a, pp. 177–8) quite explicitly employs the semisovereign model in his instructive cross-national comparison of constitutional structures and veto players, while Reutter (2004) uses it to contextualise the policy changes under the SPD-Green government from 1998 to 2002. More broadly, the importance of the

model of semisovereign governance is reflected in the fact that Germany is included almost by right in any significant study of comparative government and governance (e.g. Lane and Ersson 1999; Pierre and Peters 2000, especially p. 38; see also Tsebelis 2002).

Unification and the Challenge to Semisovereignty

Given (West) Germany's undoubted past economic and political success, as well as its importance in comparative political studies by virtue of its sheer size and economic power, it is only natural to explore the question of how the semisovereign model of governance has fared in post-unification Germany, both in terms of structures and outcomes. This question, which forms the central theme of this book's analysis, has become particularly germane in the light of Germany's generally weakening economic performance after the immediate post-unification boom. Whereas West German Gross Domestic Product (GDP) grew by an average of 2.8 per cent in real terms between 1970 and 1980, this rate slowed to 2.3 per cent between 1980 and 1991, and to 1.3 per cent for united Germany between 1991 and 2000. Indeed, in 2001, 2002 and 2003, real GDP effectively ground to a halt, with growth rates of just 0.8 per cent, 0.2 per cent and −0.1 per cent respectively.[4]

While the slowdown in Germany's economic growth since 1992 has been unmistakable, its performance has languished in other areas too: unemployment has increased rapidly since 1990, and in 2003 remained stubbornly high at around 10 per cent of the workforce, or over four million in total, with considerable regional variation. When combined with an increasingly ageing population (and a sharp rise in early retirements), plus a long-term decline in the birth rate, this has contributed to a rapid increase in social expenditure, including unemployment benefit, health and pension costs, which has jumped from 29.3 per cent of GDP in 1990 to 33.6 per cent in 2001. Higher welfare expenditure has also impacted on the cost of labour in Germany: hourly labour costs in Germany are now 13 per cent higher than in the USA, 43 per cent higher than in the UK and 59 per cent higher than in Spain (*The Economist*, 7 December 2002), although Germany admittedly fares better on a comparison of unit labour costs. The volume of red tape and bureaucracy, which had baffled outside observers of West Germany even before unification, has reached almost epidemic proportions since

[4] Unless otherwise stated, all economic data are taken from the Statistisches Bundesamt (http://www.destatis.de).

1990, with over 3,400 legislative acts passed by the federal level alone between 1990 and 1998 (*Der Spiegel*, 21 September 2002).

Even though the fact that other European countries have also increased their welfare expenditure since the 1990s has meant that Germany remains broadly on the 'middle way' internationally (Schmidt 2000a), the country's economic performance since unification has, by most standards, been disappointing. This has given a sense of urgency to the question of what (if any) reforms might be needed to the structures of *Modell Deutschland*. However, so far, progress has been painfully slow. Since the late 1990s, notably pre-dating the change of government in 1998, commentators have been lining up to berate the sclerosis that was perceived to have gripped the German public policy agenda: even incremental change *à la* Katzenstein no longer seemed possible. Thus, already in 1997, the term *Reformstau* (reform blockage) was the word of the year for the Society for the German Language. More recently, *Der Spiegel* news magazine entitled its issue coinciding with the federal election on 22 September 2002 'The Blocked Republic' (*Die blockierte Republik*) (*Der Spiegel*, 21 September 2002). Elsewhere, *The Economist* asked 'Is Deutschland AG Kaputt?' in its post-election survey of Germany, aptly entitled 'An Uncertain Giant' (*The Economist*, 7 December 2002). Academic and non-academic commentators too have highlighted the parlous economic situation in which Germany currently finds itself (e.g. Padgett 2003; Kitschelt and Streeck 2004a; also Steingart 2004).

What had happened? In truth, and this is borne out by most of the chapters in this volume, most of Germany's structural and economic problems pre-date unification. As in other countries, economic growth in West Germany had already slowed from the mid-1970s onwards, to the extent that an influential volume in 1992 described the country's economic performance as the 'fading miracle' (Giersch et al. 1992). Already back in 1985, the year's first issue of the magazine *Der Spiegel* bore the title *Die Sklerose der deutschen Wirtschaft* ('The Sclerosis of the German Economy', quoted in Bulmer and Humphreys 1989, p. 181). The long-term implications of slowing birth rates in West Germany had also already been the subject of lively public debate in the mid-1980s. In 1988, Fritz Scharpf famously characterised West Germany's system of co-operative federalism as a 'joint decision trap' (Scharpf 1988), in which intractable conflicts tend to lead to 'non-decisions' (Bachrach and Baratz 1963). At the end of the 1980s, Bulmer and Humphreys (1989, p. 195) declared that 'the West German model faces its toughest challenge' in the 1990s. Perhaps most presciently, given the nature of political conflicts in recent years, Manfred Schmidt in 1989 summarised the problems of co-operative federalism thus: 'West Germany's