

The Constitution Unit

**Multi-Layer Democracy in Germany:  
Insights for Scottish Devolution**

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## **The Constitutional Framework for German Federalism**

The German federal system was established in the then West Germany in 1949. It forms a fundamental part (one of those which can never be overturned by constitutional legislation) of a constitutional order designed to deconcentrate political power after the experience of the Third Reich. Of the 141 articles of the German constitution (the Basic Law), over a third relate to the operation of the federal system. Many of these require supplementary legislation which fleshes out constitutional stipulations in, at times, rigorous and lengthy detail.

Constitutional provisions and supplementary legislation thus set out a highly structured set of relationships between the federation (the various institutions of central, or federal government) and the sixteen states, or Länder. All the Länder have equal constitutional status under the Basic Law. In addition, they each have their own detailed constitutions which formally structure government within their territories.

## **The Constitutional Division of Powers in German Federalism**

### a) The Division of Legislative Competences

The Basic Law states that residual power lies with the Länder, i.e. unless otherwise specified, governmental powers and functions are exercised by the Länder (Art. 30). Areas 'otherwise specified' are the exclusive legislative powers of the federation (Art. 73), areas of concurrent legislation (Art. 74), areas of federal framework legislation (Art. 75) and joint responsibilities (Arts. 91a-b). All else falls under the exclusive legislative power of the Länder.

However, 'all else' does not amount to much. The exclusive powers of the federation include foreign affairs, defence, citizenship, migration, currency, transport and communications and aspects of policing. Concurrent and framework legislation covers 37 separate legislative fields. Although the presumption of residual power of the Länder applies here, the federation has made extensive use of the possibility given

*The Scottish Parliament and the other units of devolved government in the UK under preparation or consideration will be established by normal statute. The UK constitutional order does not admit a 'higher' quality of constitutional legislation or, therefore, the possibility of constitutional entrenchment. The devolution process is asymmetrical; different devolved units will have different powers, functions and status, and therefore different relationships with Westminster. These relationships are not extensively codified in the devolution proposals, and will largely emerge through practice and experience.*

*The Scotland Bill reserves legislative rights in certain policy fields for Westminster, leaving the residual power with the Scottish Parliament. The scope of the residual (or devolved) power is wide, though the list of reserved (and therefore devolved) powers may be revised.*

*There is no provision for concurrent or otherwise mixed legislative responsibilities. Nor is there an overt requirement that the Scottish Parliament's legislation be shaped in regard to any notion of maintaining 'equivalent' living conditions throughout the UK.*

in Art. 72 of the Basic Law to claim the power to legislate in those fields. Art. 72 sets out a 'national interest' test, which justifies federal legislation wherever it is deemed necessary to maintain 'equivalent living conditions' throughout the federation. The equivalence clause has been described as the 'mission statement' of German federalism and has been invoked so extensively that there remains little scope for the Länder to legislate in the fields covered by concurrent or framework legislation.

The concern to maintain equivalence also underlay the joint responsibilities of Arts. 91a-b (introduced in 1969-70), which allow federal participation in the joint planning and financing of a range of high expenditure policy fields originally the preserve of the Länder, but where the Länder were considered insufficiently able to guarantee the delivery of equivalent standards of public services across the federation.

The net effect is that the residual power of the Länder in legislation now has a marginal scope, with exclusive legislative competences remaining only in aspects of policing, education, media regulation, regional economic policy, and local government structure.

*The different configuration of the residual power in UK-Scottish relationships means that the legislative autonomy of the Scottish Parliament will be far more extensive than that of the German Länder.*

## b) Administrative Competence

The residual power also extends, though, to administration. Unless otherwise specified in the Basic Law, the Länder implement federal legislation with considerable discretion (Art. 83). Federal administrative authorities exist only in areas covered by exclusive federal legislation (and even in some of these, administrative authority is delegated to the Länder).

This principle of Länder administration has been far less subject to erosion by federal incursion than the residual power in legislation. Its scope has also widened more or less in proportion to the extent that the federation has taken on additional legislative competences since 1949. The relationship is a straightforward one - the more federal legislation, the more Länder administration - and establishes the primary division of competence between federation and Länder as a *functional* one with the federation responsible for most legislation and the Länder for administering most of that legislation.

*The Scottish Executive will be responsible for administering legislation in some fields of Westminster's reserved powers and/or in some EU matters.*

*The primary division of power between Scotland and Westminster remains, though, separated legislative responsibility for their respective devolved and reserved policy fields.*

### c) Länder Participation via the Bundesrat in the Federal Legislative Process

This relationship has further implications concerning the role of the Bundesrat. The Bundesrat comprises representatives of the governments of the Länder (which have between 3 and 7 votes roughly proportional to population size) and acts as the second chamber in the federal legislative process. It formally guarantees Länder participation in the federal legislative process (Art. 50). In comparative terms it is a strong second chamber, possessing an absolute veto power over wide areas of federal legislation, and a suspensive veto over the remainder. Aside from constitutional legislation, the absolute veto typically applies to bills which affect the Länder in their administrative role. This applies to roughly 60% of all federal bills. The relationship noted above can therefore be extended: the more federal legislation, the more Länder administration, the greater the scope of the Bundesrat absolute veto.

### d) The Länder and EU Policy

The constitutional division of power outlined above was established and developed in a domestic political context. It became skewed as the scope of European-level competence with direct effect in the member states of the EU widened, especially after the mid-1980s. European policy was regarded as foreign policy and as a preserve of the federation even though both the process of transferring sovereignty and the subsequent exercise of transferred sovereign powers by European institutions eroded both the legislative and administrative competences of the Länder. Given the privileged access of the federal government to the European-level decision-making process - most notably in the Council of Ministers - this was accompanied by a de facto transfer of competence from Länder to federation.

*No formal point of access for the Scottish Parliament or Executive in the Westminster legislative process is foreseen. The scope of the role of Scottish Westminster MPs, which will no doubt develop strong informal links with the Scottish Parliament, is an area of some controversy and may be reduced in the future. Current proposals on House of Lords reform have not extended to discussion of a Bundesrat model, though such a concept occasionally surfaces as a longer term consideration in the wider constitutional reform debate the present government has set in motion.*

*Relations with the EU are a reserved power of the UK parliament and government. It is, though, recognised in all the current proposals for establishing devolved units that the exercise of devolved powers necessarily requires some form of access to the EU policy process.*

After a protracted campaign, the Länder secured a number of constitutional amendments in 1992 which addressed these problems. Essentially they extended the rights and role of the Länder and in domestic politics to European policy matters (Arts. 23 and 50). The most significant aspects of these rights, which are formally exercised through the Bundesrat, are: a) that the Bundesrat can bind the federation to represent its views in the EU in matters which impinge internally on their exclusive legislative competences or their administrative powers; and b) that a Bundesrat-nominated Länder representative leads the German delegation in the Council in discussion of matters 'essentially' affecting exclusive legislative competences of the Länder.

#### Excursus: The Role of the Länder Parliaments

As these forms of division of power have evolved over the postwar period, they have had a major impact on the institutional relationship between parliament and executive within the Länder. Put simply, the Länder parliaments have become less important as the scope of the exclusive legislative competences of the Länder has narrowed. Conversely, the Länder governments have become much more important in proportion to: a) the widening of the Länder competence in administering federal law (for which the executive branch in the Länder is responsible); b) the consequently increased significance of the Bundesrat veto in the federal legislative process (given that the Bundesrat is composed of Länder governments); and c) the more recent embedding of the Bundesrat in EU policy-making. The Länder parliaments have no direct oversight over the administrative role of the executive; nor do they have direct input into Bundesrat decision-making in domestic or European matters. This raises concerns that government action in the Länder is insufficiently accountable and poses questions about the efficacy of citizen participation in parliamentary elections in the Länder.

*In the case of Scotland, the level of access under consideration is the highest, extending from Scottish Parliament scrutiny of EU legislative proposals, through (as yet unspecified forms of) coordination between the UK government and the Scottish Executive on EU matters affecting areas for which the Scottish Parliament is responsible, to Scottish Executive Ministers speaking for the UK in Council of Ministers meetings.*

*The precise nature and balance of relationships between Parliament and Executive in Scotland will remain fluid until the new devolved arrangements have bedded in. There are certainly areas in which the Executive's work will develop away from direct parliamentary scrutiny (in the administration of Westminster legislation, and in coordination with the UK government on EU matters). However, the main feature of devolution to Scotland - the separation of legislative powers between the UK and Scotland - will invest the Parliament with a central role and place significant barriers before the development of an executive preeminence analogous to that in the German Länder. One can expect a much clearer sense of accountability of decision-making than in Germany. This may be conducive to high levels of citizen interest and participation in the work of the Scottish Parliament.*

#### e) Adjudicating Disputes over the Division of Powers

In any system of decentralised government there will be disputes over the division of powers. Binding adjudication of disputes is provided by the Federal Constitutional Court, which is independent of both federation and Länder and is the highest legal authority in Germany. Given the legal complexities of the division of powers in the federal system it has frequently been called upon to resolve disputes. While its decisions have at times favoured the federation over the Länder and vice versa, each has accepted its authority without challenge. It has also used the adjudication process to develop a constitutional doctrine of federal 'comity' which obliges all the institutions of the federal system to cooperate sincerely with one another to reach common understandings.

*The UK has no constitutional court, nor any tradition of independent adjudication of disputes between different tiers of government. German experience suggests that effective and authoritative formal mechanisms of conflict resolution are a vital prerequisite of the operation of a decentralised form of government. Given the UK constitutional doctrine of parliamentary sovereignty, it remains to be seen what level of authority decisions of the adjudicating body proposed in the devolution legislation - the Judicial Committee of the Privy Council - will attain, and whether some conception of Scottish-UK 'comity' can develop. These are arguably the areas in which the UK devolution proposals are at their vaguest and in need of fleshing out.*

## The Intergovernmental Politics of German Federalism

A crucial feature of German federalism emerges from the above: the high level of interdependence which exists between federation and Länder/Bundesrat in the process of making and implementing law. Only in the few areas of exclusive competence at either level of government do federation and Länder act separately from one another. In the vast majority of policy fields, their activities are intertwined through the functional division of competence between federal legislation and Länder administration and the scope of the Bundesrat's powers in federal legislation and EU matters. In order to make policy in Germany, elaborate mechanisms facilitating the cooperation and coordination of the two levels of government are therefore required. For this reason, German federalism is often described as 'cooperative' federalism.

These, characteristically, are highly structured, require intensive bureaucratic interaction, and are open to a number of criticisms: the need for coordination slows down the policy process, limits flexibility, and can lead to immobilism; the coordinative operation is expensive, requiring immense input of civil service time; and it is carried out largely outside the public view, raising additional questions of democratic accountability.

### a) Intergovernmental Relations between Federation and Länder

If the Länder wish to maximise their influence in the policy process, they must as far as possible act collectively. The Bundesrat's veto powers can only be effective if enough Länder agree to deploy them. Intensive coordination between the Länder is therefore a necessary launching point for federal-Länder intergovernmental action. It is carried in a number of ways: in conferences bringing together representatives of the Länder ministries responsible for the same policy areas in their respective Länder; in formal and informal coordination between the 'missions' each Land maintains in the federal capital; in Bundesrat committees (which broadly cover the policy areas of federal government departments); and ultimately in the Bundesrat plenary. Equivalent forms of coordination also take place between the Länder and the federation, up to

*The separation of legislative powers in devolved and reserved matters will require a less close and formalised form of intergovernmental coordination between the Scotland and the UK authorities than in Germany. However, the role of the Scottish Executive in administering aspects of UK reserved powers and in the EU policy process will require coordination. In addition regularised interaction to discuss the implications of the legislative programmes of the Scottish and UK parliaments for one another can be expected. It is unlikely, though, that intergovernmental coordination will achieve such an intensity as to expose it to similar accusations of inflexibility, expense and accountability as are made in Germany.*

*Given the asymmetry of powers between different devolved units in the wider devolution process, it is unlikely that extensive coordination of activities between, e.g. Scottish and Welsh, or Scottish and London executive authorities will occur. The mechanisms which will facilitate Scottish-UK coordination are unclear. They will presumably involve the UK Secretary of State for Scotland, though the role and rationale of this position after devolution is not uncontested. Most coordination is likely to take place between Scottish and UK ministries responsible for equivalent policy fields.*



and including the convening where necessary of a Mediation Committee whose function is to bridge differences between the Bundesrat and the Bundestag, the directly elected first chamber of parliament.

While these processes of intergovernmental coordination are usually technocratic, consensual and uncontroversial, they do at times veer into overt political conflict. There is, for example, always a party political dimension in the coordination process. The parties represented in the Bundestag and in the federal government coalition are (with few exceptions) the same as those forming the governments represented in the Bundesrat. Informal party-political linkages interlace the coordinating bodies noted above. They become most significant when the party majorities in Bundestag and Bundesrat are incongruent. When this has occurred (e.g. in the 1970s and currently) the Bundesrat is vulnerable to being instrumentalised as a tool of the parliamentary opposition in the Bundestag. Conversely, congruence of party majorities in Bundestag and Bundesrat can be used - as was the case in the mid-1980s - to override or ignore the concerns of the Länder led by the parties at the time in opposition at the federal level.

Such overt party-politicisation of the Bundesrat is, however, rare and often exaggerated and is in any case inherently limited by a tradition of broadly consensual party politics. A more frequent form of conflict concerns money. To understand this, though, first requires consideration of the allocation of financial resources in the federal system.

#### Excursus: Financial Equalisation

The allocation of resources between federation and Länder is governed by a complex system of financial equalisation designed to ensure that each has sufficient funds to fulfil its constitutional responsibilities. This system, like the rules shaping the allocation of competences, is guided by the 'mission' of maintaining common standards of 'living conditions' across the federation. The Länder have only a

*Pressure may grow for a form of Scottish 'mission' to be established in London to act as a clearing house for the coordination process.*

*Party politics will also play a role in the coordination process. Coordination between parties in Edinburgh and Westminster can be expected. This may facilitate Scottish-UK coordination if party majorities are congruent. If they are incongruent, the coordination process may be more difficult especially if the incongruence also extends into differences of conception about the merits and/or scope of devolution. It is unclear how UK traditions of adversarial party politics will impinge in these circumstances on the necessity and practice of power-sharing between units of government inherent in a devolved system of government.*

*The mechanism for resource allocation to the Scottish Parliament will remain, initially at least, much as that through which the activities of the Scottish Office are currently funded, i.e. funding through a 'block' whose initial level was set in the 1970s by a needs assessment exercise,*

very limited autonomy to raise, or vary the rates of, taxes (although the revenues, or shares of revenues, of certain taxes are constitutionally guaranteed to them in Art. 106 of the Basic Law).

The net allocation of resources between federation and Länder ('vertical' equalisation) is periodically adjusted according to a formula designed to balance tax revenues and expenditure obligations at the two levels of government. 'Horizontal' equalisation of resources among the Länder is, by contrast, primarily revenue-driven. The aim is to equalise tax income per head of population and is realised by a series of allocation mechanisms designed to ensure that each Land has at least 99.5% of the average income per head of all the Länder taken together. It involves a range of financial transfers from economically stronger to weaker Länder, plus a number of 'top-ups' by the federation.

Horizontal equalisation is a much criticised system for a number of reasons. First, it has an extraordinary complexity which obscures financial accountability; it is scarcely possible to identify whose tax payments pay for which (or more precisely, which Land's) public services. Second, the levelling effect of 99.5% income equalisation is felt by the economically stronger Länder to penalise them for their economic success and (what they perceive as) their sound financial management, while failing to offer the weaker Länder real incentives for managing their economy and/or finances better. Third, the system is guided by income criteria, and takes differential expenditure needs among the Länder into account only marginally or in an ad hoc and inconsistent manner. Länder with weaker economies and therefore higher expenditure needs (e.g. on social security or economic restructuring) feel the system fails them.

The latter two criticisms reveal problems for the operation of the intergovernmental coordination process. There exists first the possibility that conflict among the Länder over the allocation of financial resources can restrict

*and which has varied since according to a formula relating changes in government expenditure in Scotland to changes made to government expenditure in England. In addition, there is an income tax-varying power of  $\pm 3\%$ .*

*The inherited system of block funding based on needs assessment, together with the new tax-varying power can be commended for their simplicity. In addition, though marginal in scope, the tax-varying power is widely seen as a tool for ensuring the accountability of financial decision-making. Given the publicity the tax-varying power has raised in the devolution debate, any decision to invoke it - especially upwards - will generate extensive public discussion and require strong parliamentary justification.*

*Dispute over the allocation of resources to the Scottish Parliament can be expected given that the funding formula 'locks in' an assessment of Scottish expenditure needs two*

their consensus-building capacity in intergovernmental coordination (as exemplified in a series of constitutional complaints issued by one or other of the Länder about the financial equalisation system in the 1980s). Second, such conflict also opens up the possibility for the federation to 'divide and rule' and short-cut the federal-Länder coordination process by offering financial incentives - the so-called 'golden leash' - to one or more Länder.

#### b) Federation, Länder, and the EU

Intergovernmental coordination in EU policy-making has become more intensive and formalised following the constitutional amendments of 1992. An outline framework for the coordination process was set out in Art. 23 of the Basic Law, and then further refined and fleshed out in subsequent legislation. In addition, the Länder boosted their own coordinative capacity by establishing a Conference of European Ministers of the Länder. Broadly, these arrangements replicated for the European context the same kind federal-Länder coordinative procedures used in the domestic policy process.

The capstone of the new constitutional amendments was the opening up of the Council of Ministers to the Länder in matters centrally focused on areas of their exclusive legislative competence. Two features of coordination in this field are worth noting. First, the Bundesrat mandates a representative to pursue on its

*decades old. Arguably, as many - including UK Government Ministers - have suggested, Scotland is no longer in 'need' of such expenditure levels with the implication that resources should revert to the purview of the UK Parliament (and/or to other parts of the UK whose blocks may not cover their expenditure needs). In addition, pressure for a reassessment of needs is set to grow as parts of the UK not currently in receipt of block funding seek their own blocks. In other words, devolution is opening up potentials for 'vertical' (UK-Scotland) and 'horizontal' (e.g. Scotland-North East England) competition for resources. As in Germany, it can be expected that resource issues will inject new complexities and controversies into intergovernmental relationships in the post-devolution UK.*

*The role foreseen for Scotland in the EU policy process will require coordination with the UK government and in some areas (e.g. coordination of Structural Funding bids) with other devolved units. Such coordination can be expected to follow (or be incorporated in) the pattern of relationships developed for coordination in domestic policy.*

*Scottish ministerial access to the Council of Ministers requires some comment. First, Scotland will be the only EU region with individual access to the Council; others in Germany, Belgium and Austria have common*

behalf a collective policy line in the Council. An initial tendency to issue over-rigid mandates unsuitable for the consensual political style of the Council has been rectified, and the system is generally deemed to work satisfactorily. Second, the Bundesrat representative in no sense legally represents the Länder in the Council, but the German member state, and merely takes the (temporary) lead for a delegation *also and always* comprising representatives of the federal government. In these circumstances, the Bundesrat's positions for the Council are invariably subject to prior coordination with the federal government.

Two further features of Länder engagement in the European policy process are worth noting. First, though the main force behind the establishment of the Committee of the Regions in the Maastricht Treaty, the Länder have been disappointed by the operation of the Committee in practice. This is less a reflection of the Committee's as yet weak, consultative powers and more of its composition as a body of regions *and* local authorities (including, alongside at least one representative for each Land, three representatives from the German local authorities' associations). The Länder have found it difficult and of limited utility to pursue common cause with constitutionally weaker local government units which have different perspectives and interests in EU policy-making.

Second, all of the Länder maintain liaison offices in Brussels, some of them with more staff and splendour than some national embassies. Although some of the Länder style these (without legal foundation) as quasi-diplomatic 'representations', their function is rather more prosaic. They do not serve primarily as autonomous lines of influence into the Commission or Parliament (much less the Council), but rather as information channels whose main function is to supply early and thorough intelligence which the EU policy operation 'at home' then feeds into the intergovernmental coordination process.

*representatives pursuing collective sub-national positions. Second, Scottish representatives will not speak for Scotland, but for the UK; intensive pre-Council coordination with the UK government will therefore be required. And third (given the early experiences of the German Länder) initial circumspection in Scottish involvement in the Council would be recommendable.*

*The nature of post-devolution Scottish involvement in the Committee of the Regions is unclear. Post-devolution Scotland will develop affinities with other 'strong' regions like the German Länder, and may, like the German Länder, feel the Committee to be unsuitable to its status. If this is the case, it would seem sensible for the Scottish Parliament to nominate Scottish local government representatives to sit on the Committee.*

*The significance of the proposed 'representative office' of the Scottish Executive in Brussels should not be overstated. Scottish access to EU decision-making will be channelled through, and coordinated with, the UK central government. The representative office's main role will be equivalent to that of the German Länder offices: to get hold of information from EU institutions or other sources of intelligence in Brussels in order to bolster the Scottish Executive's capacity to bargain with the UK government.*

### c) The Länder and Local Government

An additional dimension of intergovernmental interaction in Germany is that between the Länder and their local governments. Each Land has a separately configured structure of local government, and Land-local government relations therefore vary widely and cannot be recounted in detail here. There are, though, a number of commonalities. First, local government autonomy is constitutionally entrenched in the Basic Law (Art. 28). Second, the scope (and the financing) of local government autonomy is constitutionally delineated - and therefore protected - in the various Land constitutions. Third, local governments perform important functions, in particular extensive administrative responsibilities delegated downwards by the Länder.

The status and functions of local governments embed them in a relationship of interdependence with their Land government. This, though, is less extensively formalised as a system of intergovernmental relations than that between Länder and federation, and leaves open rather more scope for the Länder to neglect the principle of local government autonomy in favour of their own (often financial) prerogatives. Local government frustration at this situation has grown (not least in view of the success with which the Länder invoked the principle of subsidiarity as an argument for improved access to the EU policy process) and has led in some of the Länder to institutional proposals designed to meet local government concerns.

These - local government 'chambers' or 'councils' - would have the right to object to (but not reject) Land parliament bills and even to initiate legislation. One such council has been established in Rhineland-Palatinate, and another seems set for introduction in Lower Saxony. At the cost of course of additional complexity and expense in Land legislation, such innovations do seem set to add additional flesh in practice to what can currently be a haphazardly realised constitutional commitment to local government autonomy.

*Local government throughout the UK lacks constitutional status and guarantees of its autonomy, though still performs important functions, especially in policy implementation. Legislation relating to Scottish local government will be a responsibility for the Scottish Parliament.*

*The Scottish Parliament's responsibility for local government will be an important indicator of the qualities of post-devolution governance in Scotland. When formerly centralist states decentralise powers to the regional level, local government can suffer from the 'decentralisation of centralism' (as has, for example, been the case in Belgium). And, as the case of Germany shows, local government autonomy can be 'squeezed' even in states with a long decentralised tradition.*

*It is unclear, though, whether and how the Scottish Parliament and Executive will see it as a priority to guard against such tendencies - e.g. through institutional mechanisms such as those emerging in Germany.*

## **Current Issues: From Cooperative to Competitive Federalism?**

To recap: the German federal system has evolved over the postwar era into a 'cooperative federalism' which is based mainly on a functional division of power and which seeks through intense intergovernmental interaction to ensure common standards of public policy and services - 'equivalence' of living conditions - across the federal territory.

However, cooperative federalism had become entrenched as a method and ethos of government by the late 1960s. This was an era when, relatively speaking, 'living conditions' did not significantly diverge from one part of the federal territory to another. In those circumstances, ensuring common standards was both an uncontroversial and a feasible goal.

These conditions are no longer met. In the 1980s a north-south divide emerged in West Germany between northern 'smokestack' Länder facing structural economic decline in traditional industries and a group of southern Länder riding a wave of economic success in high-tech manufacturing and/or the expanding service sector. Since German unification in 1990 and the integration of the eastern Länder into the federal system, economic divergence has, of course, become much starker. As a result the question of whether the pursuit of common standards is desirable or feasible is increasingly being answered in the negative.

Economic divergence leads the Länder to pursue increasingly differentiated and at times conflicting policy interests which are less amenable to coordination in the intergovernmental relations of German federalism. In addition, economic divergence brings with it a greater volume of financial transfers in horizontal equalisation from the economically strong to the economically weak. As a result, the sense of solidarity between the Länder has become increasingly strained, raising doubts about whether cooperative federalism remains appropriate as a method and ethos of government.

*The UK devolution process is asymmetrical and for Scotland consists primarily of the separation of legislative powers between Edinburgh and Westminster. It will require a lesser degree of intergovernmental coordination than in Germany.*

Bavaria has been most vocal among the Länder in criticising the existing institutional configuration of the federal system, arguing in the words of its Minister-President, Edmund Stoiber, for the replacement of the 'uniform corset' within which all Länder have to operate with 'made-to-measure suits' whereby each Land would pursue its own regional priorities on the basis of its own resources. The aim is to establish a competitive, rather than a cooperative federalism.

Bavaria has not as yet secured regular support for its aims elsewhere among the Länder. Indications are, though, that other economically stronger Länder in western Germany are beginning to endorse the Bavarian agenda. It seems likely, therefore, that the ethos of cooperation which has been central to postwar Germany federalism will continue to dissipate in the coming years.

*In this sense, Scottish devolution equates broadly to Stoiber's recommendation of a 'made-to-measure' suit: the Scottish Parliament and Executive will be able to pursue separate Scottish priorities and will have sufficient resources (through block and tax-varying power) to do so.*