The German Political System I
From its historical roots to the country of the Basic Law

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Outline

1. Historical background
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   - Germany after 1945

2. The German Basic Law: the Grundgesetz
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3. Institutional structure of the Federal Republic of Germany
   - The legislative I - Bundestag
   - The legislative II - Bundesrat
   - The process of legislation
   - The executive - chancellor and cabinet
   - The Federal President
   - The judiciary - Federal Constitutional Court
Early democratic uprisings (e.g. Hambacher Fest 1832)

Revolutions of March 1848
National Assembly at Frankfurt’s St. Pauls Church: first German Parliament adopting the first constitution for the complete German territory → ultimately unsuccessful
Founding of first free democratic parties during the period of the German Empire

- Social Democrats first founded in 1863 and finally legalized by Bismarck in 1890
- Weimar Republic (1918-1933)
  - Philipp Scheidemann proclaiming the republic (November 9, 1918)
Weimar Republic came to its end when Adolf Hitler was appointed as chancellor by Reich President Hindenburg.
Allied conferences about the future of Germany already during WWII (Casablanca 1943, Teheran 1943, Yalta 1945)

Morgenthau Plan: demilitization, partitioning, internationalization of the industrial Ruhr area and reparations
Potsdam Conference

- Denazification
- Demilitarization
- Decentralization
- Democratization
Historical background
The German Basic Law: the Grundgesetz
Institutional structure of the Federal Republic of Germany

Democratic roots in the 19th and 20th century
Germany after 1945

Berlin Declaration June 5, 1945

- Allied supreme authority over the German Reich
- Establishment of the Allied Control Council
- Breakdown of the territory in four occupational zones (+ Berlin into four sectors)

Federal structure and establishment of the Basic Law

- Establishment of the German Länder in 1945/46
- Parliamentary Council in 1948/49 developed the Basic Law (“Grundgesetz“): Democracy and federalism as central elements
- No institutional continuities from Weimar
- Occupational statute: no complete sovereignty (foreign affairs, demilitarization, industry, financial affairs under Allied control) → ended in 1955 with the treaty of Paris (Allied reserved rights until 2+4 Treaty 1991)
The German Länder after the reunification
Basic rights Art. 1-19: (must not be changed in their essence)

- Art. 1(1): **Human dignity** shall be inviolable. To respect it and to protect it shall be the duty of all state authority.

- Art. 1(2): The German people therefore acknowledge inviolable and inalienable **human rights** as the basis of every community, of peace and of justice in the world.

- Art. 1(3): The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.

  - Art. 2: Personal freedom
  - Art. 3: Equality before the law
  - Art. 4: Freedom of faith and conscience
  - Art. 5: Freedom of expression
  - Art. 6: Marriage, family and children
  - Art. 8: Freedom of assembly
  - Art. 9: Freedom of association
  - Art. 12: Occupational freedom
Organizational structure of the Federation and the Länder

- Art. 20(1): The Federal Republic of Germany is a **democratic and social federal state**.

- Art. 20(2): All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies.

- Art. 20(3): The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice.

- Art. 20(4): All Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedy is available.

- Art. 21: political parties
- Art. 23: EU
- Art. 31: supremacy of federal law
Art. 38-48: The Bundestag (first chamber)

Art. 50-53: The Bundesrat (second chamber)

Art. 53a: The Joint Committee (takes decision in the state of defence)

Art. 54-61: The Federal President


Art. 70-82: Federal Legislation and Legislative Procedures

Art. 79(3): Amendments to this Basic Law affecting the division of the Federation into Länder, their participation on principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible.


Art. 91a-91e: Joint Tasks

Art. 92-104: The Judiciary

Art. 104a-115: Finance

Art. 115a-115l: State of Defence

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**Chancellor**

**Federal President**

**Federal Cabinet**

**Electoral College**

**Minister President**

**State Cabinet**

**Bundestag** (Federal Diet)

**Bundesrat** (Federal Council)

**16 Landtage** (State Diets)

**Federal Supreme Court**

**Mediation Committee**

Federal electorate (all citizens above 18)

Länder electorate (all Länder citizens above 18)
first chamber, members elected by popular vote for a 4 year term, at the moment 622 parliamentarians
more a working than a debating parliament
permanent committees...
- discuss draft bills and thus prepare the decisions of the Bundestag
- in general get their work assigned from the plenary after the first reading, but they can also take up issues on own initiative
- can hold up hearings (lobbyists, experts) and form subcommittees
- usually about 20 permanent committees

three types of special committees
- committees of inquiry (must be set up if 1/4 of the members of the BT demand it → instrument of the opposition)
- joint committee (48 members, 2/3 from the BT, 1/3 from the BR; emergency parliament in case of state of defence)
- mediation committee (32 members, 1/2 from the BT, 1/2 from the BR; intermediary between the Bundestag and the Bundesrat)

presidium of the Bundestag takes on administrative issues
the council of elders (assists the presidium and settles disputes between parliamentary groups)
Functions of the parliament

- **electoral function**
  - Federal Chancellor
  - Federal President (together with delegates from the Länder in the Federal Convention)
  - Half of the justices at the Federal Supreme Court

- **lawmaking**
  - Exclusive federal legislation (foreign policy issues, defence, currency...) vs. concurrent legislation (Civil law, criminal law, consumer protection...) vs. exclusive state legislation (education, penal system...)
  - laws needing assent of Bundesrat vs. laws where the Bundesrat can only lodge an objection

- **control of the government** (questions, major interpellation, constructive vote of no confidence)

- **articulation and expression of political will** (representation of the voters)
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Chancellor
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Federal Council
Federal Supreme Court

Federal electorate
(all citizens above 18)
Länder electorate
(all Länder citizens above 18)
Second chamber representing the Länder interests

Members appointed by the Länder governments according to the population of the respective Bundesland
- at least 3
- 4 if the Bundesland has more than 2 mio. inhabitants
- 5 if the Bundesland has more than 6 mio. inhabitants
- 6 if the Bundesland has more than 7 mio. inhabitants
  → 69 members at the moment

Imperative mandate and votes of each state must be cast en bloc

Differing party majorities in Bundesrat and Bundestag can cause blockades → necessity of cooperation between the two major parties (CDU/CSU and SPD)
Distribution of seats in the current Bundesrat

- Baden-Württemberg
- Bavaria
- Brandenburg
- Bremen
- Hamburg
- Hesse
- Mecklenburg-Western Pomerania
- Lower Saxony
- North Rhine-Westphalia
- Rhineland-Palatinate
- Saarland
- Saxony
- Saxony-Anhalt
- Schleswig-Holstein
- Thuringia

- Christian Democratic Party (CDU & CSU in Bavaria)
- Social Democratic Party (SPD)
- Alliance ’90/The Greens
- Free Democratic Party (FDP)
- The Left
Abbé de Sieyes:

„If a Second Chamber dissents from the first, it is mischievous; if it agrees, it is superfluous.“
Legislation can be initiated by:
- the Bundesrat
- the Federal Government
- the Bundestag (at least 5% of the parliamentarians necessary)
Three readings in the plenary of the Bundestag

First reading:
Designates the appropriate committee to prepare it for the second reading

Second reading:
the results of the deliberations in the committee forms the basis of the plenary debate in the second reading. Amendments possible, first vote on the bill.

Third reading:
further debate only on request; final vote on the bill
After approval in the Bundestag the bill goes to the Bundesrat. If the Bundesrat approves it, the bill is sent first to the Federal Chancellor and then to the Federal President who signs it into law.

Federal Cabinet → Bundesrat (Federal Council) → Federal President → final law

Bundestag (Federal Diet) → Bundesrat (Federal Council) → Federal President → final law
If the Bundesrat does not approve the bill, there are two possibilities according to the type of legislation:

1. Laws requiring assent of the Bundesrat
2. Laws requiring no assent of the Bundesrat
1. **Laws requiring assent of the Bundesrat**
   Bundesrat, Bundestag or Federal Government can call the Mediation Committee
1. **Law requiring assent of the Bundesrat**
   If the Mediation Committee does not alter the bill, it goes back to the Bundesrat for final decision.

Diagram:
- Bundesrat (Federal Council)
- Mediation Committee
- Bundestag (Federal Diet)
- Federal Cabinet
1. **Laws requiring assent of the Bundesrat**
   If the Mediation Committee does not alter the bill, it goes back to the Bundesrat for final decision.
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**Diagram:**

- Bundesrat (Federal Council)
- Mediation Committee
- Bundestag (Federal Diet)
- Federal Cabinet
- Final law

**Flowchart:**

1. Bundesrat (Federal Council)
   - Mediation Committee
   - Final law
   - Final law
   - Bundestag (Federal Diet)
   - Federal Cabinet
1. **Laws requiring assent of the Bundesrat**
   If the Mediation Committee alters the bill, it goes back to the Bundestag for a fourth reading and a further vote.
1. **Laws requiring assent of the Bundesrat**
   After approval in the Bundestag, the bill goes to the Bundesrat for final decision.
2. Laws requiring no assent of the Bundesrat
   Only the Bundesrat has the right to call the Mediation Committee
2. Laws requiring no assent of the Bundesrat
If the Mediation Committee does not find a compromise or one which the Bundesrat rejects, the Bundesrat can lodge an objection. This objection can be overruled by an absolute majority of the members of the Bundestag. Otherwise the law fails.
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Konrad Adenauer 1949-63
Ludwig Erhard 1963-66
Kurt-Georg Kiesinger 1966-69
Willy Brandt 1969-74
Helmut Schmidt 1974-82
Helmut Kohl 1982-98
Gerhard Schröder 1998-2005
Angela Merkel 2005-

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- Elected by the Bundestag with absolute majority of all its members (chancellor majority).
- Right to form the cabinet, i.e. the chancellor selects and dismisses the ministers (but constrained by coalition agreements, inner party factions and regional proportionalities).
- The chancellor sets the guidelines for government policies.
- Absolute veto against bills changing the budget.
- In state of defence the chancellor executes the supreme command over the army.
- A chancellor can only be voted out of office if at the same time a new chancellor is elected (constructive vote of no confidence).
  - 1972: Rainer Barzel vs. Willy Brandt → not successful, Brandt remained in office
  - 1982: Helmut Kohl vs. Helmut Schmidt → successful, Kohl became chancellor
Elected for a 5 year term by the Federal Convention, an electoral college consisting of the Bundestag and the same number of delegates from the Länder parliaments → weaker democratic legitimization than the directly elected Reichspresident in the Weimar Republic

Generally mostly representative and bureaucratic functions (e.g. signing of laws)

Speeches as an important ways to influence public opinion → but no daily politics

Reserve functions in times of political crisis (lack of parliamentary majority)

If the Bundestag elects the Federal Chancelor only with a relative majority, the Federal President decides whether to appoint him or her or to call early elections

If the Chancelor loses a vote of confidence and proposes a dissolution of the Bundestag, the Federal President can either follow this proposal or decline it
The judiciary as a real third and independent power.
The judiciary shall control the executive and the legislative.
The Federal Supreme Court is the guardian of the Basic Law.
One half of the justices is elected with 2/3 majority by the Bundesrat and the other half with 2/3 majority by a special electoral committee from the Bundestag → need to form informal coalitions.
The justices at the Supreme Court are elected for 12 years. No reelection possible.
Five main competences of the Federal Supreme Court

- Constitutional complaint: can be made by any person who feels his or her constitutional rights been violated.
  - Makes the majority of the Supreme Courts procedures.
  - Only a very small number is successful (2.5%)
- Abstract regulation control (initiated by a political institution)
- Specific regulation control (initiated by a court regarding a specific legal case)
- Federal and state-federal disputes
- Prohibition of a political party
  - successful: Socialist Reich Party (SRP) - a Neo-Nazi party in 1952 and the Communist Party of Germany (KPD) in 1956
  - failed: National Democratic Party of Germany (NPD) - a Neo-Nazi party in 2003
References:

- Most pictures (except the chancellor portraits) are from the site „German History in Documents and Images“: http://germanhistorydocs.ghi-dc.org/index.cfm

Further reading:

- David P. Conradt (2009): The German polity (9th Edition),
Thank you for your attention

The presentation can be downloaded from my webpage:
www.sebastianjaeckle.de

- Username: student
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