

FEDERALISM UNIFICATION AND EUROPEAN INTEGRATION

EDITED BY
CHARLIE JEFFERY
AND
ROLAND STURM

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 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

First published in 1993 by
FRANK CASS & CO. LTD

This edition published 2013 by Routledge
2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

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British Library Cataloguing in Publication Data

Federalism, Unification and European
Integration

I. Jeffery, Charlie II. Sturm, Roland
320.943

ISBN 0-7146-4507-9

Library of Congress Cataloging-in-Publication Data

Federalism, unification and European integration / edited by Charlie
Jeffery and Roland Sturm.
p. cm.

"This group of studies first appeared in a special issue of *German*
politics, vol. 1, no. 3 (December 1992)"—t.p. verso.

Includes bibliographical references.

ISBN 0-7146-4507-9 : \$35

1. Federal government—Germany. 2. Germany—Politics and
government. 3. Germany—History—Unification, 1990. 4. Europe—
—Economic integration. I. Jeffery, Charlie. II. Sturm, Roland.

JN3971.A38S835 1992

92-2459

321.02'0943—dc20

CIP

This group of studies first appeared in a special issue of *German Politics*, Vol. 1, No. 3
(December 1992). [Federalism, Unification and European Integration].

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Typeset by Regent Typesetting, London

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Foreword

This collection grew out of a conference held by the Association for the Study of German Politics in May 1992 at the Goethe-Institut, London. The conference papers have been revised and updated for publication and supplemented by a number of contributions from authors commissioned to investigate and develop further aspects of the issues surrounding 'Federalism, Unification and European Integration'.

The aim of the collection is above all to point out and assess the implications which have arisen and will arise for the German federal system following the achievement of German and the deepening of European unity. The contributions, written by a combination of policy-makers and political scientists, focus in particular on the problems which have emerged from the perspective of the Länder following the incorporation of the former GDR into the Federal Republic and the progressive incursions of the European Community into policy areas formally reserved to the Länder by the Basic Law.

The first contribution, by Hartmut Klatt, offers a general survey of the issues which have arisen concerning the federal system since unification. He examines in particular the competing perspectives federation and Länder have developed on the need to reform the federal system in the light of unification and on the methods through which reform might be carried out. Some of the themes Klatt raises are then amplified in the following two articles. Ulrich Exler gives a detailed account of the often somewhat frantic negotiations conducted by federation and Länder during 1990 on the question of finance: both on how to co-finance the commitments the incorporation of the new Länder into the Federal Republic would create, and on how the new Länder might be incorporated on a provisional basis into the systems of vertical and horizontal financial equalisation. Next, Arthur Benz discusses the question of territorial reform in the Federal Republic, outlining the arguments which are conventionally employed in support of territorial adjustment, but also emphasising the entrenched opposition to such reform which exists in those parts of Germany most likely to be affected. In view of this opposition, he then discusses potential alternatives to territorial reform which would involve a greater degree of horizontal coordination between bordering Länder, focusing in particular on current developments on these lines in the north of West Germany.

Charlie Jeffery and John Yates examine how the Länder governments have sought to respond to the challenges of unification and deeper

European integration. In an analysis of two key documents produced by the Länder governments – the first prior to unification and the second in the run-up to the EC Intergovernmental Conferences at Maastricht – Jeffery and Yates point to a dual strategy aimed, in line with the traditions of the Federal Republic, not just at reasserting and defending areas of exclusive Länder sovereignty *vis-à-vis* federation and Community, but also at claiming a greater role in the exercise of the competences of federation and EC wherever these impact on the interests of the Länder.

Reimut Jochimsen and Roland Sturm focus in their contributions on the problems and opportunities which exist for the Länder in today's Community. Jochimsen outlines the strategy North Rhine-Westphalia has developed over the last two decades for promoting structural economic adjustment. This involves infrastructural investment, the promotion of research, especially into new technology, and the promotion of the small business sector rather than traditional forms of subsidy-based structural policy. Such a strategy can act, he asserts, as an ideal basis for maintaining regional economic competitiveness in a 'Europe of the Regions'. Sturm takes a rather different perspective by indicating how Community regulations have restricted the leeway of the Länder to pursue traditional forms of regional industrial policy at the same time as – by and large – denying the (western) Länder access to the programmes and resources of the European Regional Development Fund. He does, though, point to an increased emphasis on developing new forms of industrial policy in the Länder, similar to the North Rhine-Westphalian strategy Jochimsen outlines, which have allowed at least some of the Länder to make use of those autonomous powers left to them.

Uwe Leonardy discusses the development of the constitutional rights and the institutional participation of the Länder in the Federal Republic's foreign relations. He then focuses on the discussions currently being conducted between federation and Länder on the strengthening of the constitutional powers of the Länder in both foreign treaty-making and European affairs, as made necessary in particular by the proposals of the Maastricht Treaty on European Union. The emphasis is reversed in David Spence's contribution, which examines the European Community's response to German unification. He focuses on the key role played by the Commission in preparing the ground with remarkable speed and flexibility for the incorporation of the former GDR into the Community, and also points to the link which emerged between unification and the deepening of the integration process beyond the completion of the Internal Market.

In the final contribution, Roland Sturm and Charlie Jeffery review the major themes developed throughout the collection. They discuss the

problems posed for the federal system by unification and deepening European integration and assess whether these are likely to lead to a revival of the characteristic cooperative federalism of the Federal Republic or an alternative scenario in which the Länder no longer prove able to provide a strong counterweight to the federal level.

It would be appropriate at this point to offer the thanks of the Association for the Study of German Politics to the Anglo-German Foundation, in particular Dr Connie Martin and Dr Ray Cunningham, and to the Goethe-Institut and its Director Dr Elmar Brandt, without whose generous support this collection, and the conference from which it arose, would not have been possible. Thanks are also due to the Centre for Federal Studies at the University of Leicester, especially John Yates and Rachel Clarke, for assistance in preparing this collection for publication.

Charlie Jeffery and Roland Sturm, August 1992

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German Unification and the Federal System

HARTMUT KLATT

The expansion of the German federation from 11 to 16 Länder following unification represents a manifold challenge for the federal system. A series of interim measures designed to meet the most immediate of these challenges on a transitional basis were incorporated into the Treaty on Economic and Monetary Union and the Treaty of Unification in 1990. The problem of a more enduring adjustment to the Federal Republic's constitutional order has, however, not yet been solved. Differences of perspective and interest between federation and Länder and between the Länder themselves have so far frustrated agreement on the measures needed to accommodate the new Länder within the federal system in the longer term. The possibility remains that these differences will not be bridged within the timescale set out for their resolution in 1990.

The radical changes which swept through the socialist states of eastern Europe during 1989, aimed at democratisation and the introduction of a free market order, had their effect on the GDR from the summer onwards. The peaceful and democratic revolution which subsequently unfolded in the GDR in the autumn of 1989 resulted in the fall of the SED regime and its replacement by a transitional government under Hans Modrow, flanked by the quasi-parliamentary 'Round Table'.¹ After the first free elections to the Volkskammer on 13 March 1990 a genuine parliamentary democracy was established. Foreign and economic policy problems then accelerated the process of unification to such an extent that the GDR Grand Coalition, formed under Prime Minister de Maizière after the March election, was also soon demoted to the status of a transitional government. On the night of 22–23 August 1990, the Volkskammer decided, by a two-thirds majority, that the GDR should accede on the basis of Article 23 of the Basic Law to the Federal Republic.² On 3 October 1990 the unification process was completed.

Despite the many disputes and controversies which surrounded unification, there existed from the outset widespread agreement across the political spectrum in both East and West that a federal constitution should be the basis of a unified Germany. There was a cross-party

consensus that a unified Germany should have, for domestic, European and international reasons, a federal structure. The aim of this contribution is to examine, in a discussion of some of the key aspects of the unification process, the problems posed, and the implications raised by, unification for Germany's federal system.³

THE ESTABLISHMENT OF THE NEW LÄNDER IN THE FORMER GDR

After the end of World War Two new Länder were quickly established in the respective occupation zones. These were based in part on long-established units of government like Bavaria, but elsewhere were completely new creations (for example, North Rhine-Westphalia or Lower Saxony) fashioned from the territory of the former Land of Prussia, which was dissolved by the Allies in 1947. In the Russian occupation zone five Länder were formed between 1945 and 1947, likewise comprised in part of former Prussian territories.

In 1952 these five Länder were transformed, under the SED's policy of centralisation, into 14 administrative districts by a 'Law on the Further Democratisation of the Structures and Procedures of the State Authorities in the Länder of the GDR'.⁴ At the same time the structure of local government was also transformed. These subnational government structures were to be in place for the next 38 years, until the GDR Volkskammer passed a 'Law on the Establishment of Länder' (*Ländereinführungsgesetz*) on 22 July 1990 as a prerequisite of the Treaty of Unification.⁵ This law was intended to establish the Länder Brandenburg, Mecklenburg-West Pomerania, Saxony, Saxony-Anhalt and Thuringia with effect from 14 October 1990, and in addition gave the status of a Land to East Berlin (East and West Berlin were subsequently unified to form a single Land). Apart from some minor exceptions, the new Länder were based on amalgamations of the 14 previous administrative districts. Under the terms of the Treaty of Unification, the federal structure of the Federal Republic of Germany was then extended to these new Länder and East Berlin on 3 October 1990, 11 days earlier than initially planned.⁶

Some 15 *Kreise* (local authority areas) held referenda which decided which of the reestablished Länder they would join. In some cases the final decision was taken only after the establishment of the new Länder. Although the respective Länder capitals were not set out in the *Ländereinführungsgesetz*, it was undisputed right from the beginning that Potsdam was to be the capital of Brandenburg, and that Dresden and Erfurt were to be the capitals of Saxony and Thuringia respectively. In two Länder the newly elected parliaments (*Landtage*) dealt with the issue of selecting a capital city. A majority in Saxony-Anhalt preferred Mag-

deburg to Halle, and in Mecklenburg-West Pomerania the decision about the future seat of both parliament and government fell in favour of Schwerin over Rostock.⁷

CHANGES TO THE FEDERAL FRAMEWORK FOLLOWING UNIFICATION

The unification of the GDR and the Federal Republic of Germany has left a deep imprint on the German federal system. As a consequence of unification the number of Länder has risen from 11 (including unified Berlin) to 16. The German federation has thus grown by 40 per cent in territory and by about a quarter in population. These quantitative changes inevitably altered the framework of German federalism. As a consequence there developed an intensive discussion between federation and Länder during the unification process about the need to introduce appropriate changes to the federal order. In the end a series of transitional regulations and adjustment provisions, rather than a wholesale reform of the federal order, were set out both in the first State Treaty (*Staatsvertrag*) on Economic, Monetary and Social Union and in the Treaty of Unification itself.

Changes to the Financial Constitution

The most important regulations in both the State Treaty on Economic, Monetary and Social Union and the Treaty of Unification are those relating to the financial constitution of German federalism, as set out in the Basic Law. On their accession the new Länder were largely integrated into the existing financial constitution. Those few cases where divergences from the financial regulations set out in the Basic Law were allowed reflect the considerable differences which exist in economic structure and financial capacity between old and new Länder. The amended financial equalisation law⁸ gives a commitment to maintain a 65:35 per cent distribution of turnover tax revenue between the federation and the old Länder until the end of 1992. In addition, the new Länder have in principle been fully incorporated into the existing system of vertical distribution of tax revenues between federation and Länder.⁹ However, in order to avoid unjustified advantages accruing to the old Länder in the distribution of turnover tax between federation and Länder, transitional arrangements will be applied in this area between the federation and the new Länder until 1994.

The existing regulations in the Basic Law on the horizontal distribution

of taxes (that is, between the individual Länder) have also been applied in principle to the new Länder. There is one basic exception, however, concerning the Länder share of 35 per cent of the turnover tax revenues. After the deduction of a tranche for Berlin, turnover tax revenues were divided into two parts, east and west. On this basis, the new Länder receive only 55 per cent of the turnover tax revenues to which they would normally be entitled. This figure will, under the terms of the Treaty of Unification, rise to 70 per cent by 1994. The old Länder, set to receive four to five billion DM more annually as a result, forced this regulation through in order that the German Unity Fund,¹⁰ and not they, would bear the major burden of supporting the new Länder in the short term.

In a transitional measure supplementary to the financial constitution of the Basic Law, the federation and the old Länder have provided 115 billion DM of financial aid for use by the new Länder through the German Unity Fund. Out of this, 95 billion DM is to be raised by borrowing on the capital market, with the federation and the old Länder sharing interest and repayment costs. Other divergences from the Basic Law in the Treaty of Unification include provisions dealing with the share of income tax revenue allocated to local authorities and measures to ensure that the local authorities in the new Länder have sufficient financial resources to carry out the responsibilities incumbent on them.

The financial regulations contained in both the State Treaty on Economic and Monetary Union and the Treaty of Unification need to be seen against the background of the agreement reached by the heads of government of the federation and the old Länder on 16 May 1990.¹¹ In the face of popular pressure for unification, the federation had to make considerable concessions to the heads of government of the old Länder. The old Länder were able to insist on the highly favourable apportionment of turnover tax revenue mentioned above; they were also able to insist as a condition of their participation in the Unity Fund that the federation pay seven of the old Länder annual complemental grants (*Bundesergänzungszuweisungen*) to the value of nearly three billion DM, and to continue to grant nine out of the 11 old Länder structural aid amounting to 2.45 billion DM a year. It was also decided to leave the system of financial equalisation between the 'rich' and the 'poor' western Länder unchanged until the end of 1994. In this way the old Länder avoided the risk of all of them, rich and poor (excepting perhaps the poorest, Bremen and the Saarland), becoming net contributors to the equalisation system as a result of an immediate incorporation of the new Länder into that system. The heads of government of the western Länder were thus largely successful in their attempt to leave the federation to foot the bill if the resources of the Unity Fund proved insufficient to finance

the former GDR. This turned out to be a negotiating success which was to prove extremely costly for the federation.

Joint Tasks and Mixed Financing

The Joint Tasks listed under Articles 91 a and b of the Basic Law and the provisions for mixed financing arrangements under Article 104a Paragraph 4 were introduced directly in the new Länder on their accession to the Federal Republic.¹² Although this meant the assumption of a massive extra financial burden, the federation still declared its willingness to the old Länder not to cut back the financial contributions hitherto paid to them, in particular for the Joint Tasks of university construction and the improvement of agricultural structures. The federation was not, however, prepared to make similar concessions on the Joint Task of improving regional economic structures. Moreover, the federal government reserved the right to modify its budgetary commitments in the future and thus refused to give the old Länder a general commitment to continue with existing arrangements indefinitely.

Reform to the Voting Arrangements in the Bundesrat

A further amendment to the Basic Law brought about by unification and impinging on the federal system was the reform to the allocation of votes in the Bundesrat.¹³ This amendment built on initiatives already taken up by the Bundesrat which were directed towards balancing the federal principle of Länder equality with the democratic principle that the population should be adequately represented. On the basis of the Treaty of Unification Article 51 Paragraph 2 Basic Law was thus altered so that North Rhine-Westphalia, Baden-Württemberg, Bavaria and Lower Saxony, the biggest four Länder in terms of territory and population, now have six votes in the Bundesrat instead of the previous five. Including the five new Länder, there are thus now 68 votes in the Bundesrat. With their combined 24 votes, the four big Länder together now have just over a third of the total votes available, sufficient to block any potential changes to the constitution, particularly on financial issues, which might be detrimental to their – and their population's – interests.

Other regulations affecting the federal order in the two state treaties dealt with the issues of whether Bonn or Berlin was to be the capital,¹⁴ of how the federation and the old Länder might help build up the administrative capacities of the new Länder,¹⁵ and of how the new Länder are to exercise powers in their autonomous fields of responsibility while receiving – on a transitional basis – high levels of financial support from the federation.¹⁶

CONSEQUENCES FOR THE FEDERAL SYSTEM IN UNIFIED GERMANY

Increased Complexity of Decision-Making

The expansion of the federal system by five new Länder has implications both for 'vertical' relations between federation and Länder and for 'horizontal' relations within the Länder community. Procedures for policy formulation and decision-making have become more complicated simply by virtue of the increased number of Länder. Pre-unification experience showed that coordinative procedures had already become unwieldy and time-consuming throughout the federal system: at the federal level (that is, in the Bundesrat), in federation-Länder relations (in the conferences of heads of government and ministers and in the institutions of cooperative federalism), and in inter-Länder relations. These problems have inevitably been intensified by unification. The cross-cutting differences of interest and lines of conflict which exist in the new federation – and the coalitions that may form around them – could delay or even prevent agreement on key issues being reached. There thus exists a real danger of the federal system 'seizing up' and entering a period of paralysis.¹⁷

New lines of conflict are most likely to emerge in the relationships between financially strong and financially weak Länder and the federation. The federation already had opportunities to play the old Länder off against each other prior to unification by exploiting differences of interest, in particular by forming coalitions with the financially and structurally weak Länder against the stronger Länder (as was illustrated in the case of the Law on Structural Aid¹⁸). This potential for the federation to interfere in Länder affairs with the aim of dividing them against each other and using its financial resources to exert influence in their affairs has subsequently been increased considerably by the incorporation of the five new Länder. The likely result is a growing dependence of Länder politics on the federation and thus a strong push towards a more centralised and regulated federal system. In addition, the tendency towards *Politikverflechtung*, the enmeshment of federation and Länder in the federal policy process, is likely to be strengthened as both Joint Tasks and mixed financing arrangements are expanded in the new Germany: as past experience shows, the response to newly emerging problems will undoubtedly be to seek jointly planned and jointly financed solutions.

Party political lines of conflict are also likely to continue to play an important role in the federal system. Despite their specific regional interests, particularly in the economic and social spheres, the new Länder

have already lined themselves recognisably up on party political lines. This could be seen, for example, in the federal-Länder negotiations on the possibility of a higher contribution by the old Länder to the costs of German unity.¹⁹ In relations between the Länder themselves, party-political front-lines have also been clearly drawn, for example on the question of the length of the school day.

There also exist divergent interests between the stronger Länder with larger territories and population, and those which are of medium or small size. This has been seen in debates on the possibility of a territorial reform of the federal system and on the proposed concentration of the central banking system by slimming down the existing structure of 16 to one of just nine Länder central banks.²⁰

Finally, unification has added a further element to the balance of powers between federation and Länder: old and new Länder are, perhaps inevitably, pursuing extraordinarily divergent interests in the new Germany. Proof of this can be found in the emergence of new institutional structures: the heads of government and departmental ministers of the five new Länder have, for example, already begun to meet separate from their western counterparts to discuss issues and problems of specific concern to them.²¹ Moreover, in view of the disproportionately high financial needs of the new Länder in the coming years, there will be constant struggles between old and new Länder over the distribution of limited financial resources. This financial line of conflict will undoubtedly play a prominent role in the forthcoming (by 1995) reform of the financial equalisation system, when it is highly likely that the new Länder will be able to count on the support of the federation in asserting their interests against the old Länder. As the new Länder are gradually integrated and as their economic and social standards come to approach those in the west, however, this competition between new and old will be modified and overlain by coalitions of the financially and economically stronger (western) Länder ranged against the majority of their weaker (both eastern and western) counterparts.

Disputes about the Financing of Unification

In the course of time it has become clear that the cost of unification – and the resources needed by the German Unity Fund – were grossly underestimated.²² As a result of the desolate economic situation in the east, of growing unemployment, the unresolved property question, run-down infrastructure, insufficient private investment and an administration still far from working efficiently, the five new Länder are teetering on the brink of financial catastrophe. The sections of the Treaty on Economic

and Monetary Union and the Treaty of Unification which dealt with the question of finance have thus, in effect, become largely redundant. As a consequence an intense political struggle broke out over the distribution of financial resources. All the interested parties – government and opposition in Bonn, old and new Länder and the local authorities – were agreed that steps needed to be taken to devise a financial equalisation system which would both be ‘just’ and improve the financial situation of the new Länder. Conflict existed, of course, over the means by which this should be achieved.

The central question was who was to foot the bill. Bonn’s answer was the old Länder; these of course returned the compliment and suggested the federation should shoulder the major burden. Both sides expected the new Länder to cut expenditure and to cover their outgoings where necessary by taking up loans. The general opinion in the mass media was that the old Länder were placing their own self-interest over solidarity with the East Germans, and that the federation was paying more than it really ought. However, over time the view that the old Länder were the financial ‘winners’ of the unification process became less and less certain. It became ever clearer that the federation had grossly underestimated the amount of money required to finance German unification and wanted to unload some of the additional burdens on to the old Länder.²³ All those involved recognised the necessity of now granting greater financial aid to the new Länder than before and of thus putting them on a sound financial footing, but there was no such agreement on the scale of the additional financial needs of the new Länder.

The old Länder were initially unable to secure agreement on an approach to solving the problem.²⁴ The SPD-led Länder tabled a suggestion that the German Unity Fund be supplemented with another six billion DM, raised on the capital markets, in order to provide rapid aid for the East German Länder and their local authorities. The federation, opposed to such forms of credit-financing, preferred the plan put forward by the CDU/CSU-led Länder. This proposed the full integration of the new Länder into the system of distribution of the Länder share of turnover tax by 1992 at the latest. The federal government refused to enter into any further financial commitments and urged the old Länder and their local authorities to take more seriously their co-responsibility for the improvement of the financial situation of the new Länder. In this vein Theo Waigel, the Federal Finance Minister stressed that a ‘just’ distribution (that is, shared between federation and old Länder) of the burdens arising from unification was necessary, because unification, in the eyes of the Basic Law, was a responsibility of the whole state (*Gesamtstaat*).

On 28 February 1991 the heads of government of federation and Länder finally agreed to take a first step towards an amendment to the Treaty of Unification by deciding on a more balanced distribution of burdens in meeting the cost of German unification.²⁵ On the basis of this agreement the federation has given up its 15 per cent share of the German Unity Fund in favour of the new Länder. The new Länder were also fully integrated into the system of distribution of the Länder share of turnover tax with effect from the end of 1991. In order better to counter the catastrophic financial situation in the east, the federation also provided additional funds through the establishment of a further 24 billion DM programme for 1991 and 1992 entitled *Gemeinschaftswerk Aufschwung-Ost* (Joint Task for Recovery in the East). In order to finance these and other commitments, the coalition parties in Bonn announced tax increases whose proceeds will go wholly to the federation.

A second round in the ongoing dispute between federation and Länder over the financing of German unity took place in the spring of 1992. The bone of contention, which emerged in connection with the 1992 Tax Amendment Law (*Steueränderungsgesetz*), was the raising of the value of financial transfers to the new Länder from the German Unity Fund. In view of the increased needs which had become apparent in the east, these transfers were now to rise to a level of over 30 billion DM in 1992 and 1993 instead of being progressively decreased as had originally been planned. It was proposed that the federation and the old Länder together pass over 5.9 billion DM from their budgetary resources and tax revenues in 1992 and 11.5 billion in 1993 to the new Länder. This financial transfer from west to east was to be made possible in two ways. The first was the cancellation of the structural aid programme in the Law on Structural Aid (*Strukturhilfegesetz*).²⁶ After 1992, the 2.45 billion DM previously spent annually by the federation on the structural aid programme will be dedicated to structural policy investment in the new Länder. The second means of transferring funds to the east was linked to the increase of turnover tax from 14 per cent to 15 per cent which was to be made, in compliance with EC regulations, from 1 January 1993. The extra revenue from this increase is to accrue solely to the new Länder in 1993 and 1994. A further element of the proposed package was an increase in the share of turnover tax revenue allocated to the old Länder from 35 per cent to 37 per cent for 1993 and 1994. This was designed to enable the old Länder to cope with the structural effects of the disarmament process of recent years without needing federal aid in a joint arms industry adjustment programme (which had previously been mooted).

This package of measures became the subject of controversy between federation and Länder when the SPD-led Länder attempted to use their