

# 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 receives most 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