

The origins of the *Länder*

Introduction

Where is Germany? What are its constituent parts? Who is a German? These questions may not be entirely unique to Germans; they are sometimes asked in many nation-states in Europe and elsewhere. But questions about identity have been asked for centuries in Germany and to some extent are still asked today. For hundreds of years “Germany” was a group of tribes located in north-central Europe, most but not all of which became a part of the empire of Charlemagne and, after the death of Charlemagne, a part of what would become the Holy Roman Empire. This empire consisted of hundreds of political units of widely varying sizes and shapes, including noncontiguous territories, speaking different dialects and developing different cultures, headed by kings, princes, dukes, counts, bishops, and various and assorted minor nobility generally referred to as knights. Those who lived within the borders of the empire were not all Germans by today’s standards, but most were even if they did not know it. For in the middle ages, people did not think in terms of nationality. They were the parochial subjects, not citizens, of a prince or lord, and nationality was not a meaningful concept for them.

Later, in the sixteenth century, they became divided also by religion. This and other divisions led to a devastating Thirty Years’ War (1618–48) between Protestants and Catholics, both German and foreign, on German territory. For many decades this had far reaching negative effects on the economic, cultural, and political development of Germany. The Holy Roman Empire, not a “state” but a historically unique league of princes with some confederate features, was naturally weakened by the Thirty Years’ War and other conflicts between and among the princes, but it continued to exist in some form until Napoleon forced its dissolution in

1806. One important change between the Thirty Years' War and 1806, however, was the Treaty of Westphalia in 1648 which, among other things, is generally credited with having introduced the modern concept of the state. Subjects were now more likely to identify themselves as Bavarians, Württemberger, Hanoverianians, Saxons, and so forth.

Following the French Revolution, the concept of the state was modified to include a particular kind of state: the nation-state. This meant that it was now the goal of people who identified with one another – whether because of geography, language, religion, history, or culture – to form a state which included this distinct group of people. This led to the rise of nationalism, which generally replaced religion as the major focus of common identity. Napoleon had manipulated national feelings to great personal advantage, and the monarchical heads of state in the German and Austrian territories had good reason to fear the consequences of nationalism in their own highly divided and fragmented states.¹

In 1815, with the final defeat of Napoleon at Waterloo, the German Confederation of thirty-nine states, including Austria, was formed. It was a very loose confederation, the main purpose of which was to provide internal and external security. This confederation, supplemented by a Customs Union of 1834, which excluded Austria, continued to limp along until 1866, when the two major German states, Prussia and Austria, fought a brief war that led to their final separation within even as loose an arrangement as the German Confederation. In 1867 more than twenty German states joined in the formation of the North German Federation, led and dominated by Prussia. Following a brief war in 1870 between France and Prussia, the states in the North German Federation and the four separate and independent South German states joined to form a united German state for the first time in history.

But the questions of where Germany is and who is German were not resolved. The German population in Austria and the majority German population in Switzerland did not become a part of the new German state. Then, following defeat in the First World War, many Germans who had been a part of the Kaiserreich were now in France or Poland, and even more Germans who had been a part of the Austro-Hungarian Empire were now in various, mostly newly created, separate countries, such as Czechoslovakia, Italy, and Romania. These developments fed nationalistic fervor among many Germans, with the result that the most radical nationalistic elements under the leadership of Adolf Hitler and his National Socialist Party were able to capture the German state and launch a war to unite all Germans and expand German territory in the East at

the expense of the peoples living there. They also, of course, led to the Holocaust and other crimes against any and all opponents of Nazi rule.

Following the Second World War, the questions arose again. Where is a Germany that has lost one-fourth of its pre-war territory and many former citizens to Poland and the Soviet Union, has had to absorb as many as 12 million refugees and expellees, is divided first among the four Allies into four zones and then into two hostile camps facing each other throughout the Cold War, and then is presented suddenly and unexpectedly with the opportunity to unite in peace? This latest unification seems to have answered once and for all the question of where Germany is if not in every case who is German. But now Germany is faced with two other questions that are new to the post-war era: where and how does Germany, and, for that matter, where do the other European states, fit into an increasingly integrated Europe? And, less dramatically but still of considerable importance, where and how do the current German states (*Länder*) fit into a united Germany? Are there too many of these *Länder*? Should they be joined in ways that would reduce their number from sixteen to perhaps eight or ten? Would the predicted economic and administrative benefits outweigh the potential costs in loss of traditions and regional identity? Is there a strong German identity that is shared between former East and West Germany in spite of forty years of experiences with profoundly different regimes?

This chapter and this book cannot answer all of these questions satisfactorily, but they can help to provide some background and a framework for understanding how Germany and the Germans literally have come to where they are today. The focus, then, will be less on the larger issues of German identity over the past decades and more on the sources of identity of the people within Germany for the regions in which they live today.

The Holy Roman Empire

Following Charlemagne's death, the Treaty of Verdun in 843 divided his "Roman Empire" into three parts: the West Frankish Kingdom, the Middle Kingdom, and the East Frankish Kingdom. The West Kingdom would become the core of France, the East Kingdom the core of Germany. The Middle Kingdom would become the Netherlands, Belgium, Luxembourg, and areas later contested by France and Germany, such as Alsace-Lorraine and the west bank of the Rhine. There were five "stem duchies"

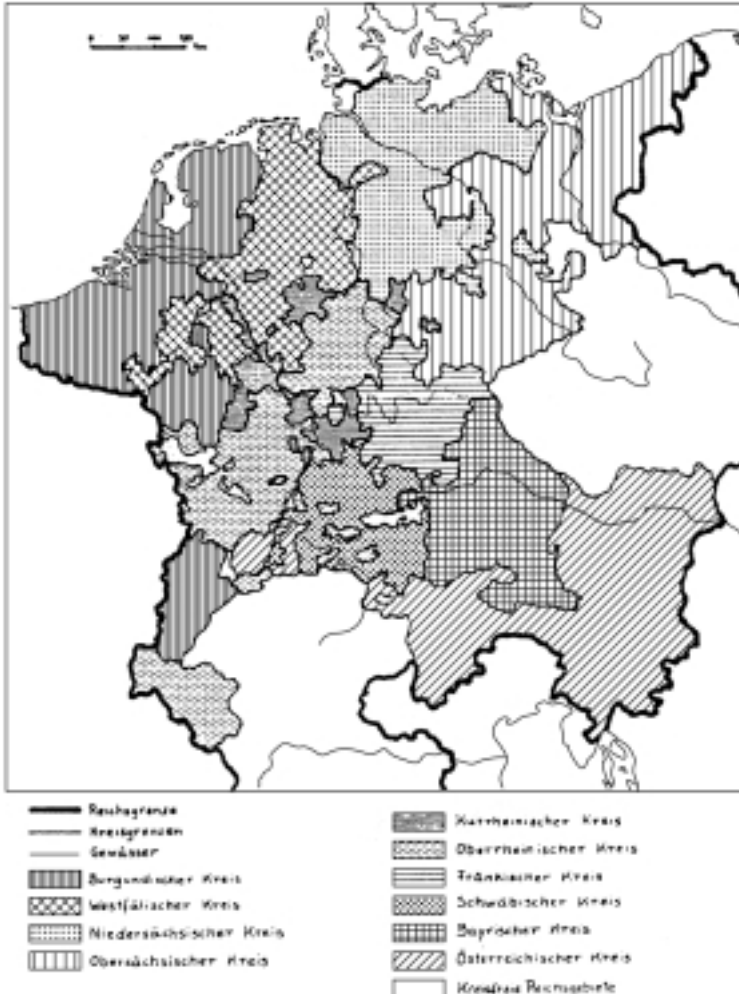
(*Stammesherzogtümer*) in the East and Middle Kingdoms, based originally on Germanic tribes (Saxony, Franconia, Swabia, Bavaria, and Lorraine – which included the Netherlands, Belgium, and Luxembourg on today's map). They did not, however, prove to be durable territories. Election of kings by the nobility in the Carolingian Empire was a Germanic influence that complemented the Roman administrative institutions adapted to the local conditions. This meant that the king was more *primus inter pares*, and that the kingdom represented a central authority versus particularistic tendencies.² The empire followed this tradition of election in the selection of emperors by the stem dukes before the tenth century and again after the beginning of the thirteenth century.

By “the middle of the eleventh century the realm was firmly united under its ruling dynasty and all traces of particularism seemed on the point of disappearance.”³ The emperors gained power at the expense of the duchies by dividing territories, for example, the emergence of an important part of Austria from eastern Bavaria in 1156, and by using their authority to appoint the high clergy whose administration competed with that of the dukes. Nevertheless, the tendency was for the Reich to divide into smaller units of rule, so that while the stem duchies disappeared, smaller territorial duchies and territories led by the “princes” emerged in their place. These smaller territories provided the actual government over their subjects, but the rulers were not sovereign and enjoyed their power only as a part of the Reich and in alliance with the emperor.⁴

The emperor ruled through the princes, who in turn ruled through the lesser nobility, such as the knights. In the imperial free cities small groups of oligarchs, usually from the guilds, were in charge. There was no capital city of the Reich, and the emperor traveled from place to place with his entourage to demonstrate his authority. His territorial base consisted of his own lands.⁵ Only in these territories did the emperor rule directly. While the princes of the realm were not sovereign, they did enjoy considerable autonomy (*Landeshoheit*). The empire served to protect the smaller territories from annexation by their more powerful neighbors, and it provided some protection from outside threats to their territorial integrity. The nobility was based on heredity, but that, of course, did not apply to the ecclesiastical princes. In the early centuries the emperor appointed them and used them for purposes of administration. He also received the moveable inheritance of the bishops and other revenues. In return, the Church received various lands, customs duties, and other benefits. In the twelfth century the emperor relinquished his right to

appoint archbishops, but his presence at their election still gave him considerable potential influence (map 1.1).⁶

At this time the controversies over the appointment of the Pope, whose power and actions had weakened the empire, led to a strengthening of the territorial princes at the expense of the emperor.⁷ The princes were also strengthened by the reestablishment in 1198 of the traditions of electing



Map 1.1 Germany in the sixteenth century

the emperor. Election of the emperor was confirmed by the Golden Bull of 1356, which gave the right of selection to three ecclesiastical and four secular princes (*Kurfürsten*) and broke the bonds of papal subjugation.⁸ But the rejection of an hereditary emperor also weakened the empire, because some of the newly elected emperors had to start anew (emperors from Luxembourg were chosen from the middle of the fourteenth to the middle of the fifteenth century).⁹ Indeed, Barraclough renders the harsh verdict that “[t]he monarchy was [after the Golden Bull] a nullity and German unity a mere façade.”¹⁰ Such a negative view is not, however, shared by many contemporary historians.¹¹

Even the territorial princes had to contend with a division of their authority owing to the rights of the aristocracy, e.g., the knights, and of the free cities, with which they were also in conflict.¹² But feudal independence from the princes was doomed in the fifteenth century with the vulnerability of castles to destruction by cannon. The princes also gained control over the Church.¹³

By the end of the fifteenth century the lack of imperial territory that could be used as a basis for support for the emperor meant that only an emperor with extensive territories outside as well as inside the empire could even afford to accept the crown. Thus the Austrian Habsburg line became the dynastic rulers of the empire in the fifteenth century. The result was that imperial policy became Habsburg policy, and Habsburg policy was only partially in the interests of Germany.¹⁴ This, of course, continued to be the case even after Emperor Maximilian of Austria added “of the German Nation” to the old title, “Holy Roman Empire.”¹⁵

By the end of the fifteenth century the emperor had been weakened to an alarming degree. The territorial units were fighting each other, feuds were common, and the princes were using force to extend their territories. Finally, an imperial reform concluded in 1500 by the *Reichstag*, an assembly of princes, about an “eternal public peace” which introduced the principle that the state, not individuals, must secure peace in the land; established the Imperial Chamber Court (*Reichskammergericht*) consisting of princes who would decide cases dealing with matters that fell under the jurisdiction of the empire but not within the individual territories; created an Imperial Authority (*Reichsregiment*) which did not last long after two failed attempts; and divided the empire into “imperial circles” (*Reichskreise*) which enforced imperial chamber court decisions with troops assembled in the circles. The circles established their own circle assembly (*Kreistag*) that mirrored the *Reichstag*. There were ten circles by 1512.¹⁶ These circles, according to Hermann Wellenreuther, became the

key “federal” elements in holding the empire together as intermediate-level organizations until the end in 1806.¹⁷ From settling local and regional disturbances of public peace to taxation, coinage, and various administrative tasks and making public proclamations of imperial law to providing “circle” troops to serve the empire in a number of causes, including the struggle against Turkish forces in the east, Neuhaus argues that the circles were crucial factors in explaining the continued existence of the empire, including the period after 1648.¹⁸ Hartmut Lehmann, on the other hand, argues that Neuhaus exaggerates the role of the circles and ignores other important factors. He points instead to the influence of at most a dozen of the larger territories that were not identical with but often dominated the imperial circles in promoting some kind of federal principle in the empire.¹⁹

By 1500 the “Holy Roman Empire of the German Nation” was “a patchwork of dynastic and ecclesiastical territories dotted with imperial free cities and castles of independent imperial knights.”²⁰ The rulers of the seven electoral principalities elected the emperor and therefore enjoyed a higher status, but there were also another twenty-five major secular principalities, around ninety ecclesiastical principalities, over 100 territories led by counts, a large number of lesser noble holdings, and many free cities. These territories were organized in the *Reichstag* which was equal to the emperor and consisted of three chambers: one for the seven electoral princes (the bishops of Mainz, Cologne, and Trier, and the secular princes of Saxony, the Palatinate, Brandenburg, and Bohemia); one for the other princely rulers (four archbishops, forty-six bishops, eighty-three other spiritual rulers, twenty-four secular princes, and 145 counts and lords); and one for the eighty-three imperial free cities.²¹ These 392 territories did not generally include the knights and their small estates.²²

The Reformation, which began officially in 1517 with Martin Luther’s nailing of his ninety-five theses on the door of the castle church in Wittenberg, served to strengthen the territorial princes even further, as did their victories in the Peasants’ War in 1524. Charles V was the last emperor to be crowned by the Pope in 1529. A religious split occurred with the Catholic princes siding with the emperor and the Lutheran princes determined to protect their beliefs and autonomy. The emperor defeated them in battle in 1547, but it was a Pyrrhic victory in that it aroused the concern of all princes about the emperor’s power. At the Augsburg *Reichstag* in 1555 the princes came to decide which religion their subjects would embrace,²³ which reflected the decline in power of the Catholic Church as well as the emperor. However, spiritual princes

who changed religion were to lose their principalities.²⁴ Charles V resigned in 1556.

During the Thirty Years' War from 1618 to 1648, the emperor at first gained power *vis-à-vis* the princes, but by the end the princes had reestablished their autonomy. Barraclough again comes to a harsh conclusion with his assertion that "after 1648 the subordination of the principalities within the empire was a form of words without political significance, the empire a shadow without substance, beyond all hope of resurrection or reform."²⁵ And Daniel Elazar suggests that "[t]he Thirty Years' War . . . effectively ended the traditional confederation of German states known as the Holy Roman Empire. Although its shell survived until 1806, the rise of Prussia and Austria as modern states destroyed that basis of its existence."²⁶ But others have noted that the empire had possessed a "grandiose historical mystique" as a "living and legitimate successor of ancient western and Christian Roman Empire as renewed by Charlemagne and his successors."²⁷ Gagliardo also suggests that recent scholarship has shown "the consciousness of being part of an imperial structure was still a very important factor in the policies of German territories large and small right up to the dissolution of the Empire in 1806."²⁸

The Thirty Years' War and the Treaty of Westphalia in 1648 did not bring about major territorial changes, except for Brandenburg, which gained the eastern half of Pomerania and the bishoprics of Magdeburg, Halberstadt, Minden, and Kammin. The Cleves duchies had been added by inheritance in 1614, and in 1721 Western Pomerania was added from Sweden. Silesia was wrested from Austria in 1741 by Frederick the Great and West Prussia was gained from Poland in 1772. In the west the empire had lost Alsace and Lorraine to the French in 1681 and 1766.²⁹

There were also some changes in the "constitution" of the Empire. The Treaty of Westphalia functioned as a basic law until the empire's demise in 1803–6. It gave the princes certain rights and privileges, including the right to conclude treaties among themselves and with foreign powers as long as they were not directed against the emperor and empire.³⁰ Technically, this did not give the princes legal sovereignty, but the autonomy (*Landeshoheit*) they enjoyed was close to it and amounted practically to internal sovereignty.³¹

With the addition of Bavaria after 1648, there were eight, rather than seven, electors. In 1692 the number was increased to nine with the addition of Hanover.³² After 1663 the *Reichstag* met permanently in Regensburg, whereas before then the emperor had called the meetings in different cities. The *Reichstage* (diets) were not representative in the modern sense;

membership was not legitimated by elections but by property. However, they can be seen as a part of the evolutionary development of representative systems, in part because the emperor's powers were tied to the consent of the estates meeting in the *Reichstag*.³³

The period after 1648 was the beginning of the age of monarchical absolutism, especially in Austria and Prussia. The princes became the undisputed rulers in their territories, eclipsing the powers of the ecclesiastical authorities and incorporating them into territorial churches. Whether in terms of the selection of the Church hierarchy, the administration of Church property, the taxation of the Church, or the submission of the Church to the judiciary of the territory, the prince became the dominant power. This included the knightly estates and the (mostly small) free cities as well. The goal of the princes became increasingly to achieve a tight coordination and rule over their territory which for the first time was becoming a modern state administered by offices and civil servants rather than vassals.³⁴ According to Vierhaus, however, the goal was never achieved fully, because at least the lesser princes lacked the tools and personnel to assume the various administrative and judicial functions performed by the lower nobility.³⁵

In spite of their inclusion in the empire, some princes were oriented toward Sweden (Brandenburg), some toward France (Bavaria), and some remained loyal to the emperor. Austria grew in strength, not because the emperor was Austrian, but because of his own territorial base, which included lands outside the empire (e.g., territories in what are today Hungary, southern Poland, Slovenia, Croatia, northern Italy and parts of Romania). Some other princes also had territories outside the empire. Thus the electoral princes of Saxony were also the King of Poland from 1697 to 1763, and the electoral princes of Hanover were also the Kings of England, which made it more difficult for the Austrian Emperor to maintain authority over them.³⁶ There were also German speaking territories outside the empire in East Prussia (where the Duke of Brandenburg was King), Switzerland, and Alsace as well as non-Germans within the empire, e.g., Flemings, Walloons, Italians, Czechs, and some other Slavs.³⁷

In the eighteenth century, as before, there were four categories of territories. First, there were the ecclesiastical states, ruled as distinct principalities by prince-bishops of the Catholic Church. They ruled their territories essentially like secular princes and at the same time had ecclesiastical oversight of districts which did not necessarily coincide with the political boundaries of their states. Most of these states were small, and they saw the empire as their guarantor.³⁸ The second and most powerful group was

the secular principalities, governed by the hereditary high nobility with titles of king (Bohemia), duke, count, landgrave, margrave, etc., and simply “prince.” The size of territories varied dramatically, but in most the landed nobility, towns, and Catholic clergy had formal rights of representation in the territorial diets (*Landtage*).³⁹ The number of territories formally listed as independent for certain military and financial obligations declined from 405 in 1521 to 314 in 1780.⁴⁰ Third were the imperial cities or towns, which accounted for only about 2 percent of the total population. The fifty-one cities were governed by “exclusive and often self-perpetuating patrician oligarchies,”⁴¹ and most were in the west and southwest. Some cities like Bremen, Hamburg, and Lübeck prospered owing to trade, while others declined to mere villages. They were especially loyal to the empire as a protection against the territorial princes.⁴² The fourth group consisted of the imperial counts and knights, found mostly in the west and southwest. Most of their territories, especially those of the knights, were very small, numbering between 1,600 and 1,700, but they also enjoyed autonomy. This often gave them a personal authority over their few subjects which was more complete than that of the more powerful princes. Given the rule of primogeniture, positions outside the estate had to be found for the other heirs. In Catholic families, these were often with the imperial Court or with ecclesiastical princes, while in Protestant families they were generally with a secular prince.⁴³

The attack on Austria by Frederick the Great in 1740 by which Prussia gained Silesia was a serious blow to the cohesion of the empire, and the Seven Years’ War from 1756 to 1763 which again involved Prussia against Austria served to weaken further the empire and emperor. The institutions of the empire were used increasingly to air differences between Prussia and Austria, and the smaller states began to consider alliances to ally themselves against both of the larger states. Prussia took up the idea on its own and formed an Alliance of German Princes which in 1785 consisted of Prussia, Hanover, Saxony, and later others, with the goal of protecting and preserving the constitutional order of the empire. Soon, however, the Alliance failed and the empire was in a desultory condition when the French Revolution broke out in 1789.⁴⁴

The French Revolution and its aftermath

In the year of the French Revolution, 1789, the empire, including Austria, included 314 secular and Church territories and imperial cities and 1,475

knightly estates, or 1789 political units of widely varying size and power.⁴⁵ Soon after the Revolution the empire was at war with France, which quickly occupied the left bank of the Rhine. The armies of the empire were weak and easily defeated, and even Prussia agreed to a separate peace, even though this was an egregious violation of imperial law.⁴⁶ Following a second Austrian defeat in 1800, the Peace of Lunéville was concluded in 1801 according to which the emperor accepted the French Republic on behalf of the empire and of Austria as well as the loss of the west bank of the Rhine. The secular princes who lost territory on the left bank were to be compensated by the secularization of ecclesiastical territories on the right bank.

The *Reichstag* created an Imperial Deputation, consisting of plenipotentiaries of five electors and three other princes, with the purpose of drawing up a specific plan of indemnification. But between July 1801 and May 1802 several states of the empire made a separate peace with France, which in turn guaranteed them substantial shares in the indemnification and removed many decisions from the Imperial Deputation which had not yet convened. After a few minor changes, the French-induced plan was accepted by the Deputation in 1803, approved by the *Reichstag*, and ratified by the emperor. This is the famous *Reichsdeputationshauptschluss* or “Final Recess” that dissolved around 112 political units: all ecclesiastical principalities (about twenty archbishoprics and prince-bishoprics and forty abbeys and convents) and all but six free imperial cities (Bremen, Hamburg, Lübeck, Frankfurt, Nuremberg, and Augsburg). Thus the spiritual principalities were secularized, which meant the elimination of spiritual rule and the annexation of church property into the state. Bishops were no longer the equal of the prince, and the churches fell under the regulation of the individual states. To compensate for losses on the left bank of the Rhine, Prussia gained even more territory on the right bank, as did Baden:⁴⁷

With these compensations, Bonaparte realized one of the great goals of his German policy: the creation of a group of enlarged German client states on or near the French border, of sufficient size and internal cohesion as to diminish their sense of dependence on Austria, yet not so large as to be able to forget that their recent good fortune as well as their possible future expansion was due to the good will of France.⁴⁸

The growing influence of Napoleon on the south and central German princes and other factors led Austria to enter into an offensive alliance with Russia and Britain against France. But France, in alliance with Baden and

Württemberg, again defeated Austrian forces at Austerlitz, and Austria had to accept the Peace of Pressburg in December 1805. Prussia was forced to give up territories on the east bank of the Rhine, while Baden, Württemberg, and Bavaria were recognized by France as sovereign states.⁴⁹

In July 1806 several German princes declared their withdrawal from the empire and formed the *Rheinbund* (Confederation of the Rhine). Napoleon demanded that the emperor lay down the imperial crown, thus ending the empire for good. Prussia presented France with an ultimatum to withdraw from all of Germany, but in the ensuing war France defeated Prussian forces at Jena in October 1806. France now controlled all of Germany, and Prussia was saddled with reparations to France. The *Rheinbund* started with sixteen states, but after the Prussian defeat and the Treaty of Tilsit in 1807, it grew to thirty-nine. Only Austria, Prussia, Danish Holstein, the Hanseatic cities, and Swedish Pomerania remained outside. Through consolidation of imperial cities and further secularization, Napoleon increased the size of Baden, Württemberg, Bavaria, and Hesse-Darmstadt. The Grand Duchies of Berg (a new territory created on the east bank of the Rhine) and Würzburg were expanded and the Grand Duchies of Frankfurt and the Kingdom of Westphalia were formed. At the same time, the *Rheinbund* states had to relinquish some territory to France, and though formally sovereign were now under the dominance of Napoleon.⁵⁰

A *Bundestag* (federal assembly) was established in Frankfurt as the common organ of the *Rheinbund*. Not unlike the imperial *Reichstag*, its purpose was to deal with common interests and resolve disputes between member states. Each member was obliged to come to the aid of any other member that was involved in a continental conflict. Intervention, of course, was determined by Napoleon, which meant that the sovereignty of the members was in fact circumscribed politically if not legally. In any case the *Bundestag* never met. Officially the *Rheinbund* was a confederation of German states, but in practice it was more a French protectorate.⁵¹

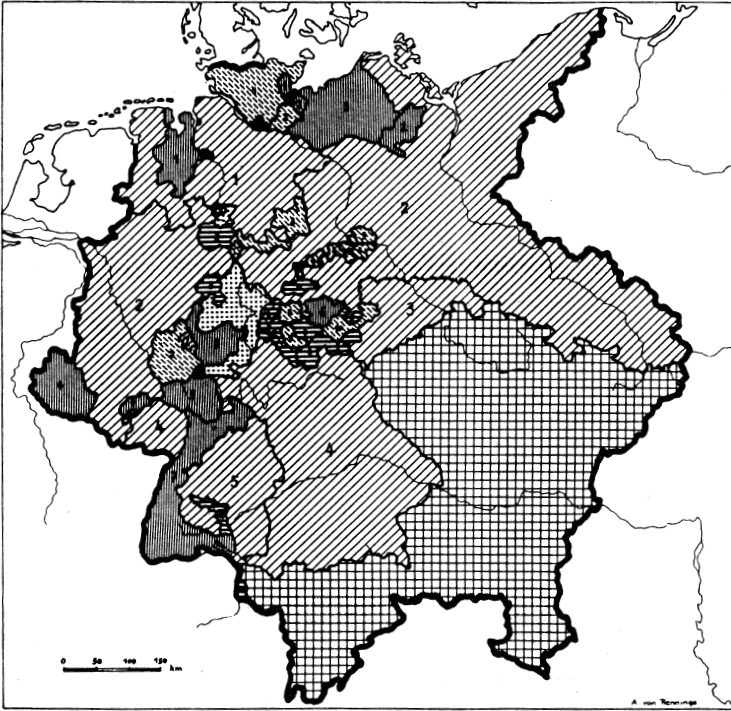
The assessment of the *Rheinbund* varies among historians, but it certainly had important consequences. Numerous reforms and territorial changes were introduced,⁵² and a growing homogeneity of living conditions in different states created the basis for the development of a middle class. Absolute monarchism was promoted by the sovereignty the territories now enjoyed – even if limited by Napoleon – and a national sentiment began to grow. Indeed, the idea of a German nation grew with the writings of nationalist poets and philosophers and the rise of a middle class that replaced the estates weakened by secularization and the

consolidation of cities.⁵³ Thus “the tendency of the empire to create autonomous territories from dependent states changed in the direction of autonomous territories combining to form a federation and therefore coming closer together.”⁵⁴

With the French defeat in Russia in 1812, Russia, Austria, and Prussia formed an alliance in 1813. Prussia declared war on France and was joined by a large coalition of European states whose forces defeated Napoleon at Leipzig in 1813. Napoleon retreated to Paris, he was exiled to Elba, and his domination of Germany for two decades was ended. It was now left to the Congress of Vienna, interrupted by Napoleon's return and the Battle of Waterloo in 1815, to establish a new order for Europe and Germany. Prussia ended up with a small part of Poland, part of Westphalia, territories on the left bank of the Rhine and on the Saar that had been taken by France (but not Alsace). Bavaria was given Landau in the Palatinate (map 1.2)


In the meantime the *Rheinbund* had ceased to exist, and the German Confederation (*Deutscher Bund*) was established in 1815. It consisted of thirty-nine states, excluding the eastern parts of the territories of Prussia and Austria. Some historians suggest that it continued the old Reich in a new form.⁵⁵ It was established for the limited purposes of securing the states against both internal and external dangers and for the promotion of trade. Though a clear expression of federal powers was not contained in the founding document, the Federal Treaty, there was a general clause which authorized the confederation to carry out its purposes. As time went on, the confederation became the means of internal restoration or reaction rather than an instrument of external protection which in practice was left up to the individual states. In other words, the states retained their sovereignty, but the confederation served to protect the status quo.⁵⁶

The confederal organ responsible for common matters was a permanent federal assembly or diet (*Bundestag*) in Frankfurt. Otherwise there was no head of state, no government, no administration, and no courts. The *Bundestag*, chaired by Austria, consisted of representatives who served their states with an imperative mandate, i.e., as delegates rather than trustees. When the assembly met in full session for the purpose of voting, a two-thirds majority or even unanimity was required. The seven largest states had 4 votes each, the other thirty-two states 1 vote. An executive committee consisted of the largest eleven states with 1 vote each. Another 6 votes were distributed among the smaller states. Decisions of the committee were made by majority vote in general, but in some cases unanimity was required.⁵⁷




— Grenze des Deutschen Bundes 1815
 — Grenzen der Bundesstaaten
 — Gewässer

 Kaiserreich Österreich

 Königreiche

- 1 Hannover
- 2 Preußen mit Prov. Jülich-Kleve-Berg
- 3 Sachsen
- 4 Bayern
- 5 Württemberg


 Kurfürstentum Hessen

 Großherzogtümer

- 1 Oldenburg
- 2 Mecklenburg-Strelitz
- 3 Mecklenburg-Schwerin
- 4 Luxemburg
- 5 Hessen-Darmstadt
- 6 Sachsen-Weimar
- 7 Baden

 Herzogtümer

- 1 Holstein
- 2 Lauenburg
- 3 Braunschweig
- 4 Anhalt-Köthen
- 5 Anhalt-Bernburg
- 6 Anhalt-Deschau
- 7 Nassau-Weilburg
- 8 Sachsen-Gotha
- 9 Sachsen-Hildburghausen
- 10 Sachsen-Altenburg

 Fürstentümer

- 1 Schaumburg-Lippe
- 2 Detmold-Lippe
- 3 Waldeck
- 4 Schwarzburg-Sondershausen
- 5 Schwarzburg-Rudolstadt
- 6 Sachsen-Coburg mit Lichtenberg bis 1826
- 7 Sachsen-Meiningen
- 8 Reuß jüngere u. ältere Linie
- 9 Hohenzollern-Hechingen
- 10 Hohenzollern-Sigmaringen
- 11 Lichtenstein

 freie Reichstädte

- 1 Lübeck
- 2 Hamburg
- 3 Bremen
- 4 Frankfurt

Map 1.2 The German Confederation, 1815

There were some important reforms in Prussia and in other German states – especially in the south – at this time, but in Prussia reforms ended in 1819, and in general the German Confederation was noted until 1848 for the Austrian Prince Metternich's promotion of policies of restoration and hostility to democracy, liberalism, and nationalism because of the threat each posed for multi-national Austria. South German states continued to make some modest reforms, but these were not allowed to challenge the monarchical principle. Restoration was more the norm in northern Germany. Yet while the constitutional order of the German Confederation stagnated, economic and social modernization were taking place. One result was the Hambach Festival in 1832 which demanded German unification and popular sovereignty; but this brought about even more reactionary measures pushed by Metternich. On the other hand economic changes also led to the establishment of a Prussian–German customs union in 1834 in which Austria did not participate.⁵⁸

After the defeat of Napoleon and the Congress of Vienna in 1815, Prussia was located in the East as well as the West of Germany, with a hole in the middle. Though Prussia was an absolutist state, it was not really a unitary state. Historical regions retained their characteristics, e.g., Brandenburg, East and West Prussia, and Silesia, while the new territories in the West, Westphalia and the Rhine Province, were not historical. The country was divided into ten, then eight, provinces, which were subdivided into administrative districts (*Regierungsbezirke*). The period before 1848 was “pre-constitutional,” in that the king resisted any efforts to promulgate a constitution; however, government was not arbitrary, for it was bound to abide by the rule of law.⁵⁹

The Customs Union (*Zollverein*) of 1834, which was formed under Prussian leadership, was the result of a reluctant but steady increase in support for free trade. It is ironic that Prussia therefore succeeded in achieving considerable economic unity while together with Austria and the *Bundestag* it continued to suppress the national and liberal movements. Unlike the German Confederation established in 1815, the Customs Union did not include Austria, Bremen, or Hamburg, but it did include Luxembourg. It had no assembly of delegates, but it did have a general conference of governments with one vote each. Again, it was another form of confederation that overlay the German Confederation of 1815.⁶⁰

The Revolution of 1848 to the Second (Bismarck) Reich of 1871

The Revolution in March 1848, which followed revolutionary uprisings in France, was a key event in German constitutional and political history, an event comparable in some ways to the disturbances in East Germany in 1989.⁶¹ It was the culmination of a national movement, which derived the idea of a German nation-state from the French Revolution, the writings of nationalist philosophers, and from increasing democratic pressures. But the idea of a liberal nation-state did not find favor in the governments of the individual states,⁶² in spite of the fact that by 1848 all but four German states had constitutions; however, the two key states, Prussia and Austria, did not.⁶³ One of the many ramifications of the Revolution was the efforts of the Frankfurt Assembly in the Paulskirche, elected in May by relatively democratic procedures throughout the German Confederation, to devise a constitution for a united, federal Germany that would meet basic democratic requirements, satisfy the many monarchical ruling houses in the German states, and somehow accommodate the conflicting interests of the two major German powers, Prussia and Austria, whose reemergence after Napoleon's defeat had "left no room for a nationalistic agenda."⁶⁴ By this time the idea of a federal state, as opposed to the more traditional German idea of a loose confederation, had taken root with the United States often perceived as a kind of model.⁶⁵ But the conditions in Germany were different from those faced by the American Founding Fathers. In the first place the territorial developments in Germany were very different: from hundreds of states at the end of the eighteenth century, there were still thirty-nine states ranging in size from thousands to many millions of inhabitants and in territory from city states to large monarchies; there was no unitary legal system; economic unity was inadequate in spite of the Customs Union; and reformers faced states with an authoritarian, feudal-absolutistic tradition. Second, economic prosperity was generally lacking, a proletariat had formed, and as a result there was resistance by many to universal male suffrage. Third, the German Confederation had been hostile to democratic and progressive change. There was no political center, but rather two restorative powers competing for hegemony. Thus, in the United States the issue was separation from a distant political center in London and the gradual formation of a nation, while in Germany "the aim was to unite different sovereign states with rather distinctive peculiarities and to create a powerful central government in opposition to internal particularistic forces but also in opposition to the great powers in Europe, which were not interested in the formation of a new powerful state."⁶⁶

By the fall of 1848, it became clear to the ruling houses of Prussia and Austria that they still enjoyed the loyalty of the military and could resist the pressures of the Frankfurt Assembly. The initial hopes of a majority of the Assemblymen that they could forge a united Germany including Austria were dashed in November by the Austrian government's rejection of any such plan. Efforts to form a "small" Germany without Austria continued with the writing of a constitution for the other states of the German Confederation. The Constitution of March 1849 provided for a federal state with enumerated powers for the federation and reserve powers for the states. The federation was made responsible not only for foreign affairs; war and peace; internal law and order; trade, currency, weights and measures; immigration and citizenship; postal affairs, etc., but also railways and health. Provisions for achieving unitary economic conditions were included, and there was an implied powers clause not very different from the American "necessary and proper clause." The result was a constitutional draft somewhat more centralist than the American model. On the other hand, only the navy was under national control, while ground forces were to be provided by the states. Only in wartime would they come under national command. The federal parliament was to pass the laws, but the states were to execute them in order to preserve the monarchical character of the states and their bureaucracies. The federation was to have only supervisory powers over the execution of the laws. These provisions reflected "the ambivalence of the unitarian-particularistic German approach very clearly."⁶⁷

The Frankfurt Constitution of 1849,⁶⁸ accepted by twenty-nine states of the German Confederation, was doomed to failure, however, when the Prussian King, Frederick William IV, rejected the offer to become the crowned head of state of a new, united Germany, on the grounds that it "does not bear the stamp 'by the grace of God' on its head."⁶⁹ The Prussian and Austrian delegates to the Frankfurt Assembly were recalled, and in May the central authority that had been established dissolved the Assembly. Left-wing elements decided to fight, but they were easily defeated by Prussian troops by the end of July.⁷⁰

In 1850 the king of Prussia reluctantly accepted a constitution which provided for an upper house composed of the nobility and a plutocratic parliamentary assembly, one-third of which was elected by those very few Prussians who paid the top one-third of the taxes, one-third by a modest proportion of citizens who paid the next one-third in taxes, and one-third by the remainder of the citizens who paid taxes. Austria did not follow with a constitution until 1861. In the meantime most of the other

German states became more authoritarian, even though the principle of representative government was not abandoned.⁷¹

Following the dissolution of the Frankfurt Parliament in 1849, Prussia proposed a plan for German unification which would provide for Prussian executive dominance in a league of princes with a plutocratically elected parliament. Austrian objections, supported by Russia, led to abandonment of the effort by several German states, and an assembly elected in early 1850 as a first step toward establishing the new league was dissolved by the end of the year. By the spring of the following year Prussia and Austria had reestablished the German Confederation. In 1851 the Customs Union was also reestablished, again under Prussian leadership.⁷²

In 1859 representatives of several German states gathered together to discuss the adoption of common civil and criminal laws for the Confederation and a German supreme court. Committees were formed to begin the process of codifying civil and commercial laws in 1862, and in 1861 the Saxon head of government proposed a plan of German unification in which executive power would be shared by Prussia, Austria, and a third German state. Austria expressed interest and proposed a revised alternative plan. Prussia was wary of having to share power in such a federal arrangement and proposed its own plan which was another version of its 1850 plan for unification. A commercial code which Prussia had worked out for the Confederation and a free-trade arrangement between Prussia and France which Austria could not accept led to tensions between the two large states, and Prussia refused to attend a conference in Frankfurt in 1863 at which Austria presented its ideas for German unification. This led to failure of efforts to unite Germany with Austria as a member state.⁷³

In 1864 Prussia and Austria joined forces to defeat Denmark in a brief war over Denmark's intention to annex Schleswig and perhaps Holstein as well. Rather than create a new German state for the Confederation, Prussia and Austria divided the new territory so that Prussia secured Schleswig and Austria occupied Holstein. In 1866 the two quarreled over the spoils, and Austria took its case to the Assembly of the Confederation. Prussia seized Holstein in retaliation, and Austria responded by seeking approval from the Frankfurt Assembly to mobilize against Prussia. It won the support of most of the kingdoms, including Saxony and Hanover, while Prussia was supported mostly by smaller states in the North. In the brief war that followed, Prussia quickly defeated the forces of Hannover, Hesse-Kassel, and Bavaria before they could join with the Austrians, and then went on to defeat the Saxon and Austrian armies at Königgrätz. The Confederation was dissolved, and Austria withdrew from Germany.

Schleswig and Holstein were annexed by Prussia, as was Hannover, Hesse-Kassel, Nassau, and Frankfurt. Prussia stopped at the Main River, however, to avoid provoking France. Prussia formed the North German Confederation in 1867, which left three Germanies: one in the North, including Saxony; one in the South; and Austria. South Germany was in the French zone of influence, but the South German states of Hesse-Darmstadt, Baden, Württemberg, and Bavaria agreed secretly to give Prussia high command in case of war. No territory was taken from Austria, nor was any given to the bitterly disappointed Napoleon III.⁷⁴

After the war Prussian proposals for a new constitutional order were accepted by twenty-three states. A *Reichstag* was elected and, after several changes, approved the constitution on 16 April 1867. It had rejected the demands of the progressive Left for a unitary state, which Bismarck had opposed in favor of a federation that would be legally less problematic, would grant the states considerable autonomy, and would serve as a barrier against parliamentary-democratic tendencies. It had also rejected particularistic demands from the traditional aristocratic feudal Right and the newer parliamentary particularism found especially in newly annexed states.⁷⁵ The new “Constitution of the North German Federation” then went into effect on 1 July 1867. Prussia, with a large majority of the population and territory, was, of course, the dominant state in the Federation. The executive head of the Federation was the “Federal Praesidium” which consisted of the King of Prussia. He was authorized to appoint the chancellor as head of government, who had to countersign all acts of the Federal Praesidium, and he had the overall command of the armed forces. The states and their princes were represented in the *Bundesrat*, which was the “carrier” of sovereignty in the Federation rather than the individual states; however, law enforcement, religion, and education were retained by the states. Prussia had 17 of 43 votes in the *Bundesrat*, enough to prevent amendments without its consent. The *Reichstag* was the chamber that represented the people and was elected by what was then in Europe a remarkably democratic system of universal male suffrage (in contrast to the plutocratic class system of voting for the Prussian legislature which continued without change). Indeed, the Frankfurt Parliament had passed a law in February 1849 that called for universal male suffrage by secret ballot, in spite of serious opposition from many middle-class delegates.⁷⁶ Though its powers were limited, the *Reichstag* had to approve all domestic legislation passed by the *Bundesrat* and signed by the King of Prussia. Of course the North German Federation was formed essentially as the result of a revolution “from above” by governments, in contrast to the efforts of

the Frankfurt Parliament of 1848; on the other hand the revolutionary changes introduced by the Federation were supported by the people “from below” through the political parties. The new Federation signed a customs treaty with the four South German states in July 1867, which created a unified economic area for all of Germany except Austria.⁷⁷

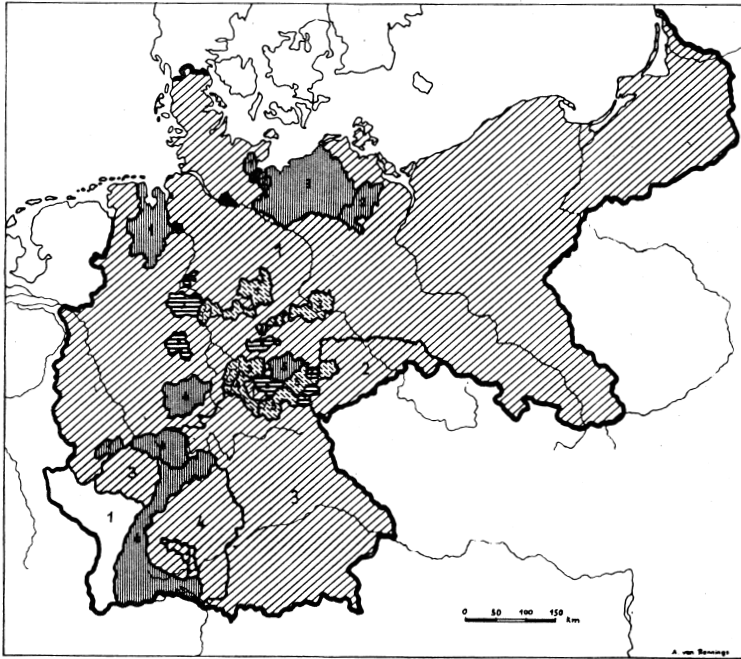
In 1870 Chancellor Bismarck maneuvered Napoleon III into declaring war on the Federation, which was joined by the South German states in defeating French forces at Sedan and Metz. The South German states expressed an interest in unification, and they joined with the North German Federation to form the Second German Reich (also *Kaiserreich*, *Hohenzollern Reich* or *Bismarck Reich*) in January 1871. Thus was created for the first time a German “center” in the capital of Berlin (map 1.3):

The ubiquity of territorial politics in the history of Germany before unification necessarily had the consequence that there was no centre. As a result of this fact the picture which most Germans have of their past differs profoundly from the historical images familiar in Britain, France or Spain where there is a long experience of government from a dominant capital city. There has been no single all-pervasive centre in the German political evolution.⁷⁸

From the Second Reich to the Third Reich

The constitution of the German Reich was modeled closely after the constitution of the North German Federation. The highest organ of the German Reich was the emperor (Kaiser), who was also the King of Prussia. He appointed the Chancellor who was also the Minister-President (prime minister) of Prussia and was responsible to the Kaiser as head of government. The Chancellor chaired the *Bundesrat* meetings and had to answer to the *Reichstag*, but he was not dependent on the confidence of that body as was the case in the British parliamentary model. The legislative bodies consisted of the *Bundesrat* and *Reichstag*. Both chambers had to approve all legislation. The dominance of Prussia in this constitution is reflected by Koppel Pinson: “The men of ‘48 had wanted Prussia ‘to merge itself’ into a greater Germany. Bismarck annexed the non-Prussian Germany to Prussia in order to create an enlarged Prussia.”⁷⁹

The *Reichstag* was elected in single-member districts by universal male suffrage for those who were over twenty-five years of age, and its members were “representatives of all the people.” However, its powers were limited in several ways. First, it had no influence on the appointment or



- | | |
|-----------------------------|---------------------------------|
| — Reichsgrenze 1871 | ▨ Herzogtümer |
| — Grenzen der Bundesstaaten | 1 Braunschweig |
| — Gewässer | 2 Anhalt |
| ▧ Königreiche | 3 Sachsen-Coburg - Gotha |
| 1 Preußen | 4 Sachsen-Meiningen |
| 2 Sachsen | 5 Sachsen-Altenburg |
| 3 Bayern | ▧ Fürstentümer |
| 4 Württemberg | 1 Schaumburg - Lippe |
| ▩ Großherzogtümer | 2 Lippe |
| 1 Oldenburg | 3 Waldeck |
| 2 Mecklenburg - Stralitz | 4 Schwarzburg - Sondershausen |
| 3 Mecklenburg - Schwerin | 5 Schwarzburg - Rudolstadt |
| 4 Hessen - Darmstadt | 6 Reuß ältere Linie |
| 5 Sachsen - Weimar | 7 Reuß jüngere Linie |
| 6 Baden | ▩ freie Städte |
| | 1 Lübeck |
| | 2 Hamburg |
| | 3 Bremen |
| | 1 Reichsland Elsaß - Lothringen |

Map 1.3 The Bismarck Reich, 1871

removal of the Chancellor. Second, it had to share legislative powers with the *Bundesrat*. The list of legislative powers in Article 4 of the Constitution was modest, but it expanded in practice, e.g., in the area of courts, judicial procedures, and a nation-wide code of civil law still in operation today. By the end of the century it had become the major factor in legislation in spite of the *Bundesrat*, promoted strongly by the national political parties.⁸⁰

The *Bundesrat* consisted of delegates from the twenty-five states listed in Article 1 of the Constitution⁸¹ that made up the new Reich (twenty-two monarchies and three city states; Alsace-Lorraine became a special *Reichsland* with representation in the *Reichstag*), and they voted by instruction from their state governments, led mostly by the traditional princes (actually four kings, six grand dukes, five dukes, and seven princes). The *Bundesrat* was the first organ mentioned in the Constitution, and it “carried” the sovereignty of the Reich. This meant that the individual states were no longer sovereign, even though they retained considerable autonomy in a number of areas. It was the organs and activities of the Reich, however, that represented sovereignty, including the Kaiser, the Chancellor, the Reich administration, the *Reichstag* and *Bundesrat*, foreign policy, and army and navy that had never existed before for Germany as a whole. Prussia had 17 of the 58 votes in the *Bundesrat*, in spite of the fact that it had about three-fifths of the population and two-thirds of the territory of the Reich. On the other hand, amendments to the Reich Constitution required 14 votes. The three kingdoms of Bavaria, Württemberg, and Saxony had 14 votes together (6, 4 and 4, respectively). The seventeen small states had 1 vote each.⁸²

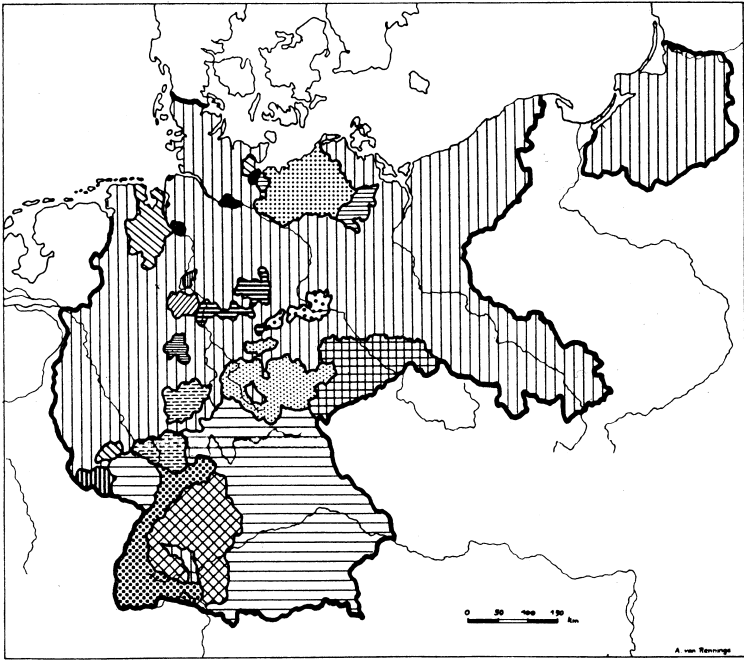
Since the Kaiser was the supreme commander of the armed forces, over which there was no civilian control and therefore no parliamentary control, “the Kaiser virtually remained an absolutist monarch in the military field.”⁸³ Indeed, Pinson suggests that the Prussian army was the core of the Prussian state and therefore of the Kaiserreich. Therefore, it “was the most obvious instrument of power and influence in the new Reich.”⁸⁴ The constitutional order of the Reich remained stable, in spite of numerous challenges, for example, from Protestant–Catholic tensions and the growing working class and their leaders.⁸⁵ The challenge which it did not survive, however, was the First World War. Facing certain defeat, the High Command pressed for an armistice that would be signed by a new parliamentary-democratic government led by the former opposition, the Social Democrats, Left liberals, and Catholics. While deemed necessary at the time owing to the fear that the Allies would not conclude an armistice

or conclude peace with a government lacking democratic legitimacy, the result was that it was the democratic opposition, not the Kaiser and his government, that ended up facing charges of treason by the extreme nationalists. In October 1918 the necessary changes were made in the constitution to bring it more into conformity with a democratic parliamentary system. The *Reichstag* approved the necessary changes, but the November Revolution and the overthrow of the Kaiser and the old order required the writing of a new constitution.

Elections in January 1919 for the constitutional assembly (National Assembly) in the small city of Weimar yielded a majority for the Social Democrats, German Democratic Party (progressive liberals), and the Catholic Center Party, which together formed the center-left democratic coalition responsible for writing the Weimar Constitution (map 1.4). The far left and far right were not well represented. In the meantime the states also elected constitutional assemblies for their own new constitutions, in spite of the fact that the Social Democrats in Weimar (but not state leaders!) favored a unitary state together with the leadership of the German Democratic Party.

In his proposals of early January 1919, the constitutional scholar, Hugo Preuss, did not call for a federation but rather for sixteen territories of approximately equal size, including Austria, that would become administrative units in a decentralized unitary state. His goal was to break up Prussia, but the identity of the people with their traditional states was too strong. Even the national leaders of the Social Democratic Party, who supported Preuss, had to deal with the party's leaders in Prussia, who, with the elimination of the old Prussian three-class voting system for the state parliament, were now confident that they would be (and indeed did become) the dominant force in Prussia.⁸⁶ As a result of these kinds of pressures, Preuss' draft, along with four others, was rejected. A committee of states was formed at the end of January with the agreement that it had to approve proposals brought before the Weimar National Assembly, which had the effect of guaranteeing the continuation of a federal system. Nevertheless, Preuss insisted that "[t]he foundation of the entire Weimar Constitution is that this republic is not an association, a league of German states, but that the German state is and shall be the political organisation of the unified German people living within this state."⁸⁷ A new constitution was drafted and accepted, and it went into effect in August 1919.⁸⁸

The Weimar Constitution⁸⁹ provided for a parliamentary democracy in which the government, with a chancellor as head of government, was made dependent on the *Reichstag*. The head of state was a popularly



- Grenze des Deutschen Reiches 1920
- Grenzen der Gliedstaaten
- Gewässer
- Preußen
- Oldenburg
- vereinigte Hansestädte
- Mecklenburg - Strelitz
- Mecklenburg - Schwerin
- Schaumburg - Lippe
- Lippe
- Braunschweig
- Anhalt
- Waldeck
- Saargebiet
- Hessen
- Thüringen
- Sachsen
- Baden
- Württemberg
- Bayern

Map 1.4 The Weimar Republic, 1920

elected president. The new republic was a federation, with the *Reichsrat* replacing the *Bundesrat*; however, the *Reichsrat*, which had 66 votes, was not made a regular participant in the legislative process and could be overridden by the *Reichstag*. Prussia received two-fifths of the votes, but half of the Prussian delegation of twenty-six came from the Prussian government, the other half from the Prussian provincial administrations represented by political parties. The states were now called *Länder* and over the years were reduced in number from twenty-five to seventeen by 1932. Territorial changes remained minor, however, in comparison with Napoleon and even Bismarck.⁹⁰

The seventeen *Länder* were: Prussia, Bavaria, Saxony, Württemberg, Baden, Thuringia (created in 1920), Hesse, Mecklenburg-Schwerin, Oldenburg, Brunswick (Braunschweig), Anhalt, Lippe, Mecklenburg-Strelitz, Schaumburg-Lippe, and the three city states of Bremen, Hamburg, and Lübeck. Austria, which wanted to join the new federation, was prevented from doing so by the Allies. Unlike the Constitution of the Kaiserreich, the *Länder* were not listed in the Weimar Constitution on the grounds that the Reich territory, including Prussia, would be reorganized so that the *Länder* would be of roughly equal size. As it turned out, however, territorial reorganization of the kind envisaged by Preuss receded into the background in light of many more urgent problems.⁹¹

Under the Weimar Constitution the relationship between Prussia and the Reich was changed dramatically. Prussia lost its hegemony through the elimination of the *Personalunion* between the prime minister of Prussia and the chancellor of the Reich. The powers of the Reich were also expanded. A Reich administration of financial matters was created alongside the finance administrations of the *Länder*, and by 1930 a reform commission consisting of delegates from the Reich and the *Länder* were calling for the dissolution of Prussia; creation of new *Länder* from Prussian territory that would have less autonomy than the larger, older, *Länder*; and the consolidation of small *Länder*. These proposals never reached the *Reichstag* owing to more pressing matters.⁹²

In contrast to the Constitution of the Kaiserreich, the *Reichstag*, rather than the *Bundesrat* (now called the *Reichsrat*) was the first organ to be mentioned in the Weimar Constitution. The *Reichstag* was elected by men *and* women by proportional representation, with only 60,000 votes making up one parliamentary seat. This system led to fair representation, but it also led to a greater role for the political parties and promoted a fragmented multi-party system. The *Reichsrat* represented the *Länder*, which received one vote for each million inhabitants; however, the largest

Land (Prussia) could not have more than two-fifths of the total membership in spite of its population which was more than three-fifths of the total. In addition, half of the Prussian votes were from the various provinces rather than from the central government of Prussia.⁹³

The Chancellor was appointed and dismissed by the popularly elected Reich President; however, the Chancellor and his ministers were also dependent on the support of a majority of the *Reichstag*. These provisions of the Weimar Constitution which are very similar to those of the French Fifth Republic today broke down by the end of the 1920s because of the inability of the polarized multi-party system to form stable majority coalition governments. This, in turn, led to an increasing dependency on the emergency rule of the President under Article 48. In the end, exasperation with these conditions led to the invitation to Adolf Hitler to form a government.

When the National Socialists came to power in January 1933, they began the process of *Gleichschaltung*, the “coordination” of the *Länder*, first by replacing non-Nazi governments in ten *Länder* by Reich commissioners, then by giving the *Land* governments (cabinets) legislative powers. By April a kind of governor (*Reichsstatthalter*) was placed over the *Land* governments, and in January 1934 the autonomy of the *Länder* was transferred to the Reich. The *Länder* became administrative districts of the Reich, acting only on behalf of the central administration. As a result the *Reichsrat* became superfluous, and it was dissolved in February 1934. The *Land* parliaments were also dissolved, and the *Land* governments were appointed by the Reich. In the meantime the two Mecklenburg *Länder* were consolidated, Lübeck was absorbed by Prussia, and the Saarland was placed under the *Gauleiter* (regional party leader) of the Palatinate, which was part of Bavaria. Over time the *Gauleiter* assumed greater importance than the *Länder*.⁹⁴ Both the Nazi Party and the state which it governed under the highly centralized dictatorship of Adolf Hitler made no pretense of the contempt with which any semblance of regional or local autonomy and democratic rule were held.⁹⁵

The *Länder* in the Federal Republic of Germany

There was a dramatic shake-up of German states with the dissolution of the old Reich in 1806, a dramatic growth in size by Prussia in 1815, a struggle over hegemony between Prussia and Austria and the incorporation of several states into Prussia in 1866, and the collapse of the Kaiserreich in

1918 followed by a reduction in the number of states from twenty-five to seventeen during the fourteen years of the Weimar Republic. But none of these changes could compare to the events following the defeat of the Third Reich in 1945.

Germany was divided into four zones of occupation, with the supreme commander in each zone, a general from the United States, Great Britain, France, and the Soviet Union, respectively, acting as the highest authority. Berlin, like Vienna and the rest of Austria, was also occupied by the four Allies. In each case a council was established to provide for coordination and cooperation in the whole of Germany or Berlin, but from the beginning tensions among the Allies prevented almost all common actions. Territories east of the Oder/Neisse Rivers were placed under Polish and Soviet "administration," and several millions of their German inhabitants became the victims of "ethnic cleansing." The Soviet Zone consisted of the five pre-war *Länder* of Mecklenburg-Strelitz and Mecklenburg-Schwerin, Anhalt, Thuringia, Saxony, and the two Prussian provinces of Brandenburg and Saxony. In the zones of the three Western Allies, old *Länder* with administrative continuity included only Bavaria, Württemberg, Baden, Hesse-Darmstadt in the south, and tiny Schaumburg-Lippe, and the city states of Bremen and Hamburg in the north. Most of the territory in the north consisted of former Prussian provinces. The military governments decided whether to use the administrative structures in the old *Länder* or to create new ones.⁹⁶

The American zone

The Americans, who wanted a federal structure from the beginning, created three *Länder* in the South in September 1945.⁹⁷ They re-created the old *Land* of Bavaria without the Bavarian enclave of Landau in the Palatinate; other than that minor territorial loss, Bavaria was the only *Land* in the three Western zones other than Bremen and Hamburg that emerged unchanged. A new constitution for Bavaria was drafted during the first half of 1946 and approved by an elected constitutional assembly and a popular referendum on the day of the first election to the Bavarian parliament in late autumn of 1946.⁹⁸

The Americans also created the new *Land* of Württemberg-Baden, consisting of the northern halves of the former *Länder* with these names. The Americans had given the southern half of Baden, rather than all of it, to France for its occupation zone in order to prevent the French from separating territories along the Rhine from the rest of Germany. Dissatisfaction

with the creation of this *Land* and the one created by the French in their zone led to further changes which are discussed below.⁹⁹

Finally, the new *Land* of Hesse was created. "Large Hesse" (*Grosshessen*), as it was called initially, consisted of the older *Land* of Hesse, without Rheinhessen, which went to the French zone; the former Prussian province of Nassau, without four counties that went to the French zone; and the former Prussian province of *Kurhessen*.¹⁰⁰ Each of these *Länder* drew up a constitution in 1946 which was approved by an elected constitutional assembly. The northern city-state of Bremen, which the Americans secured as a port of entry, was re-created in January 1947.¹⁰¹ Local elections in the south were held in early 1946, county elections and elections in the larger cities in the spring, and constitutional assemblies approved draft constitutions in late autumn. At the same time *Land* parliaments were elected and *Land* governments formed.¹⁰²

The French zone

The French zone was carved out of the original British and American zones, because the Soviets insisted at Yalta on retaining their zone that had been drawn by the British, Americans, and Soviets without the French in mind.¹⁰³ It consisted of several Prussian territories: the southern part of the Rhine province of Prussia, parts of the former province of Nassau, the Saar, the Palatinate, and Hohenzollern. It also got parts of four older *Länder*: Rheinhessen from Hesse, the southern halves of Baden and Württemberg, and the Bavarian territory in the Palatinate around Landau. In 1947 the southern half of Baden was created as a new *Land*, (South) Baden, and the southern half of Württemberg and the Prussian enclave of Hohenzollern became the *Land* of Württemberg-Hohenzollern. The new *Land* of Rhineland-Palatinate was formed from the Prussian administrative districts (*Regierungsbezirke*) of Koblenz and Trier, four counties of the former Prussian administrative district of Wiesbaden, the former Hessian administrative district of Rheinhessen, and the former Bavarian enclave of Landau mentioned above.¹⁰⁴

The Saarland was a special case. It had been occupied by Napoleon from 1801 to 1815, and Napoleon III had expected to receive it in compensation for standing by when Prussia went to war against Austria in 1866. After the First World War it was occupied by France but returned to Germany as a result of a referendum in 1935. In 1946 the French separated it from Germany again and turned it into a legally autonomous but in fact dependent territory of France. The French went so far in 1948

as to change the nationality of the inhabitants from German to a “Saarland nationality.” With efforts by the French and German leaders to move in the direction of European integration, and after German complaints to the Council of Europe about violations of basic rights, the French began to modify their position and to be more conciliatory. After numerous ups and downs and the apparent success of efforts to “Europeanize” the Saarland, the French allowed the voters to decide whether to accept this solution in 1955. They rejected it, and a new *Land* parliament was elected for the first time with pro-German parties. The French finally accepted majority sentiment and agreed to return the Saarland to Germany on 1 January 1957; however, the Saarland remained in economic union with France until the end of December 1959.¹⁰⁵

The British zone

The British waited somewhat longer with the territorial reorganization of their zone, which was more heterogeneous than the others. It consisted of the four previous Prussian provinces of Hannover, Schleswig-Holstein, Westphalia, and the northern part of the Rhine province; the four small *Länder* of Braunschweig (Brunswick), Oldenburg, Lippe-Detmold, and Schaumburg-Lippe; and the city-state of Hamburg. The other city-state in the north, composed of Bremen and Bremerhaven, was occupied by the Americans, who wanted to have control over the port of entry for American troops and supplies.

North-Rhine Westphalia was formed from the province of Westphalia, the northern part of the Rhine province, and, somewhat later, the small *Land* of Lippe-Detmold. These territories incorporated the heavily industrialized and densely populated *Ruhrgebiet* which made this new *Land* then and still today the most densely populated in all of Germany. It was first created in August 1946, with Lippe being added in January 1947. The first *Land* parliament was appointed in October 1946. Work on the first constitution was begun in the spring of 1947 but, owing to much controversy, not completed until the spring of 1950.¹⁰⁶

Lower Saxony was formed in 1946 from Hanover, Oldenburg, Braunschweig, and Schaumburg-Lippe, the smallest traditional *Land* in Germany. In September 1946 the British appointed a *Land* parliament, which approved a temporary constitution in February 1947. A few months later, the members of the first elected *Land* parliament entered office. A second “temporary constitution” was passed by the *Land* parliament in 1951 and went into effect in May of that year. Some efforts were made to separate

Oldenburg and Schaumburg-Lippe from Lower Saxony, but they were unsuccessful.¹⁰⁷

Schleswig-Holstein, including the former city-state of Lübeck which lost its autonomy in 1937, was elevated to the status of a *Land* in 1946. It is the only former Prussian province that became a *Land* with no change of boundaries.¹⁰⁸ The first *Land* elections took place in April 1947. The Social Democrats wanted to combine Schleswig-Holstein, Hamburg, and Lower Saxony into one large “Northwest State,” but Hamburg was vehemently opposed.¹⁰⁹ The constitution, which did not go into effect until December 1949, reflected an agreement with Denmark which guaranteed minority rights for the Danes in Schleswig-Holstein and for the Germans in Denmark.¹¹⁰

The traditional city-state of Hamburg was re-established as a *Land* in 1946, and the first election for its parliament was held in November 1946. The first constitution, however, was not completed until June 1952. As noted above, Bremen and Bremerhaven, at first occupied by the British, were turned over to the Americans who proclaimed them to constitute a *Land* in January 1947. It was and remains today the smallest *Land* in population and territory.¹¹¹

The Soviet zone

In 1945 American and British troops occupied Thuringia, parts of Saxony, Halle-Merseburg, Magdeburg, and Mecklenburg. In accordance with the Yalta Agreement, these troops were withdrawn from these territories in July 1945, and they were replaced by Soviet troops. The territories east of the Oder/Neisse River – Pomerania, Silesia, and the lower half of East Prussia – were given to Poland for “administration,” while the northern half of East Prussia was annexed by the Soviet Union. In the Soviet Zone west of the Oder/Neisse River there were five older *Länder*: Mecklenburg-Strelitz, Mecklenburg-Schwerin, Anhalt, Thuringia, and Saxony; and two Prussian provinces: Brandenburg and Saxony. These were used for administrative purposes and given constitutions in 1947, when Prussia was formally dissolved.

In June 1946 the Americans formed a provincial government in Thuringia which was replaced by the Soviets in July with a government completely dominated by communists. A new constitution for the *Land* of Thuringia went into effect in 1947, and in 1948 the capital was moved from Weimar, where the Americans had placed the seat of government, to Erfurt.¹¹²

The old Kingdom of Saxony, which had been turned into a republican *Land* in the Weimar Republic, was occupied in 1945 by American troops in the west and Soviet troops in the east. This led to the appointment by the Americans in their half of mostly social democratic and middle-class politicians and of communists and left-wing social democrats in the Soviet half. The Soviets occupied the entire territory in July 1945, and local elections and parliamentary elections were held in September and October 1946, respectively. In spite of Soviet support, the communists (Socialist Unity Party, SED, see below) received a little less than half of the seats in the parliamentary elections. A constitution was passed by the *Land* parliament in February 1947.¹¹³

In 1945 Soviet forces entered Mecklenburg from the east, while British and American troops entered from the west and south. The Soviets occupied all of the two Mecklenburg territories and the western portion of Pomerania in July 1945. Not only was the territory east of the Oder given to Poland; Polish gains also included the area around Stettin just west of the Oder. In spite of considerable Soviet harassment, the non-communist parties received half the seats in parliamentary elections in October 1946. The new government that was formed was, however, controlled by the communist-dominated SED. A constitution for the new *Land* consisting of the two Mecklenburgs and western Pomerania was passed by the parliament in January 1947.¹¹⁴

Like Mecklenburg, the former *Land* of Anhalt and the Prussian province of Saxony which contained Halle-Merseburg and Magdeburg were occupied by British, American, and Soviet troops, but they became part of the Soviet zone in July 1945. The Soviet military government organized an administration for Halle-Merseburg and Magdeburg and the *Land* of Anhalt with the seat of government in Halle. Deputies of a provisional consultative assembly were appointed in July 1946, and county and parliamentary elections were held in October. Again, the SED failed to gain an absolute majority of seats, but it did dominate the coalition government that was formed. A new constitution for the region went into effect in January 1947. After the dissolution of Prussia, Saxony-Anhalt was declared a *Land*.¹¹⁵

The Prussian province of Brandenburg was occupied by Soviet forces in 1945, which began immediately with the construction of a communist administration. Potsdam was made the seat of government. In June 1946 a consultative assembly was organized. Local elections were held in September, parliamentary elections in October. Even though the SED did not receive an absolute majority in spite of Soviet support, it became the

dominant partner in a coalition government. A constitution was passed and went into effect early in 1947, and with the dissolution of Prussia on 25 February 1947 Brandenburg became a *Land*. In the elections of 1950, a “unitary” list of parties was presented to the voters in all of the *Länder* in the Soviet Zone, which meant for all practical purposes that any meaningful opposition in the parliament was eliminated.¹¹⁶

At the Yalta Conference in September 1944, the Allies agreed to divide Berlin into three occupation sectors just as Germany was divided into three zones of occupation. A common administration was to be exercised by the three sector commanders (*Kommandatura*). The city was captured by Soviet forces in April and May 1945, and a city administration was formed that was one-half communist. Western Allied troops, including French forces, which received part of the British sector, entered the city in July. Soon controversy emerged over the transit corridors for the Western Allies. Rail traffic and air routes were regulated in the autumn of 1945, and agreement was reached in May 1946 on road and canal traffic. The Soviets began to take a separate path early in 1946, when they tried to force a merger of the old Communist Party of Germany (KPD) and the Social Democratic Party of Germany (SPD) to form the SED. Outside the Soviet sector the SPD members voted against the merger by 80 percent; however, the merger took place in the Soviet sector and in the rest of the Soviet Zone of occupation. The Allied *Kommandatura* issued a provisional constitution in August 1946, and it went into effect in October. In the first and only free election that followed, the Social Democrats received 49 percent of the vote, the Christian Democrats 22 percent, the Liberals 9 percent, and the communist-dominated SED only 20 percent. Increasing Soviet–Western differences made the work of the city government increasingly difficult, and in the spring and summer of 1948 the Soviets left the Allied Control Council and *Kommandatura*, respectively. The Western currency reform took place on 20 June 1948, and in response the Soviets introduced the East German Mark. In an attempt to force the Western Allies out of West Berlin, the Soviets began the Berlin Blockade on 24 June 1948; the Blockade failed and was lifted on 5 May 1949. In the meantime the SED in the eastern half of the city stopped their cooperation with their Western colleagues, and the city administration was effectively divided by the end of 1948. The SED refused to participate in the elections of December 1948, which then led to two city administrations, one in the East and one in the West.¹¹⁷

Largely in response to the West German Basic Law, an East German constitution, like the previous *Land* constitutions in the Soviet Zone

modeled after the Weimar Constitution but largely ignored by the communist-dominated SED, went into effect in October 1949. The *Volkskammer* (Peoples' Chamber) was the popularly elected body dominated completely by the SED. The deputies of the five *Länder* parliaments elected representatives to a second body, the *Länderkammer* (*Länder* chamber), but it was given little authority and attention. As Georg Sante noted, in East Germany

[t]he *Länder* are the atavistic and contrary element of the constitution. They point to the example of the Weimar Constitution, to past history, which is to be superseded in its old form. They contradict the socialist, communist principle of "democratic socialism," which amounts to a unitary state.¹¹⁸

In effect the *Länder* became administrative districts, and they were dissolved *de facto* in July 1952 when they were subdivided into the three administrative districts created from each *Land* that reported directly to East Berlin, which was one of the fifteen districts. The three districts within each *Land* (except Saxony-Anhalt, which had two) continued to elect delegates to the *Länderkammer* until 1958, when it was finally dissolved officially.¹¹⁹

Developments after the creation of the new *Länder* in the West

Political developments

In the West it became apparent that the *Länder* or administrative regions that had been created were too small for economic purposes, so the Americans formed a *Länder* council in November 1945, and the British formed a similar council for consultative purposes in February 1946. In January 1947 the two were joined economically to form the British–American Bizonia. The French, in the meantime, tried to administer their zone with as little contact with the other Allies as possible. They had the most centralized, rigorous and strict administration of the three Western zones. In May 1947 an economic council – in effect a parliament – was added to the Bizonal administration. This council, located in Frankfurt, consisted of delegates from the *Länder* parliaments. The French did not create a zonal consultative body, but they did join the Bizonia early in 1948. The administration of this combined economic zone introduced the famous currency reform of Ludwig Erhard on 20 June 1948. Together with the Marshall Plan of June 1947, this reform was an important element in the so-called German "economic miracle" that

began soon after. The growing tensions between the Western Allies and the Soviets led to the Berlin Blockade from June 1948 to May 1949.¹²⁰

In July 1948 the Western Allies gave the eleven prime ministers of the *Länder* in their three zones the “Frankfurt Documents” which called for a constitutional convention to draft a democratic, federal constitution for the territory of the three Western zones. The prime ministers were also asked to propose changes for *Land* boundaries in order to avoid both too small and too large *Länder*. The first reaction was generally negative, on the grounds that a constitution for the Western zones would effect a permanent division of Germany. However, the prime ministers finally agreed, after the military governors accepted a compromise according to which the new state would be provisional, not with a constitution but a “basic law.”¹²¹

On 10 August 1948 the first meeting of the constitutional convention was called by the prime ministers in Herrenchiemsee, a palace located on an island of a large lake in Bavaria. Each *Land* had one legal expert as a representative. Together they prepared a draft constitution for the Parliamentary Council, consisting of representatives elected by the eleven *Land* parliaments. The Basic Law was approved by the Parliamentary Council on 23 May 1949 and passed by ten of the eleven *Land* parliaments. Bavaria refused to pass it, but it had agreed to abide by the decision of the majority.¹²²

Additions and subtractions, 1949–60

At the time the Federal Republic was created, the *Länder* were Hamburg, Schleswig-Holstein, Lower Saxony, and North-Rhine Westphalia in the British zone; Bremen, Hesse, Bavaria, and Württemberg-Baden in the American zone; and the Rhineland-Palatinate, Württemberg-Hohenzollern, and Baden in the French zone. The Saarland, as noted above, was incorporated economically and to some extent even politically into France after 1945, but it was returned to Germany as a *Land* in January 1957.

More complicated – though without the international implications associated with the Saarland – was the question of the three *Länder* in the southwest, Baden, Württemberg-Hohenzollern, and Württemberg-Baden, which had been created from four parts: northern and southern Baden and northern and southern Württemberg (including the Prussian administrative district of Hohenzollern). Considerable dissatisfaction with the fragmentation represented by these three *Länder* was expressed

even before the Federal Republic was created in 1949, and discussions had taken place among representatives of the four parts of the two former *Länder* in 1948 regarding the creation of a new *Südweststaat* (southwest state). But so much disagreement ensued concerning proposals for a referendum that the issue was put on hold until the Federal Republic had been established. A non-binding referendum was held in September 1950, and the results in the four parts as a whole favored a *Südweststaat*. South Baden voted against a combined state, and together with the northern part of the former *Land* a very slight majority of voters favored retention of their former state. Article 118 of the Basic Law permitted the *Bundestag* to pass legislation regulating the disposition of the territories in the southwest, and it did so in May 1951. The law allowed the creation of a new combined state if approved by a majority of voters in three of the four territories and if that majority constituted a majority for the combined area. South Baden vehemently opposed the bill and took it before the Federal Constitutional Court. The Court delayed the referendum from September until December 1951, but it rejected South Baden's suit. The referendum that was held had results very similar to the non-binding referendum in 1950. In the area as a whole almost 70 percent voted for the new state; however, in South Baden the vote was 62 percent for the old *Land* of Baden, while in the North and South together the vote was 52 percent for the old *Land*. Since, however, the three territories other than South Baden voted in favor and the total majority vote in the four territories was decisive, a new provisional government was formed in April 1952 for the new *Land* of Baden-Württemberg.¹²³

In the meantime Schleswig-Holstein, which was a poor *Land* with a population that had doubled since the war because of refugees from the East, expressed a strong interest in gaining Hamburg and a strip of land from northern Lower Saxony. Lower Saxony did not want a poor *Land* to its north and suggested that Bremen be included in the annexation. Since both Hamburg and Bremen were vehemently opposed to the idea of joining Schleswig-Holstein, no action was taken.¹²⁴

Changes and proposals for change after unification

In December 1989 the government of East Germany formed a commission to consider the possibility of restoring the five *Länder* that had been dissolved in 1952. Newly created "Roundtables" in the various administrative districts were also looking at the *Länder* and found that many East Germans no longer wanted to be identified as citizens of the German

Democratic Republic (GDR) but rather as Saxons, Mecklenburger, and so forth. It became clear that the restoration of the *Länder* could help re-establish a sense of legitimacy for the emerging political system.¹²⁵

Soon, however, disputes began to arise over a variety of issues. One of these concerned the lack of congruence that could be found in many cases between the boundaries of the former *Länder* and the administrative districts that replaced them. Another was the desire of the inhabitants in some areas, such as Rostock and West Pomerania, to form new, separate *Länder*. A third issue was the location of the capital of Saxony-Anhalt. The Soviets had made Halle the capital from 1947 to 1952, but Magdeburg, which had been the seat of government of the Prussian province of Saxony, laid claim to the title and did, indeed, become the capital after the first *Land* elections in October 1990. There was also some question about certain territories and the *Länder* to which they belonged.¹²⁶

During the spring and summer months of 1990, numerous proposals concerning the boundaries of the five new *Länder* were discussed in and out of government circles.¹²⁷ The simplest options saw the fourteen districts without Berlin combined into five *Länder*, either within the boundaries of the districts or of the *Länder* as of 1952. The third option called for a division of East Germany into four *Länder* by merging Saxony-Anhalt into Brandenburg and Saxony. A fourth option was to divide the GDR into three *Länder*, which would combine Saxony and Thuringia on the model of Baden-Württemberg. This would have made this *Land* the third largest in the united Germany, thus giving the East a large *Land* that could compete with the four large *Länder* in the West. A final option would have been to create one very large *Land* out of the GDR which would have been roughly comparable in population size to North-Rhine Westphalia.

In the end, of course, five *Länder* were re-created along with a united Berlin (map 1.5). The borders of the new *Länder* ran along the lines of the administrative districts; however, the questions of which border territories (in this case, counties) should go to which *Land* were settled in non-binding referenda at the end of July 1990.¹²⁸

At this time there were also some proposals for combining parts of West and East Germany, for both sentimental and economic reasons. One serious proposal was to combine Schleswig-Holstein and Hamburg with Mecklenburg, perhaps with either Hamburg or Lübeck as the capital. Another was to combine Hesse and Thuringia, and there was also some talk of combining Lower Saxony and Saxony-Anhalt. Finally, some counties in the East sought to join their western neighbors. Heiligenstadt, the major city in the Eichsfeld in the East, for example, suggested that it



Map 1.5 The Federal Republic of Germany, 1990

Source: *Das Parlament*, 38 (14 September 1990), p. 32.

should join its sister city, Duderstadt, in Lower Saxony, and leave Thuringia. None of these proposals was implemented.¹²⁹

The dramatic changes in the GDR and the creation of the new *Länder*, in addition to the debate about whether Bonn or Berlin should be the capital of a united Germany, initiated an intense debate about a *Neugliederung* or reordering of *Länder* boundaries in West Germany. In principle this debate was nothing new. In the late 1960s there was much discussion of territorial reform in Germany, including boundary reforms

for the villages, towns, cities, and counties. As a result major territorial reforms were enacted at the local level in the eight territorial states (as opposed to the three city-states of Bremen, Hamburg, and West Berlin).¹³⁰ While these reforms were being enacted by *Land* legislatures, a special commission, called the *Ernst-Kommission*, recommended major boundary changes for the *Länder*.¹³¹ It proposed that the Federal Republic have either five or six *Länder*: North-Rhine Westphalia, Baden-Württemberg, Bavaria; a combination of the Saarland, Rhineland-Palatinate, and Hesse; and either a combination of Schleswig-Holstein, Hamburg, and part of Lower Saxony on the one hand and Bremen and Lower Saxony on the other hand, or a joining of all these *Länder* – Schleswig-Holstein, Lower Saxony, Hamburg, and Bremen – into one very large *Nordstaat*. While no action was ever taken, the discussion of boundary reform continued unabated over the years.

The debate in the western *Länder* that was rekindled by the restoration of the *Länder* in the East did not resolve the differences between the protagonists and opponents.¹³² One of the arguments made for boundary reform was that “now,” i.e., during the first half of the 1990s, is the time to act, because the new *Länder* in the East have not yet established a strong identity among East Germans, and there was much more interest in boundary reform even in western Germany since unification. In spite of this and many other arguments in favor of boundary reform, no action was taken except for the effort to join the city-state of Berlin with its surrounding territory, Brandenburg. The political elites in both *Länder* favored consolidation, but in the referendum held in 1996 the majority of East German votes in East Berlin and Brandenburg that were in opposition exceeded the majority of votes in West Berlin that favored consolidation. The failure of the efforts to consolidate Berlin and Brandenburg has had a discouraging effect on plans to initiate consolidations elsewhere in Germany. Nevertheless, by the end of the decade there was again an intense debate about boundary reform that was brought about largely because of dissatisfaction concerning the financing of the *Länder*, and in particular the system of fiscal equalization involving the transfer of funds from richer to poorer *Länder*.¹³³ These issues will be considered again later in this book.

Conclusion

German history has not been kind to the concept of a German nation-state. The Holy Roman Empire was a league of secular and religious

princes which became more of a league of semi-independent states after the Treaty of Westphalia in 1648. Like the EU today, it was a unique political entity, difficult to define and compare. In a legal work published in 1667, Samuel von Pufendorf suggested that the “Holy Roman Empire of the German Nation” could only be called by the rules of classification “an irregular and monster-like state body.”¹³⁴ It consisted of more than 300 states when Napoleon entered the scene but, following the dissolution of the Holy Roman Empire (the First Reich) in 1806 and the many consolidations brought about by the pressure of Napoleon and his German allies, only thirty-nine remained. The Confederation which they formed in 1815 could be said to constitute “Germany” culturally, but it was no “nation-state” like France or even a “state.”

Not until 1867, with the formation of the twenty-two-member North German Federation, did a German federation with a credible central authority emerge. This Federation, in turn, served as the foundation for the united twenty-five-member Germany of 1871 that did not include German Austria (nor, of course, German Switzerland). During the fifteen years of the Weimar Republic, the number of states, now called *Länder*, was reduced to seventeen. The *Länder* were weakened during the fourteen years of the still “federal” Weimar Republic and practically ceased to exist during Hitler’s Third Reich.

After the Second World War, Germany was divided into four zones and then into two antagonistic states, each within opposing camps of states with dramatically different political and economic systems. For West Germany, the Allied occupation led to the creation of several new *Länder*, including the former Prussian province of Schleswig-Holstein, Lower Saxony, North-Rhine Westphalia, Hesse, and Rhineland-Palatinate. Only three older *Länder* survived the occupation: Bavaria and the city-states of Bremen and Hamburg. In 1952 Baden-Württemberg was formed, and in 1957 France returned the Saarland to Germany. These ten *Länder* made up the Federal Republic of Germany, while West Berlin remained legally under Allied occupation throughout the Cold War. In spite of their origins, the *Länder* that constituted the Federal Republic formed a political system under the Basic Law of 1949 that provided not only for democratic government, which had existed also in the Weimar Republic, but also a federal system identified clearly with democracy. Weimar had been a federation, but the *Länder* were so weak that they were practically administrative units in an otherwise centralized democratic system.

In the Soviet Occupation Zone, the older *Länder*, Saxony and Thuringia, were recreated, while the two older Mecklenburg *Länder* were

combined with western Pomerania to form Mecklenburg. The former Prussian province of Brandenburg west of the Oder River became the *Land* of Brandenburg, and an older *Land* was combined with a Prussian province to form Saxony-Anhalt. These *Länder* were dissolved in 1952, but they were revived in 1990 with the second unification of Germany.

Today, of the sixteen *Länder* in united Germany, only five existed as *Länder* in 1933, and two of these are small city-states. Only Baden-Württemberg was created by the Germans themselves. The other ten *Länder* were created under the pressure of the Allied occupation authorities. Today there is considerable discussion of boundary reforms that might lead to a reduction in the number of *Länder*, but it is not a little ironic that in the past major boundary reforms brought about by annexations and consolidations of various kinds have taken place only as the result of war. With the possible exception of the creation of Baden-Württemberg in 1952, only minor adjustments have been made in peacetime circumstances. Perhaps the strains of fiscal federalism will force some changes on reluctant parties, or perhaps developments in the process of European integration will provide an inducement to change. But in the meantime popular identities with the existing *Länder* have developed some deep roots, and meaningful boundary reforms will not come easily.

United Germany today consists of four large *Länder* in the West and none in the East. There are five relatively poor to very poor “new” *Länder* in the East and a currently poor united Berlin and ten relatively rich-to-very-rich *Länder* in the West. A north–south economic and political gap in the West now faces a new and deeper East–West economic and political gap. A largely Protestant North, a largely Catholic South, and a largely formerly Protestant East – now a secular East – contribute further to internal tensions. Taken together, these differences present the new, united Germany with a set of major challenges. These challenges may not include the old question of where is Germany, but they do include the issue of regional identity. (Immigration in Germany – and elsewhere in Europe – has, of course, also again raised the question of who is or can become German.) Germans will have plenty to occupy them in the future when it comes to answering the questions which all of these issues and others pose regarding the *Länder* and their place in German federalism.

Notes

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- 3 Geoffrey Barraclough, *The Origins of Modern Germany* (Oxford: Basil Blackwell, 1947), p. 76.
- 4 Sante, *Geschichte*, vol. 1, pp. 9–10.
- 5 *Ibid.*, pp. 17–18.
- 6 *Ibid.*, pp. 13–16.
- 7 *Ibid.*, pp. 15–16.
- 8 *Ibid.*, pp. 34–35 and Barraclough, *The Origins*, pp. 316–317.
- 9 Sante, *Geschichte*, vol. 1, pp. 17 and 32; Barraclough, *The Origins*, p. 317.
- 10 Barraclough, *The Origins*, p. 319.
- 11 Hartmut Lehman, "Another Look at Federalism in the Holy Roman Empire," in *German and American Constitutional Thought*, edited by Hermann Wellenreuther (New York: Berg, 1990), p. 80.
- 12 Barraclough, *The Origins*, pp. 330–332.
- 13 *Ibid.*, p. 343.
- 14 *Ibid.*, pp. 355–362.
- 15 *Ibid.*, p. 368.
- 16 Sante, *Geschichte*, vol. 1, pp. 40–41.
- 17 Helmut Neuhaus, "The Federal Principle and the Holy Roman Empire," in Wellenreuther, *German and American Political Thought*, pp. 38 and 48.
- 18 *Ibid.*, pp. 42–44.
- 19 Lehmann, "Another Lok," p. 84.
- 20 Mary Fulbrook, *A Concise History of Germany* (Cambridge: Cambridge University Press, 1990), p. 27.
- 21 *Ibid.*, pp. 27, 34.
- 22 Sante, *Geschichte*, vol. 1, p. 37.
- 23 Bruno Gebhardt, *Handbuch der deutschen Geschichte*, vol. 2 (Stuttgart: Union Verlag, 1955), p. 103.
- 24 Sante, *Geschichte*, vol. 1, pp. 42–44.
- 25 Barraclough, *The Origins*, p. 373.
- 26 Daniel Elazar, *Exploring Federalism* (Tuscaloosa: University of Alabama Press, 1987), p. 132.
- 27 John G. Gagliardo, *Reich and Nation: The Holy Roman Empire as Idea and Reality, 1763–1806* (Bloomington: Indiana University Press, 1980), p. vii.
- 28 *Ibid.*, p. x; see also Joachin Whaley, "Federal Habits: The Holy Roman Empire and the Continuity of German Federalism," in *German Federalism:*

- Past, Present, Future*, edited by Maiken Umbach (New York: Palgrave, 2002), pp. 15–41.
- 29 Ilja Mieck, “Deutschlands Westgrenze,” in *Deutschlands Grenzen in der Geschichte*, edited by Alexander Demandt (München: Verlag C. H. Beck, 1990), pp. 210–212.
- 30 Rudolf Vierhaus, *Germany in the Age of Absolutism*, trans. by J. B. Knudsen (New York: Cambridge University Press, 1988), pp. 9 and 90.
- 31 Sante, *Geschichte*, vol. 1, p. 51; Gagliardo, *Reich and Nation*, pp. 4–5; Vierhaus, *Germany*, p. 90.
- 32 Gagliardo, *Reich and Nation*, p. 18. The Palatinate lost its electorate title again in 1778.
- 33 Vierhaus, *Germany*, p. 88 and 90.
- 34 Sante, *Geschichte*, vol. 1, pp. 50–52.
- 35 Vierhaus, *Germany*, p. 89.
- 36 Gagliardo, *Reich and Nation*, p. 10.
- 37 *Ibid.*, p. vii.
- 38 *Ibid.*, pp. 5–7.
- 39 *Ibid.*, p. 8.
- 40 Karl Otmar von Aretin, *Heiliges Römisches Reich, 1776-1806*, vol. 1 (Wiesbaden, 1967), p. 69, cited in *ibid.*, n. 3, p. 308.
- 41 Gagliardo, *Reich and Nation*, p. 11.
- 42 *Ibid.*
- 43 *Ibid.*, pp. 13–15.
- 44 Bernd Grzeszick, *Vom Reich zur Bundesstaatsidee* (Berlin: Duncker & Humblot, 1996), pp. 70–71.
- 45 Franz-Ludwig Knemeyer, *Regierungs- und Verwaltungsreformen in Deutschland zu Beginn des 19. Jahrhunderts* (Köln: Grote’sche Buchhandlung, 1970), p. 21; In contrast to the figures given by Knemeyer, Eric Dorn Brose, *German History 1789–1871: From the Holy Roman Empire to the Bismarckian Reich* (Providence and Oxford: Berghahn, 1997), p. 4, says there were 350 secular states, fifty-one imperial city-states, and a total of “462 largely sovereign political entities of the Holy Roman Empire” in 1789.
- 46 Grzeszick, *Vom Reich*, p. 97.
- 47 Gagliardo, *Reich and Nation*, pp. 192–195; Georg Sante, “Reich und Länder – Verfassung und Wirklichkeit,” in *Geschichte der deutschen Länder*, vol. 2: *Die deutschen Länder vom Wiener Kongress bis zur Gegenwart* (Würzburg: A. G. Ploetz, 1971), pp. 839–840.
- 48 *Ibid.*, p. 195.
- 49 Grzeszick, *Vom Reich*, p. 105.
- 50 *Ibid.*, pp. 140–143, 150.
- 51 *Ibid.*, pp. 152–155.
- 52 Brose, *German History*, pp. 52–58.
- 53 Grzeszick, *Vom Reich*, pp. 180–181.

- 54 *Ibid.*, p. 188.
- 55 Sante, "Reich und Länder," in *Geschichte*, vol. 2, p. 836.
- 56 Grzeszick, *Vom Reich*, pp. 228–231.
- 57 *Ibid.*, pp. 232–233 and Brose, *German History*, p. 82.
- 58 *Ibid.*, pp. 241–246, 272–273, 298.
- 59 Sante, "Reich und Länder," in *Geschichte*, vol. 2, p. 871.
- 60 *Ibid.*, p. 872.
- 61 Brose, *German History*, p. 248.
- 62 Sante, "Reich und Länder," in *Geschichte*, vol. 2, pp. 836 and 846.
- 63 *Ibid.*, p. 874.
- 64 Brose, *German History*, p. 76.
- 65 Hans Boldt, "Federalism as an Issue in the German Constitutions of 1849 and 1871," in Wellenreuther, *German and American Constitutional Thought*, pp. 260–261.
- 66 *Ibid.*, pp. 263–264.
- 67 *Ibid.*, pp. 266–269.
- 68 For the English text of the 1849 Constitution, see Elmar M. Hucko, *The Democratic Tradition: Four German Constitutions* (New York and Hamburg: Berg, 1987), pp. 79–117.
- 69 Cited in Brose, *German History*, p. 261.
- 70 *Ibid.*, pp. 244 and 262.
- 71 *Ibid.*, pp. 266–268.
- 72 *Ibid.*, pp. 274–275.
- 73 *Ibid.*, pp. 283–284, 334–335; Sante, "Reich und Länder," in *Geschichte*, vol. 2, p. 896.
- 74 Brose, *German History*, pp. 336–343; Sante, "Reich und Länder," in *Geschichte*, vol. 2, p. 902.
- 75 Ernst Rudolf Huber, *Deutsche Verfassungsgeschichte seit 1789*, vol. III, *Bismarck und das Reich*, 3rd edn (Stuttgart: W. Kohlhammer Verlag, 1988), pp. 655–657.
- 76 Hucko, *The Democratic Tradition*, pp. 16–17.
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