



# 4

## Political system

It fast became a successful model and a prime export: After the Second World War, the Basic Law provided freedom and stability - albeit initially only for the Germans in the West of the nation that remained divided until 1990.

The primacy of the basic rights, the definition of the principles of a democratic and social federal state, and the foundation of a supreme court that watches over adherence to the constitution - these are the basic cornerstones of German democracy.

*Symbol of open insight: The dome over the Reichstag building*



## The state, the legal system and the citizens

*By Jürgen Hartmann*

THE POLITICAL SYSTEM OF THE FEDERAL REPUBLIC of Germany represents the second democratic system in German history. At the **Parliamentary Council** when designing the new constitution, the Basic Law, the founders of the Federal Republic took into account the lessons that had been learned from the failure of the first democracy, namely the Weimar Republic, and the Nazi dictatorship. The Federal Republic of Germany was born from the ashes of World War II. And in 1949 democracy was initially established only in the Western section of a Germany that had been divided into two states. Yet the Basic Law, although originally intended as a temporary solution, stated that its goal was reunification “in free self-determination”.

The second German democracy turned out to be a success. There were several reasons for this, among which were the value placed on a way of life based on the principle of liberty following the dictatorship and a striving for acceptance by the country’s democratic neighbors. But the Basic Law also had its role to play in the success. In 1990, when 40 years of German division came to an end, the Basic Law was adopted as the constitution of a united Germany.

### The Basic Law

The **Basic Law** ties the legislative process to the constitutional order and binds state administration to uphold the law. Section 1 of the Basic Law is of particular relevance. It stipulates that respect for human dignity is the most important aspect of the constitution: “Human dignity shall be invio-



### Parliamentary Council

The constitutional convention met for the first time on Sept. 1, 1948. It was made up of 65 delegates elected by the West German State Parliaments. Prior to this, an expert working party had met on the island of Herrenchiemsee in Bavaria and compiled the documents for discussion at the convention.

### Basic Law

After it had been approved by the Parliamentary Council, the Basic Law came into force on May 23, 1949. It sets out the fundamental legal and political order for the Federal Republic of Germany. The basic rights enshrined in the Basic Law are of particular importance.

The Federal coat-of-arms:  
Black eagle, with  
red edges on a golden  
yellow background



#### Federal state

The Federal Republic of Germany consists of 16 federal states. The powers of the state are divided up between government as a whole, the Federal Government and the federal states. The latter have independent, if limited government authority.

#### Welfare state

There is a long tradition of the welfare state in Germany. In 1883, the Bill on Health Insurance was enacted, followed in 1884 by that on accident insurance and in 1889 on invalidity and old-age insurance. At that time, only one tenth of the population was protected by this insurance coverage, whereas the figure today is some 90 percent.

lable. To respect and protect it shall be the duty of all state authority." Among other things, the other basic rights guarantee the freedom to act within the law, equality before the law, freedom of the press and media, freedom of association and protection of the family.

In determining that it is the people who exercise power through special bodies, the Basic Law lays down representative democracy as the form of rulership. Furthermore, it determines that Germany is a constitutional state: All state authorities are subject to judicial control. Another principle of the constitution is that Germany is a **federal state**, in other words the ruling authorities are divided up into a number of member states and the central state. In conclusion, the Basic Law defines Germany as a welfare state. The **welfare state** requires the political system to take precautions such that people are guaranteed a decent standard of material well-being in case of unemployment, disability, illness and in old age. One particular feature of the Basic Law is the so-called "eternal character" of these governing constitutional principles. Subsequent alterations to the Basic Law or a completely new constitution cannot encroach on the basic rights, the democratization of sovereignty, the federal state and the welfare state.

## The political parties

According to the Basic Law it is the task of the political parties to participate in political will formation by the people. As such, putting forward candidates for political office and the organization of election campaigns both have the status of constitutional tasks. For this reason the parties are reimbursed the costs they incur in their respective election campaign. The **reimbursement of election campaign costs**, a feature Germany was the first country to introduce, is now commonplace in most democracies. According to the Basic Law, a political party's internal organization must conform to democratic principles (member democracy). And all parties are expected to acknowledge the values and structure of the democratic state.

Parties whose commitment to democracy is in doubt can, at the request of the Federal Government, be banned from participation in the country's political life. However, such a ban is not automatically forthcoming in any sense. Should the Federal Government consider a ban to be appropriate because such parties pose a threat to the democratic system, it can only petition for such a ban. Any such ban may only be enacted by the Federal Constitutional Court after duly considering the individual case. The

#### Reimbursement of election campaign costs

This is part of the financing received by the political parties, which is made up of contributions by party members, income from assets the party holds, donations and state subsidies. The parties each receive a lump sum from the state toward their election campaign costs; its size depends on the number of votes they last polled and the size of their contributions and donations.



## Parties in the Bundestag



**SPD**  
Social Democratic Party of Germany  
Chairman: **Kurt Beck**  
Founded: 1863/1875  
Membership: 550,000



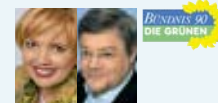
**CDU**  
Christian Democratic Union  
Chairperson: **Angela Merkel**  
Founded: 1945  
1950 at the Federal level  
Membership: 544,000



**CSU**  
Christian Social Union  
Chairman: **Erwin Huber**  
Founded: 1945  
Membership: 168,000



**FDP**  
Free Democratic Party  
Chairman: **Guido Westerwelle**  
Founded: 1948  
Membership: 65,000



**The Greens**  
Alliance 90/The Greens  
Chairpersons: **Claudia Roth, Reinhard Bütikofer**  
Founded: 1980  
Membership: 45,000



**The Left Party**  
Chairmen: **Lothar Bisky, Oskar Lafontaine**  
Founded: 1989  
Membership: 69,000

Parties represented in the Bundestag: **SPD** and **CDU/CSU** as well as the **FDP** have been represented in the Bundestag since it was founded. CDU and CSU have a joint parliamentary party. The CSU stands for election in Bavaria, the CDU in all the other federal states. In 1984, the Greens were elected to the Bundestag for the first time; after German unification they joined forces with the East German **Alliance 90**. In 1990, the successor party to the East German Socialist Unity Party, the SED, was elected to the Bundestag under the new name of Party of Democratic Socialism (PDS). In 2005, the PDS renamed itself The Left Party.PDS. In 2007, it merged with WASG, the Electoral Alternative Labor and Social Justice, to form **The Left Party**.

**Elections**

Every four years, the parties stand in the general elections to the Bundestag. Traditionally, the turn-out is high in Germany, and following a high in the 1970s, when the turn-out was over 90 percent, since reunification it has been around 80 percent. The elections to the 16<sup>th</sup> German Bundestag on Sept. 18, 2005 saw a turn-out of 77.7 percent of the electorate.

idea is to prevent the ruling parties simply banning those parties who might prove awkward in the fight for votes. The parties in government prefer to combat undemocratic parties in the everyday political arena through political debate on the issues at hand. In the history of the Federal Republic there have been few banning processes, and even fewer parties have actually been banned. Though the Basic Law accords political parties some privileges, these are, basically, means for society to express itself. They take full responsibility for failing at **elections**, a loss of members, or strife in conjunction with personnel and factual issues.

The German party system is quite transparent. Until 1983, the Bundestag was composed only of those parties who had sat in parliament since the very first elections when the Bundestag was first convened back in 1949. They are: the Christian Democratic Union/Christian Social Union (CDU/CSU), the Social Democratic Party of Germany (SPD) and the Free Democratic Party (FDP). With the exception of

Bavaria, throughout Germany the Union parties, and they are both members of the European Christian Democrat group of parties, stand as the Christian Democratic Union. The CDU itself declines to stand in Bavaria, preferring to leave the region to the Christian Social Union, with which it is closely allied. In the Bundestag the members of parliament of both parties have joined forces to create a permanent **parliamentary party**.

The Social Democratic Party of Germany is the other major force in the German party system. It belongs to the European group of Social Democratic and democratic socialist parties. CDU/CSU and SPD are considered to be the “popular” parties, i. e., in the past they successfully managed to secure the support of a broad cross-section of the **electorate**. In principle, both parties support a welfare state with its guaranteed income for the elderly, sick, disabled and unemployed. Whereas the CDU/CSU attract the self-employed, businessmen and entrepreneurs, the SPD has close links to the unions.

The Free Democratic Party belongs to the European group of liberal parties. Its political creed is that of the state being involved as little as possible in the economy. The FDP is not one of the “popular” parties. It receives backing primarily from well-educated high-earners.

The Alliance 90/The Greens, referred to in short as “The Greens”, was founded in 1980 and was the first party founded post-1949 to enjoy long-term success. The Greens belong to the European group of green and ecological parties. The characteristic feature of their program is the combination of market economy and decrees pertaining to nature and environment protection that must be monitored by the state. They too represent higher-income voters with an above-average standard of education.

Following reunification the Party of Democratic Socialism (PDS) entered the political arena in the Federal Republic of Germany. It emerged in 1989 as the successor to the SED, the state socialist party of the former German Democratic Republic. The PDS has transformed itself into a

**Parliamentary party**

At least five percent of the members of the Bundestag, and they must belong to one and the same party or to parties that owing to their identical political aims do not compete with each other in any federal state, can form a parliamentary party. The number of seats they receive in the parliamentary committees and the Council of Elders depends on the size of the parliamentary party.

**Electorate**

Just under 62 million Germans aged 18 or over are called on to cast a vote in the elections to the Bundestag. Women account for more than 32 million of them and thus constitute a majority of the electorate. At the 2005 general elections to the Bundestag, 2.6 million persons were enfranchised as first-time voters.

**The Federal Government**

On November 22, 2005 the German Bundestag elected Dr. Angela Merkel (CDU) to the office of Chancellor of the Federal Republic of Germany. She is the leader of a grand coalition of CDU/CSU and SPD. Angela Merkel is the first woman to head a Federal Government. The government consists of five female and ten male ministers. As a joint parliamentary party, the CDU and CSU



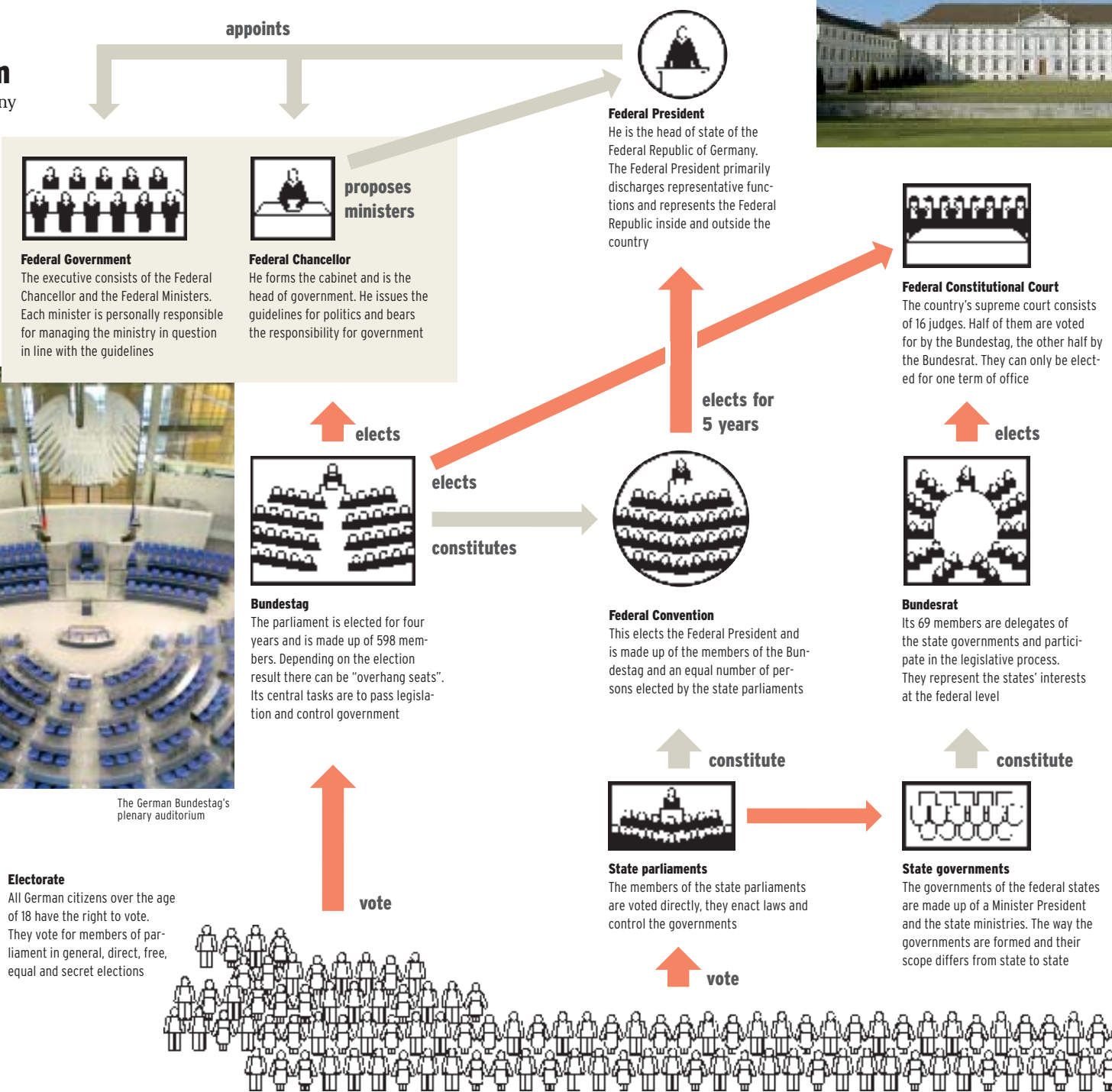
provide six ministers as well as the head of the Federal Chancellery Office. The SPD is responsible for eight ministries, including the Federal Foreign Office, headed by the Federal Minister of Foreign Affairs and Vice-Chancellor, Dr. Frank-Walter Steinmeier (SPD).

At the half-way mark in the legislative period, the cabinet felt it had achieved much: Steady growth in GDP and rising employment confirm the validity of its economic and reform policies implemented to date. During its Presidency of the EU Council and as G8 President, Germany influenced foreign and security policies in important areas. It is the Federal Government's express goal to reinforce the economic upturn and the favorable labor market trend. Moreover, it intends to press ahead with its ambitious climate and energy policies.

[www.bundesregierung.de](http://www.bundesregierung.de)

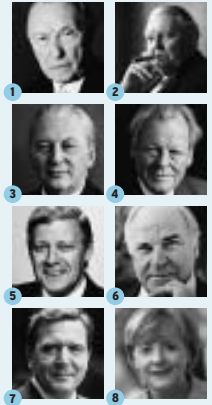
# The political system

The Federal Republic of Germany is a democratic, federal and social constitutional state. Together with the basic rights, these principles form the inviolable core of the constitution, adherence to which is guarded over by the Federal Constitutional Court



Schloss Bellevue, the official seat of the Federal President

### The German Federal Chancellors

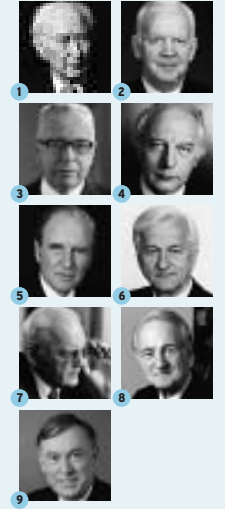


- 1 **Konrad Adenauer (CDU)** 1949-1963
- 2 **Ludwig Erhard (CDU)** 1963-1966
- 3 **Kurt Georg Kiesinger (CDU)** 1966-1969
- 4 **Willy Brandt (SPD)** 1969-1974
- 5 **Helmut Schmidt (SPD)** 1974-1982
- 6 **Helmut Kohl (CDU)** 1982-1998
- 7 **Gerhard Schröder (SPD)** 1998-2005
- 8 **Angela Merkel (CDU)** since 2005



The German Bundestag's plenary auditorium

### The German Federal Presidents



- 1 **Theodor Heuss (FDP)** 1949-1959
- 2 **Heinrich Lübke (CDU)** 1959-1969
- 3 **Gustav Heinemann (SPD)** 1969-1974
- 4 **Walter Scheel (FDP)** 1974-1979
- 5 **Karl Carstens (CDU)** 1979-1984
- 6 **Richard v. Weizsäcker (CDU)** 1984-1994
- 7 **Roman Herzog (CDU)** 1994-1999
- 8 **Johannes Rau (SPD)** 1999-2004
- 9 **Horst Köhler (CDU)** since 2004

### Electoral system

The German electoral system is based on slightly modified, i.e., so-called personalized, proportional representation. Each voter has two votes, the first of which is for a candidate in his or her constituency, the second for a state list of candidates put up by a particular party. The number of seats a party holds in the Bundestag is determined by the number of valid second votes it receives.



Assembly for the people's representatives: the Bundestag auditorium

### Five-percent threshold

Only those parties are taken into account when allocating seats in the Bundestag as have overcome the following hurdle: they must have polled at least five percent of the vote or won at least three constituencies outright.

democratic party. It was initially only successful in the five eastern states of the Federal Republic, which until 1990 had formed the GDR. In the 2005 general election, candidates from the newly founded party named Wahlablternative Arbeit & Soziale Gerechtigkeit (WASG, Electoral Alternative Labor and Social Justice) which had hitherto only challenged in a state election, were included on the PDS list, which renamed itself The Left Party.PDS. In June 2007, the two parties joined to form the party The Left Party.

### The electoral system

The German **electoral system** makes it very difficult for any one party to form a government on its own. This has only happened once in 56 years. An alliance of parties is the general rule. So that voters know which partner the party they voted for is considering governing with, the parties issue coalition statements before embarking on the election campaign. By voting for a particular party citizens thus express on the one hand a preference for a specific party alliance, and on the other determine the balance of power between the desired future partners in government.

### The Bundestag

The Bundestag is the elected representation of the German people. Technically speaking half the 598 seats in the Bundestag are allocated by means of the parties' state lists (the second vote) and the other half by the direct election of candidates in the 299 constituencies (the first vote). This division changes nothing with regard to the key role of the parties in the electoral system. Only those candidates who belong to a party have any chance of success. The party to whom members of the Bundestag belong is meant to reflect the distribution of votes. In order to prevent complications in the formation of majorities by the presence of small and very small parties a **five-percent threshold** is designed to stop their being represented in the Bundestag.

The Bundestag is the German parliament. Its elected representatives are organized in parliamentary parties and select a President from among them. It is the function of the Bundestag to elect the Federal Chancellor and keep him in office through support for his policies. The **members of parliament** can relieve the Chancellor of his duties by denying him their confidence, as do other parliaments. Nor does it make any great difference that in Germany the Chancellor is elected, whereas in Great Britain and other parliamentary democracies he is appointed by the head of state. In other parliamentary democracies, a party leader who can rely on a parliamentary majority is always appointed head of government.

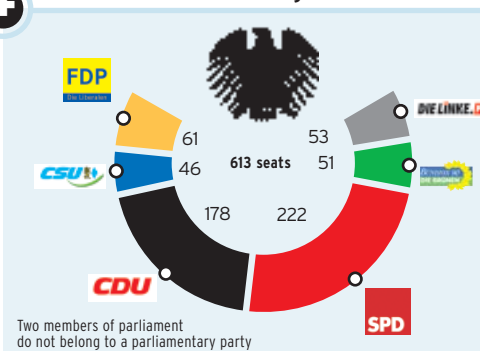
The second major function of the elected representatives in the Bundestag is to pass legislation. Since 1949 some 9,000 bills have been introduced to Parliament and more than 6200 laws enacted. These were predominantly amendments to existing acts. Most drafts are tabled by the Federal Government. A small number are introduced by Parliament or the Bundesrat. Here, again, the Bundestag is similar to parliaments in other parliamentary democracies in that it for the most part enacts bills proposed by the Federal Government. The Bundestag, however, is less like the debating parliament typified by British parliamentary culture and corresponds more closely to a working parliament.

### Members of parliament

Members of the German Bundestag are voted for in general, direct, free, equal and secret elections. They are representatives of the entire nation and are not tied to orders and instructions. Exclusion or resignation from a party therefore does not affect their status as members of the Bundestag. In practice, however, membership of a party plays a decisive role, as the members of one and the same party, to the extent that they hold the requisite minimum number of seats, form parliamentary parties, and these shape the face of parliamentary activities.



### The 16th German Bundestag



On September 18 2005 the 16th German Bundestag was elected. The election had been preceded by the dissolution of the Bundestag following a failed vote of confidence in the Federal Chancellor. The new Parliament is made up of five parliamentary parties. The SPD, the CDU and CSU together form a grand coalition government. The President of the Bundestag - and thus the second-highest ranking official in the country - is the CDU member of parliament Norbert Lammert. Women make up 32 percent of the members of parliament.

### Parliamentary Committees

The Bundestag's Committees are bodies answerable to the entire parliament. In the 16<sup>th</sup> legislative period, the parliament convened 22 standing committees. The constitution stipulates that a Foreign Affairs Committee, an EU Committee, a Defense and a Petitions Committee be established. Their duties are to prepare the debates before the Bundestag. In the presence of representatives of the government and the Bundesrat, draft bills are examined and differences of opinion between the government and the opposition overcome wherever possible.



*The Head of State: Federal President Horst Köhler represents Germany – to the outside world, too. Pictured here on a trip to Africa*

The Bundestag's expert **Parliamentary Committees** discuss the bills introduced to Parliament in great detail. Here, the activities of the Bundestag resemble to some extent Congress in the USA, the prototype of a working parliament.

The third major function of the Bundestag is to keep a check on the government's work. It is the opposition that fulfills the function of monitoring the work of government in a manner visible to the general public. A less evident, but no less effective form of control is carried out by the elected representatives of the governing parties, who behind closed doors ask the government representatives critical questions.

### The Federal President

The Federal President is the head of state of the Federal Republic of Germany. He represents the country in its dealings with other countries and appoints government members, judges and high-ranking civil servants. With his signature, acts become legally binding. He can dismiss the government and, in exceptional cases, dissolve parliament before its term of office is completed. The Basic Law does not accord the Federal President a right of veto such as is held by the President of the United States and other state presidents. Though the Federal President confirms parliamentary decisions and government proposals with regard to ministers, he only checks whether they have come about by the due procedure in accordance with the Basic Law.

The Federal President remains in office for a period of five years; he can be re-elected only once. He is elected by the Federal Convention, which is made up of members of the Bundestag, on the one hand, and by an equal number of members selected by parliaments of the 16 federal states, on the other.

### The Federal Chancellor and the government

The Federal Chancellor is the only member of the **Federal Government** to be elected. The constitution empowers him to



*Central coordination agency for the government's policies: The Federal Chancellery on the bank of the River Spree in Berlin*

personally choose his ministers, who head the most important political authorities. Moreover it is the Chancellor who determines the number of ministries and their responsibilities. It is he who lays down the guidelines of government policy. These outline the Chancellor's right to stipulate binding government activities. This authority gives the Federal Chancellor a whole array of instruments of leadership that easily stands up to a comparison with the power of the President in a presidential democracy.

The Parliamentary Council, which in 1949 resolved the Basic Law, took as its role model for the Federal Chancellor the position of the Prime Minister in Great Britain. The Prime Minister possesses exactly the same means of power as that of Chancellor, though the latter's power is actually far less than that of the British premier. In the British parliamentary system only one party is ever in power, because the first-past-the-post system there favors the strongest party. As a rule, in the Bundestag no one party has a clear majority. For this reason a **coalition**, in other words an alliance of various parties is normally necessary to be able to elect a Chancellor. The election of the Chancellor is preceded by extensive negotiations between those parties that plan to govern together. These address specific topics such as how the ministries are to be divided up between the parties,

### Federal Government

The Federal Government and cabinet is made up of the Federal Chancellor and the Federal Ministers. While the Chancellor holds the power to issue directives, the ministers have departmental powers, meaning that they independently run their respective ministries in the framework of those directives. Moreover, the cabinet abides by the collegial principle, in disputes the Federal Government decides by majority. The affairs of state are managed by the Chancellor.

### Coalitions

Since the first elections to the Bundestag in 1949 there have been 21 coalition governments in Germany. Durable alliances were, for example, the Social Democrat/Liberal coalition which ran from 1969 until 1982, the CDU/CSU and FDP coalition, which ran from 1982 to 1998, and the Social Democrat/Green alliances which endured from 1998 to 2005. A grand coalition of CDU/CSU and SPD is currently in power in Germany.

**Federal Chancellor**

The Federal Chancellor is elected by the Bundestag after being proposed by the Federal President. The Federal Chancellor then proposes to the Federal President which ministers should be appointed/dismissed. The

Federal Chancellor heads the Federal Government in keeping with rules of procedure authorized by the Federal President. He bears responsibility for the Government vis-à-vis the

Bundestag and in the case of national defense is supreme commander of the German Armed Forces.



*One of the most frequented buildings in Germany: The Reichstag, seat of the German Bundestag*

which ministries are to be maintained and which newly created. The strongest party in the alliance is accorded the right to propose the **Federal Chancellor**. In addition the parties agree on the policies they intend to tackle in the next few years. The results of these coalition negotiations are enshrined in the coalition treaty. Only when these steps have been completed is the Chancellor elected. Negotiations between the government parties prepare the decisions taken by the Federal Government and accompany them afterwards. Should there no longer be political consensus between the parties before general elections for a new Bundestag are due, removing the Chancellor from office becomes an alternative. Should a constructive vote of no confidence result in the current Chancellor indeed being removed from office, a new Chancellor must be elected at the same time. This repeal of parliamentary confidence forces the parties represented in the Bundestag to form a new, functioning government majority before they bring down the Chancellor. There have only been two previous attempts to bring down the Chancellor, only one of which succeeded, namely in 1982 when a vote of no confidence was passed against the Chancellor Helmut Schmidt (SPD), who was replaced by Helmut Kohl (CDU).

However, at any time the Federal Chancellor himself can also propose a vote of no confidence in the Bundestag to test whether he still enjoys the unlimited support of the governing parties. Should the Chancellor lose the vote this indicates that parts of the government majority are drifting away from the Chancellor, leaving the Federal President to decide whether the Bundestag should be dissolved and a general election held. The Federal President can also request the parties represented in the Bundestag to try and form a new government.

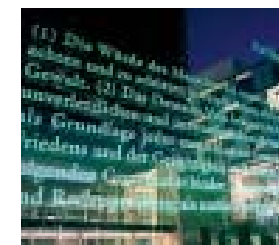
In the history of the Federal Republic there has never been a genuine defeat in a vote of no confidence. There have on three occasions been previously arranged defeats: The elected representatives of the government parties or the

ministers abstained in order to bring down the government in 1972, 1982, and 2005. This course of action was taken in order to prematurely dissolve the Bundestag, which according to the constitution is otherwise not possible. It can only be taken with the approval of the Federal President and is not uncontroversial. As early as 1983 the Constitutional Court stressed that this was a questionable process not in keeping with the intentions of Constitution. In 2005, an appeal was again made to the supreme court, but in this case the constitutional judges again rejected the petitions of two elected representatives of the Bundestag.

**The federal structure**

The German federal state is a complex entity. It consists of a central Federal Government and 16 federal states. The Basic Law lays out in great detail which issues fall within the ambit of the Federal Government and which devolve to the federal states. As such the federal system in Germany is similar to that of other federal countries. Public life in Germany is predominantly based on central laws. In accordance with the **principle of subsidiarity** citizens, on the other hand, deal almost exclusively with state and local authorities acting on behalf of the federal states. The reason for this is the aim of the Basic Law to combine the advantages of a unified state with those of a federal state. In everyday life citizens of other countries have far more frequent dealings with representatives of central government.

The Basic Law stipulates that it be possible to compare living conditions throughout Germany. Essentially these are determined by economic and social policy. For this reason central laws mainly regulate this particular field. To this extent the German federal state resembles a centralized state. Nonetheless it is the federal states that control the major part of pan-state administration. This means that federalist elements dominate the state administrative systems. First, as is typical of a federal state, its own administrative system enforces the laws that apply in that particular state. In



*The Basic Law as a work of art: Installation by Dani Karavan near the Reichstag building*

**Principle of subsidiarity**

Subsidiarity is a core concept in a federal structure. According to it, the smallest unit of the social community capable of handling problems shall bear responsibility and take the decisions - starting from the individual and working upwards via the family, associations and local authorities to the states, the nation as a whole, and the European Union and the United Nations.

**Local self-government**

According to the Basic Law, the cities, municipalities and districts have the right themselves to regulate local affairs within the framework of the law. This right of self-administration specifically covers public local transport, public road-building, water, gas and electricity supplies, sewage disposal services and town planning



Participation in the legislative process: Bundesrat plenary session

In addition they also execute most central laws, which is untypical of federal state systems. As such, formulations such as “unitarian” are used to characterize the German federal state.

There are three pan-state functions that the individual federal states exercise on their own: schooling (to a large extent tertiary education, too), internal security (including policing) as well as the organization of **local self-government**. Thanks to the wide-ranging rights pertaining to guaranteed participation they enjoy in the Bundesrat, the federal states receive a form of compensation for the fact that central government is the primary body determining legislation.

**The Bundesrat**

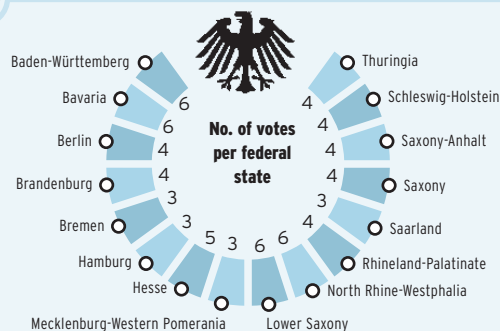
The Bundesrat represents the federal states and alongside the Bundestag is a form of Second Chamber. It is obliged to deliberate on each federal law. As the chamber of the federal states, the Bundesrat has the same function as those Second Chambers in other federal states that are mostly referred to as the Senate. The Bundesrat is made up exclusively of representatives of the federal state governments. The number of votes each state holds is aligned in a sense to the size of its population: Each state has at least three, and

those with the highest populations up to six. Bremen, the smallest state has a mere 660,000 inhabitants, the largest, North Rhine-Westphalia over 18 million.

The Bundesrat plays a part in the passing of federal legislation. Here, it differs from the Second Chamber of other federal states. The Basic Law envisages two forms of participation. Central laws that cause the federal states additional administrative costs or replace existing central laws require the approval of the Bundesrat: The latter is required to endorse laws passed by the Bundestag for these to become legally binding. In this regard, the Bundesrat enjoys the same rights as the Bundestag in terms of being a legislative organ. Currently more than 50 percent of all laws passed require the approval of the Bundesrat. Since federal laws are in principle enforced by the administrative bodies of the federal states, the most important and most costly laws involve the administrative sovereignty of the federal states. A difference should be made between these approval laws and the appeal laws.



The link between the Federal Government and the federal states: The Bundesrat in the former Preussisches Herrenhaus at the heart of Berlin

**Distribution of seats in the Bundesrat**

The Bundesrat is one of the five permanent constitutional bodies in the Federal Republic of Germany. It is involved in the legislative process and thus takes part in Federal decision-making and in European Union matters. Its 69 members are delegates of the 16 state governments. The votes each state has depends on the size of its respective population. Each state can only vote unanimously. The office of President of the Bundesrat is held for one year by the Minister President of each state; the sequence is determined by the size of the states' respective populations.

**The legal system**

The Federal Republic of Germany is a democratic constitutional state that guarantees stable laws, the protection of liberties, and equality before the law. This is essentially ensured by the Basic Law, as the principles of a democratic constitutional state are enshrined in the constitution. The German supreme court, namely the Federal Constitutional Court monitors maintenance of these rights and the preservation of justice.

In Germany, the administration of justice is divided into five branches: ordinary, labor, administrative, social and financial courts. In a normal case there are three higher tiers that can re-assess court decisions. The plaintiffs and the accused can appeal against a court ruling.



Thereupon the litigation goes before a “higher” court and a ruling is handed down. Not until the third level has been reached is there no longer any right of appeal and the litigation thus comes to an end.

Justice is passed down by some 21,000 independent judges who are bound only to the law and are, as a rule, appointed for life. They may not on principle be removed from office. Moreover, there are some 5,000 public prosecutors in Germany and more than 100,000 lawyers.

In surveys on political and legal stability, foreign investors put Germany second only to Great Britain. This legal stability attracts foreign companies and is to the benefit of investments and entrepreneurial activity in Germany.



#### Federal Constitutional Court

This is based in Karlsruhe and consists of two senates, each with eight judges, one half of whom is elected by the Bundestag, the other half voted by the Bundesrat. Each judge is appointed for 12 years and is not eligible for re-election.

Though the Bundesrat can reject the latter, the Bundestag can overrule the objection with the same majority as in the Bundesrat – a simple, an absolute or a two-thirds majority.

If one considers that the activities of the Bundesrat are spread across the shoulders of the 16 state governments, it becomes clear that the federal state governments are important players in the nation-wide political arena. For this reason, the state prime ministers, being the heads of the federal state governments, are known far beyond the borders of their own individual states. Since September 2006, the **reform of the federal system** has recalibrated the respective scope of central government and of the individual federal states. The goal of the reform: to improve the decision-making abilities and scope for action of both central government and the federal state governments, and to more clearly assign political responsibilities.

#### The Federal Constitutional Court

The **Federal Constitutional Court** is a characteristic institution of post-war German democracy. The Basic Law accorded it the right to repeal legislation passed as part of the legitimate democratic process should it come to the conclusion that such legislation contravenes the Basic Law. The Constitutional Court only acts in response to petitions. Those entitled to lodge a complaint include the federal bodies Federal President, Bundestag, Bundesrat, Federal Government and their constituent parts – elected representatives or parliamentary

parties – as well as federal state governments. In “constitution-related” disputes, the Constitutional Court acts to protect the division of powers guaranteed in the Basic Law and the federal state. In order to enable parliamentary minorities to be able to appeal to the Constitutional Court, one third of the elected representatives of the Bundestag is sufficient to submit a complaint against a valid law (“abstract judicial review”).

Furthermore, the Basic Law empowers individual citizens to launch a “constitutional complaint” should they feel that the state has infringed their basic rights. Year after year thousands of citizens register a complaint against the constitution. However, the Court reserves the right to select from the mass of petitions submitted only those that can be expected to result in verdicts that point the way ahead in terms of the validity of basic rights. Ultimately every German court is obliged to submit a petition for actual assessment of the normative basis to the Constitutional Court should it consider a law to be un-constitutional. The Federal Constitutional Court holds a monopoly on interpretation of the constitution with regard to all jurisdiction.

#### Germany and Europe

Germany shares the same basic features of its political system with most members of the European Union (EU). Its system of government is one of parliamentary democracy, in other words, government policy is determined by the head of government and the ministers, and not by the head of state. Given the high standards with regard to the constitutional state and democracy as a result of the Basic Law, the Federal Constitutional Court is also a player in the European political arena. The court has illustrated on several occasions that European law must satisfy the criteria of the Basic Law if Germany is to relinquish to the EU the rights to draw up its own laws. In this respect to a certain extent the “eternal guarantee” of applicable principles with regard to the Basic Law vie with the Basic Law’s commitment to European integration. ●

#### Reform of the federal system

Since September 1, 2006 provisions concerning reform of the federal system have been in place. The most comprehensive reform to the Basic Law since 1949 enhances the ability of both the Federation and the states to take decisions and to make the division of political powers clearer. This reform reduces the number of federal laws requiring the consent of the Bundesrat from about 60 percent to 35-40 percent. At the same time, however, some powers have been transferred to the states, above all as regards education policy. The Federation also gained powers in the fields of environmental policy and waste management.



#### Jürgen Hartmann

Professor Jürgen Hartmann lectures in Political Sciences at the German Armed Forces Helmut Schmidt University in Hamburg. He has authored countless textbooks and introductions to various areas of political science.



#### The topic on the Internet

##### [www.bundespraesident.de](http://www.bundespraesident.de)

This Web site provides information on the person and office of the Federal President and publishes speeches and interviews (English, French, German, Spanish)

##### [www.bundestag.de](http://www.bundestag.de)

The Bundestag Web site describes the parliamentary parties and MPs, and

offers access to Web casts of debates (English, French, German)

##### [www.bundesrat.de](http://www.bundesrat.de)

Daily agendas and parliamentary printed matter are to be found on this home page alongside extensive information on the work of the Bundesrat (English, French, German)

##### [www.bundesverfassungsgericht.de](http://www.bundesverfassungsgericht.de)

In addition to general data, all verdicts since 1998 by the Federal Constitutional Court can be downloaded from its Website (German, English)

##### [www.bundesregierung.de](http://www.bundesregierung.de)

This portal is a source of information about the most important political topics (English, French, German)