Service Delivery in Federal Systems
The German Case
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The Constitutional Arrangement

• Germany provide the „ideal case“ of cooperative or functional federalism
  – The Imperial Constitution of 1871 provided for common regulation (Civil Code, Business & Trade Law, common currency ....)
  – However left the implementation in the hands of the state administration
The Federal Republic

• Despite two World Wars and a revolution and democratisation the basic federal structure 1871 prevailed:
  – According to Art. 70-74 Basic Law the bulk of the legislation is the task of the federation – either as exclusive or concurrent legislation
  – Art. 83 obliges the Länder [governments] to implement federal law as “their own task”.
  – Constitution bans “mixed” administrations unless explicitly allowed
How does that work in practice?

- The ordinary citizens receive most of the administrative public services at the local administration, at the “Rathaus” – from birth to death certificate.
  - Exceptions:
    - Tax declaration: Land administration
    - Unemployment relieves: formerly federal administration, now more & more local administration (unemployment [fed] & social welfare [local] have been merged by Hartz IV reforms – ALLOWED MIXED ADMINISTRATION)
    - Formerly conscription: federal government
    - Health: private doctors & hospitals (most hospitals are owned by the local governments, however, they organized as private businesses.
Legal background

• The daily experience of the ordinary citizen, the “Rathaus”, is based on Art. 83 BL.
  – *Länder* (local administrations are part of the *Länder*) execute federal law “as their own task”
    • Meaning they have to pay for it!
    • Not quite an “unfunded mandate” because revenues distribution between the federation and the *Länder* is based on demand, fiscal equalization among the Länder to a large degree.
Joint Tasks (Art. 91 a – 91 d BL)

- 91a: regional economic promotion, improvement of agriculture and protection of the coast
  - joint planning, joint financing (50/50) by the federation and the Länder
  - Problem: status-quo oriented, decision on smallest common denominator
  - “Tight coupling”

- 91b: Cooperation in research
  - Extra-university research institutes (successful!)
  - Single projects of research at universities
  - Research buildings at universities (both rather problematic because they constitute a rather artificial distinction of research and education at universities; the universities are more and more confronted with the problem of small basic funding and an increasing competition for federal “project” money; considerable imbalance between extra-university research institutes and universities)
  - Financing based on individual agreement
  - “loose coupling”
Joint Tasks (Art. 91 c – 91 d BL)

- Art. 91 c (IT-Systems) & 91d (Benchmarking) have been newly introduced in the BL 2009
  - Cooperation of federal and Länder government for the development and utilization of IT-systems
  - Benchmarking of public administration
    - Both have been organized according to the principle of “loose coupling”, in particular Art. 91d BL is open for a free choice of procedures.
Intergovernmental fiscal relations (1)

• Art. 104 a para 2 BL:
  – Where the Länder act on federal commission, the Federation shall finance the resulting expenditures.

• In certain areas of federal powers the federal government *may* commission the Land governments to executed federal policies because the federation does not own the appropriate administration
Intergovernmental fiscal relations (2)

• Art. 104 a para 3 BL:
  – Federal laws providing for money grants to be administered by the Länder may provide that the Federation shall pay for such grants wholly or in part.

• Art. 104 b BL
  – To the extent that this Basic Law confers on it the power to legislate, the Federation may grant the Länder financial assistance for particularly important investments by the Länder and municipalities ...
Conclusion (1)

• German federalism is primarily grounded on a functional division of powers
  – The federation legislates the bulk of domestic policies
  – The Länder implement federal law (& their own law)
  – In general the Länder pay for the federal law which they execute, however there are important exceptions
  – This type of federalism would not work without an intensive cooperation between both levels of government as well as among the Länder governments
Conclusion (2)

- This federal model allows that the citizens are served mostly at the local “Rathaus”
  - Independent of the origin of the law: European, federal or Land law.
  - Service out of one hand requires a lot of cooperation behind the scene
  - The target of one-stop- or one-window-service has not been fully achieved yet, however it is easier within the system of functional federalism than in dual/competitive federal systems