

The directly-elected executive mayor in German local government

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in: Berg, Rikke/ Rao, Nirmila (eds.) 2005,
Transforming Local Political Leadership, Palgrave, pp. 29-41

Local government in Germany has recently undergone a dramatic change in the institutional design and arrangement of its local political and administrative leadership. Since the early 1990s, in a conspicuous sequence of legislative acts all federal States (*Länder*) have amended their individual municipal tp provide for the direct election of an executive mayor, replacing the previous varied pattern of local government with a largely uniform scheme. This chapter explains the extent of the institutional shift and examines its likely impact on local political and administrative structures.

The first section traces the institutional arrangements of local political and administrative leadership as they developed prior to the late 1980s. The discussion then focuses upon the introduction of the directly elected executive mayor form of local government, reviewing the commonalities as well as differences between the *Länder*. Finally, the key question of the impact of this new form of political and administrative leadership on the local political and administrative arenas will be assessed.

Background

The development of modern local self-government in Germany dates back to the enactment of municipal charters in German States (and statelets) at the beginning of the 19th century, with the Prussian Municipal Charter (*Preussische Städteordnung*) of 1808 providing a conceptual and institutional lead (Wollmann 2000b). From the outset a common feature of the multitude of municipal charters was an underlying dualistic scheme in which two institutional logics, somewhat contradictorily, merged. On the one hand, the elected councils and the councillors were awarded the right and responsibility to decide (and carry out) all local matters on a voluntary, non-paid basis. On the other hand, a local executive, either a

council-elected one man mayor, or a council-elected collegiate body (*Magistrat*), which while carrying out local government tasks, also had some administrative functions of its own, not derived from the council. This dualistic structure, reminiscent of the separation of power principle of modern parliamentary government has become a distinctive feature of the German local government tradition. It contrasts with the monistic concept of government by council (or government by committee) which characterises the English and Scandinavian local self-government traditions.

Several factors contributed to the emergence of this dualistic scheme, including the early design of local self-government in Germany, revealingly termed local self-*administration*¹). Giving the local administrative body executive powers in their own right vis-a-vis the elected council may have also suited the still semi-autocratic political context of early 19th century Germany. Furthermore, from the outset the local authorities were given the responsibility of carrying out tasks delegated to them by the State. This possession of a dual function became another essential feature of the German-Austrian local government tradition (Wollmann 2000b: 118).

The local government charters that were enacted in German States in the 19th century exhibited two patterns of local executive power. Some municipal charters followed the French *maire* model of a one man executive. In other municipal charters, the collegiate board (*Magistrat*) was installed, following the prototype of the Prussian Municipal Charter of 1808. After 1945, the newly established *Länder* in the three Western Occupation Zones (and after 1949 in the Federal Republic) enacted new municipal charters that reflected their specific regional traditions, but also bore the imprint of the respective Occupation Force (Knemeyer 2001: 175 ff; Wollmann 2004: 152 ff).

Most of the newly established *Länder* continued to follow the traditional dualistic track of juxtaposing the democratically elected local councils, as the supreme local decision-making body, and the council-elected executive, whose powers were not exclusively derived from the council. In some *Länder*, typically situated in the French Occupation Zone, the elected council plus council-elected – chief executive – mayor form was put in place. In other other *Länder* (particularly in *Hesse*) the elected council plus council-elected (collegiate) board (*Magistrat*) form was revived.

In the two South German *Länder Baden-Württemberg* and *Bavaria*, located in the US American Occupation Zone, the new municipal charters introduced a conspicuous innovation in having the (chief executive) mayor elected directly by the local residents instead of the election by the council. In the *Länder* of *Nordrhein-Westfalen* and *Niedersachsen*, situated in the British Occupational Zone, the traditional dualistic track (allegedly fraught with autocratic potential) was abandoned and the monistic scheme of the English local government model (government by council, or government by committee) was introduced. Accordingly, the elected council was designed to be the comprehensively and solely responsible (*allzuständig*) local decision-making body and the council-elected mayor was reduced to the function of chairing the local council while the position of an council-appointed city director was installed as the chief executive of local administration operating under the guidance of the local council. These four distinct local government forms showed a remarkable degree of institutional stability well into the late 1980s, with only minor changes and adaptations.

Adopting the directly elected executive mayor

In the early 1990s legislative changes effected by the *Länder* parliaments led to a more uniform system. The elected council plus directly elected chief executive mayor form, which had been in force in the two South German *Länder* since the 1950s, came to be adopted in all other *Länder*, with the exception of the City States of Berlin, Hamburg and Bremen. Similar arrangements brought about the direct election of the heads of county (*Landrat*) in most of the *Länder* (Knemeyer 2001: 178 ff.; Wollmann 2004; Kost and Wehling 2003).

In the *Land* of *Nordrhein-Westfalen* where the decision-making process had been tailored on the British local government model, the new institutional arrangement began to increasingly reveal frictions and conflicts between the mayor and the city director (or (chief executive)), as successive mayors built up their own personnel staffs and claimed decision-making and executive powers of their own, whereas the city directors started to become political players in their own right (Bogumil 2001: 68). The conflicts between the mayor and the city director in what was labelled a double-headed executive (*Doppelspitze*) became a key concern in the protracted legislative debate about adopting the South German directly elected mayor form instead.²

Variations in the directly elected mayor form

Due to the legislative moves which the *Länder* embarked upon in the early 1990s their individual local government charters show a considerable degree of uniformity in basically adopting the directly elected mayor (and *Landrat*) form. The elected council plus directly elected mayor form of decision making continues to revolve around the elected council as the supreme local decision-making and local policy-making body, while the mayor (or *Landrat*), draws political legitimacy from being directly elected.

Notwithstanding these basic similarities, the municipal charters of the individual *Länder* show a significant variations as different regional traditions and political constellations continue to exercise influence. For example, there are differences between the *Länder* in the procedure by which the candidates in the mayoral (or *Landrat*) elections are nominated. The electoral provisions range from giving local political parties the exclusive right to nominate the candidates (as in Bavaria) to extending the right of (self-) nomination only to individuals (which applies in *Baden-Württemberg* and *Saxony*). The remaining ten of the 13 *Länder* have a mixed, system of granting the nomination right to political parties and groups as well as to individuals (Holtkamp 2003: 12 ff.). It is evident that giving the political parties a formal (if not exclusive) role in the nomination process fosters the politicisation of mayoral elections and of local politics at large, whereas limiting the nomination right to individuals is likely to depoliticize the mayoral contest and local politics in general (Wehling 1982: 236)

As under the new system both the local council and the mayor (or *Landrat*) are directly elected, it is an important political issue whether the balloting takes places on the same day or at different times. In legislating the *Länder* have chosen between two options. Most of the *Länder* (11 out of 13) have fixed terms of office for the mayors (and *Landräte*) different from the legislative period of the councils. The councils mainly serve five years, whereas the terms of office of the mayors (and *Landräte*) is longer, and may be six, eight, or as much as nine years (see annex table 1). Hence the terms of office are staggered and the dates of balloting mostly years apart, and only three *Länder* (*Nordrhein-Westfalen*, *Niedersachsen* and *Bavaria*) have synchronised the terms of office so that the balloting is held on the same day..

In the *Land of Baden-Württemberg* the practice of having non-synchronised council and mayoral elections has been in place since the 1950s. The purpose of this provision was to decouple the political life cycle of the elected mayor from that of the elected council. This, together with the individual nomination of mayoral candidates, was expected to foster the

non-partisan status of the mayor, reflecting the concept of consensus-oriented (or consociational) democracy (*Konkordanzdemokratie*) which characterises the political culture of *Land of Baden-Württemberg* (Holtkamp 2003: 19 ff, Bogumil, 2001). One consequence of synchronised elections has been the emergence of political alignments which, borrowing from the French political parlance, have been called the German version of cohabitation, the council majority and the mayor may belong to rival parties and may pursue conflicting goals and beliefs.

By contrast, the *Land of Nordrhein-Westfalen*, when enacting the introduction of the directly elected mayor in 1994, opted to synchronise the local elections. This was done with the explicit political and legislative intention to install an institutional design which, by having the elections simultaneously, would make it likely that a political congruence between the council majority and the mayor would ensue. Along with an electoral law which ensures a strong say of the political parties in the nomination of the mayoral candidates, the synchronisation of the council election with mayoral election tends towards the party politicisation of the mayoral election. This mirrors and reinforces the pattern of competitive majoritarian democracy (*Konkurrenzdemokratie*) which, with its marked political party competition, marks the political culture of *Land of Nordrhein-Westfalen*, and where cohabitation – with a council majority and mayor of different political party complexion blocking each other – becomes less likely.

The South German strong mayor concept in force in *Baden-Württemberg* and *Bavaria* has given the mayor an institutionally remarkably strong position vis-a-vis the elected local council on a number of scores. First, the mayor is given the sole responsibility to conduct all routine administrative matters (*Geschäfte der laufenden Verwaltung*) on his/her own without interference by the council and the councillors. Furthermore in Baden-Württemberg, the elected councils have been explicitly denied the right to call in (*zurückholen*) decisions on routine administrative matters for the councils own determination. It is worth emphasising that in the German State and local government tradition, local authorities carry out important public tasks delegated to them by the State; here the mayors (and the *heads of counties, Landräte*) conduct such delegated business in their own right without interference by the councils.

When adopting the directly elected chief executive mayor seven Länder followed the South German model in taking a broad interpretation of those routine administrative matters which are to be carried out solely by the mayor without the councils right to reclaim them. Only in three *Länder*, typically those *Länder* where the monistic British local government model was in force from the late 1940s to the 1990s, can the council call in (*zurückholen*) any matter, including routine business, on the basis of its claim to comprehensive competence (*Allzuständigkeit*) (Schulenburg 1999: 123, Holtkamp 2003: 25).

Where the direct election of the mayors (and Landräte) was adopted in the 1990s, this innovation was accompanied by a *recall* provision through which the mayor (and *Landrat*) can be removed from office at any time by means of a local referendum. Such recall referendums can in some cases be initiated only by a qualified majority in the local council. Only in three *Länder* (*Schleswig-Holstein*, *Brandenburg* and *Sachsen*) do the local electorate enjoy the right to initiate a recall referendum procedure on its own – with a required number of signatures varying between 15 and 33.3 percent of the electorate. In both cases, a recall motion is deemed to be passed, if the yes votes find a majority among the voters and reach a certain threshold (between 25 and 50 percent) of all eligible citizens, in which case the mayor (or *Landrat*) is obliged to resign, and a new mayoral election is held (Scheffold/Naumann 1996: 73).

The impact of the directly elected mayor on local politics and government

In the South German model, the mayor is faced with a number of challenges. As a local politician he is intensely involved in local politics: seeking election and re-election, keeping in contact with local residents and electors, and dealing with the local media. As a local political leader he has to cope with the the political parties and interest groups. As chairman of the local council he has to be able to handle council and committee work effectively while, as chief executive, he is responsible for the efficient running of the local administration. Finally, he has to negotiate with would-be investors and with other levels of government³. In view of these multiple roles, concerns have been expressed that the direct election of the mayor might prove an invitation to wild populists and mavericks to seek mayoral positions unless some clear-cut qualification requirement were laid down as an entry threshold. In fact, such requirements have not been stipulated in the South German *Länder* nor in the other *Länder* that followed suit in the early 1990s. The underlying premise of the decisions to do

without such requirements obviously was that the positions of the mayors (and of the *Landräte*) are essentially *political* and should therefore be open to anybody.

Meanwhile, half a century of political experience and practice in *Land of Baden-Württemberg* suggests that this apprehension is in any event unfounded. Instead, the year-long experience indicates that, in the absence of a pertinent formal requirement, a remarkable process of professionalisation has taken place in the role perception and role performance of the directly elected mayors. Thus, it turns out that in *Baden-Württemberg* about 90 percent of the elected full-time mayors have an administrative background (Bogumil 2001: 185 ff., Wehling 2002, Bogumil et al. 2003). Many of those seeking and occupying a mayoral position in smaller and middle-sized towns are graduates from administrative colleges (*Fachhochschulen*), while those in cities of more than 50,000 inhabitants are increasingly law school graduates. In most cases mayors have considerable prior administrative experience in municipal and county administration or *Land* ministries. While some 60 percent of the mayors have thus a prior administrative career and most come from outside the municipality concerned, only some 15 percent are former local politicians from the locality in which they are elected to the mayoralty (Holtkamp et al. 2003: 22). In 20 percent of the larger towns - those with more than 20,000 inhabitants - the mayors are not members of a political party, whereas in the (many) smaller towns over half of the mayors are non-partisan.

This professionalisation of the mayoral positions is most notable in *Baden-Württemberg*. Voters appear to recognise the value of having a professional mayor preferably with an administrative background and this has become crucial credential for mayoral candidates. Typically, ambitious young people seek to be elected as mayor at first in smaller town and then to climb up the ladder to become mayor in a larger city. Once elected for one term (typically of six to eight years), incumbent mayors, particularly in larger cities, often aspire re-election for a second or even third term which, if they are successful, adds up to long-term mayoral career.

The impact of direct election on the role and influence of the local citizens

The right of the local citizens to directly elect the mayor has significantly changed the power relations within the crucial triad of local political actors: the local citizens the local council and the mayor. While the German local government of representative democracy put the

council centre stage in local decision-making, and limits the role of local citizens to electing the council, the traditional rules of the game have been changed by the introduction of the direct election as an important element of direct democracy. Voter turnout in elections to local councils has been around 60 to 70 percent in the case of non-synchronised local elections, rising to some 80 percent when the council elections coincided with elections to the Land parliament or to the federal parliament. In the mayoral elections the local voter turnout has been somewhat lower, between 50 and 60 percent.

The direct election of the mayor has strengthened the accountability of the mayor to the local electorate. By virtue of direct election, the mayor is being singled out as one local leader whose political responsibility is clearly identifiable and who accordingly can be called to account. This accountability is confirmed and reinforced if and when the incumbent mayor seeks re-election which has often been the case in the South German experience and will, in all likelihood, become a permanent pattern in the other *Länder* under their new local government charters.

Finally, the direct democratic mechanism of recall as a last resort for calling the mayor to account has been introduced in most *Länder*. Although in the majority of the *Länder* which provide for the recall procedure the right to initiate the recall referendum lies solely with the local council, (only in two *Länder* does the initiative lie with the local electorate) recall provides a powerful direct democratic weapon in the hands of the citizens, keeping the mayor politically accountable and responsive to local opinion. In the East German *Land* of *Brandenburg* where the recall procedure can be also initiated by the local citizens, a striking number of recall procedures were initiated between 1994 and 1998, and almost ten percent of the full-time mayors lost their office as result of such referendums. This aroused some alarm among local politicians and also in the media which portrayed a new local sport of the citizens to 'play skittles with the mayors' (*Bürgermeisterkegeln*). Once the threshold to initiate a recall referendum was raised, the wave of recall procedures subsided in *Brandenburg* (Wollmann 2000c: 229).

The impact of the direct election on local democracy

In a number of countries, fears have been expressed that the directly elected strong mayor may give rise to an excessive concentration of power that would be detrimental to local democracy (Wilson and Game 2002: 116; Larsen 2002). The long experience of this practice in *Baden-Württemberg* does not support such misgivings. While *Baden-Württemberg's* directly elected mayor has risen to the imposing and powerful position of what has been

termed a local elective monarch (*Wahlkönigtum*, Wehling 1989: 88), at the same time, the mayors have acquired a presidential stature by adopting a non-partisan stance. Once elected, they have typically reduced their party ties, This tendency reflects *Baden-Württemberg's*, characteristic local political culture, of consensual (or consociational) democracy (*Konkordanzdemokratie*). The inclination to detach themselves from party politics is confirmed by survey data according to which almost three quarters of the incumbent mayors believe the political parties should leave local politics alone (see Wehling/Siewert 1987: 79)

This same non-partisan stance to which the *Baden-Württemberg* mayors aspire has the effect of countervailing and moderating the exercise of their power. To the extent that the mayors have downplayed or even cut the ties with 'their' political party, and even eschew attending party caucuses, they find it difficult to command the votes of their party group in the council and the committees. Instead, they are obliged to build majorities in council on a case-by-case basis, building all-party coalitions and cross party consensus instead of counting on majority rule.

Nordrhein-Westfalen, whose regional political tradition and culture is characterised by competitive (majoritarian) democracy (*Konkurrenzdemokratie*), provides an example of similar constraints upon mayoral power arrived at by a different route. Here, the powers of the newly introduced strong majors have been moderated by the traditional and still persisting high degree of party-politicisation. As a rule, the mayors remained tied into the decision-making processes (and political control) of 'their' party, which the synchronisation of the local elections works to ensure (Bogumil 2001: 183 ff., Holtkamp 2003).

The impact of direct election on the local council arena

Traditionally, German local councils operate through holding plenary sessions and by establishing (sectoral) committees which process the issues and prepare the decisions to be taken by the full council. The councils are elected by the local electorate on proportionate electoral systems which, as a rule, ushers in a plurality of parties and groups in the council. The size of the councils ranges, in the case of *Nordrhein-Westfalen*, from 30 councillors in smaller towns to some 70 councillors in larger cities (Schulenburg 1999: 40). It was part and parcel of the early concept of local self-government that all local government activities, including the administrative day-to-day matters, were taken care of by the part-time non-

salaried councillors on the traditional voluntary (*ehrenamtlich*) formula. Today, all councillors, including the chairpeople of the committees (where the committees are not chaired by the mayor), work on a part-time, non-salaried basis. Although they receive some financial compensation, the traditional layman principle still remains, and the institution of full-time salaried council members is unknown in the German tradition.

As German local government developed further during the nineteenth century, some differentiation arose between the part-time, non-salaried, voluntary lay councillors, and the local administration with its professionalised, fulltime, salaried administrative personnel under the direction of the chief executive (mayor or board). Councillors still cling to the idea of being comprehensively competent in the conduct of local matters, and are eager to get involved in minor local decisions, not least in response to concrete complaints and concerns of individual electors. Yet in formal terms there are no direct links between the council and its committees, on the one hand, and the local government's administrative units and their staff, on the other. With the introduction of the directly elected strong executive mayor this formal differentiation between the council and the local administration has been even more accentuated. Administrative leadership is concentrated in the person of the politically accountable mayor through whom, formally speaking, the direct contacts and interactions between the councillors and the administration are supposed to be channelled.

In those Länder which have further strengthened the directly elected mayor by making him the ex- officio chairman of the local council and its committees this arrangement has noticeably enlarged the political sway which the mayor exercises on the council proceedings. Thus, he/she has direct access to the council and committee debates, can set the agenda, bring proposals already elaborated by the administration and its professional staffs, and bring to bear political as well administrative mayoral muscle and might.

The present situation in *Nordrhein-Westfalen* is quite different on a number of scores. First, the position of the elected mayor is more party-politicised, because the terms of office of the council and of the mayor are synchronised and the electoral campaigns and elections for both local institutions, thus coincide. In so far as the mayor can depend on a politically congruent majority party or coalition in the council, his or her position and influence in the council debates is likely to be quite strong. If, however, he or she is confronted with a politically

unsympathetic council majority (which can also happen with synchronised elections), then, the council majority may be eager to give the mayor a hard time and may even make use of the councils formal right to reclaim (zurückrufen) responsibilities from the mayor and thus curb his or her powers (Bogumil et al. 2003: 339).

In sum, although the introduction of the directly elected executive mayor, particularly in the South German strong mayor variant, has further dipped the scales of power between the council and the mayor in favour of the latter, Germany's local government system continues to show a power balance in which the councils and committees and the political party groups continue to play an important role. An indication of the persisting political health of the council system can be seen in the frequency of full council sessions. In Nordrhein-Westfalen on the average nine plenary sessions a year are held with, an average duration of four hours each, backed up by intensive deliberations in committees (Schulenburg 1999: 40). Another indication of the political health of the local councils is the voter turnout in council elections which stands at around 60 to 70 percent (quite high by international comparative standards) and may be seen as reflecting a recognition, by the local electorate, of the continuing political relevance of their councils.

The impact of direct election on the administration

In accordance with the traditional organisational arrangements, local administration in the larger cities comprises three levels: the top (administrative leadership) level which is the level of the chief executive; the meso level which is the echelon of the so called directorates (*Dezernate*); and the lower level which is the layer of the operative units of the sections (*Ämter*). While most of the directorates have sectoral responsibilities such as social matters, cultural matters, or public utilities, one directorate typically has cross-cutting responsibilities for organisation, personnel, or the budget.

Provision was made for the top echelon to have at a level below the mayor, a number of deputy mayors (*Beigeordnete*) who were elected, for the duration of some years, by the local council on a proportionate formula and were meant to introduce an element of collegiate deliberation into the otherwise monocratic mayoral system. The *Beigeordnete* were expected to support the mayor in certain sectors and fields of local government. A closer linkage

between the administrative leadership level (executive mayor and *Beigeordnete*) was achieved by the mayor taking responsibility for organisation, personnel, and the budget, while some of the *Beigeordneten* were put in charge of sectoral directorates.

With the introduction of the directly elected chief executive mayor the traditional organisational scheme was largely retained, but with a number of important modifications. First, the *administrative* leadership of the previous chief executive (be it the chief executive mayor or the chief executive city director) was decisively extended by combining it with the *political* leadership of the directly *elected* mayor, and complemented by his/her membership, chairmanship and leadership of the local council. So the elected mayor is now able to bring to bear his/her *political* muscle and clout also in directing the local *administrative* world.

While, in most new local government charters, the positions of the deputy mayor (*Beigeordnete*) has been retained as a second (lower) level of political leadership, their responsibilities have been more clearly defined as being supportive to the mayor. Although they continue to be elected by the council on proportionate formula, they are subordinated to the mayor who, in the case of dispute, retains the power to decide (Holtkamp 2003: 25).

Conclusion

It may be too early to draw well-grounded conclusions regarding the impact of the introduction of the directly elected mayor. Institutional shifts can be brought about by legislation but the cultural changes and adjustments in the perceptions and attitudes of actors on which the functioning of these changes depend take longer to take effect.. Nevertheless, a reasonably confident assessment can be made with regard to mayor-citizens relations. The introduction of the direct election of the mayor, complemented by the recall procedure, has, no doubt, significantly strengthened and enlarged the political empowerment of the citizens. By establishing the directly elected chief executive mayor as a kind of local president, political as well administrative leadership and responsibility is located in one person who can be clearly identified and held politically accountable both by the electorate and the council. Due to his direct linkage with the electorate, the mayor is motivated to exert influence over the administration to make it more responsive and citizen- or client-oriented.

Another fairly safe assessment can be made regarding the mayor-council relations. The direct election of the chief executive mayor has further accentuated the traditional dualistic scheme of German local government by further spelling out a division of functions and of powers between the elected council and the elected mayor, who directs the administration and its professional staffs. The council and its councillors, operating in plenary session and through sectoral committees, has moved more and more towards a parliamentary role in which the council and the councillors concentrate on deciding the major issues of local policy-making and on controlling the chief executive and local administration instead of being involved in, and absorbed by the day-to-day operations of local government. This division of functions has recently been reinforced by the NPM-derived distinction between the steering and the rowing functions, the former being geared to the council, the latter to the chief executive and local administration.

As the available empirical evidence indicates, it is less easy to reach well-founded conclusions regarding the impact of the directly elected chief executive mayor on the performance of local government, and on the governability of the towns (Winkler and Haupt 1989: 155 – 157, Kunz and Zapf-Schramm 1989: 181). Yet, it seems plausible that, by installing the mayor as a democratically legitimated and politically accountable political as well as executive leader increases the capacity of local government for pro-active policy-making and co-ordinated action. The directly elected chief executive mayor, possessing a combination of political legitimacy and administrative clout, has the opportunity to become the key local networker and to exercise a pivotal role in horizontal as well as vertical coordination of the German cities.

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¹ This tradition drew heavily on the municipal legislation in post-revolutionary France where, as early as 1790, the council-elected mayor (*maire*) was introduced in a realistic local government arrangement.

² The governing Social Democrats who were not only the majority party in the *Land* parliament but also held majorities in most local councils were opposed to the direct election of the mayors, as they suspected this would provide the opposition Christian Democrats with a political avenue to gain mayoral majorities. It was only when the Christian Democrats threatened to initiate a *Land*-wide referendum on this issue that the Social Democrats finally give in and the *Land* parliament enacted the new municipal charter with a broad majority (see Kleinfeld/Nendza 1996: 75 ff.).

³ For an impressive list and survey data on mayoral time input and time budgets see Schulenburg (1999: 1996).