

German Unification and Bureaucratic Transformation

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ABSTRACT. This paper elaborates the role of bureaucracy in the process of German unification since 1990, first by analyzing the interplay between politics and ministerial bureaucracy in negotiating the unification treaty including its civil service related part with the German Democratic Republic; second, by describing the implementation of administration policy (comprising personnel and organization policies), the elite import and transfer of administrative structures from the west are emphasized as essential elements in transforming the East German polity. Structural conservatism rather than innovation can be observed as a result. With respect to the broader topic of regime change, elites, and bureaucracy, it is argued that, owing to the dual nature of transition in East Germany (implosion plus unification), the availability of a counter-bureaucracy and an external elite reservoir (as well as western capital) accounts for the absence of political resistance of the old apparatuses that presently bother East European countries. However, programmatic and financial policies have to accompany administration policy to become fully effective.

East Germany, the former German Democratic Republic (GDR), in 1989/90 experienced political change of a twofold nature: a silent revolution (or implosion) of the totalitarian political system and, owing to the subsequent unification with the Federal Republic of Germany (FRG), the loss of statehood and the adoption of the West German constitution. This dual regime change, revolution and unification, has deeply affected life and politico-administrative institutions in the east, but it is predictable that—beyond the constitutional amendments already passed—the western part of the country, too, will not be the same as it was before 3 October 1990.

Bureaucracy played an important role in the unification process. For one, the federal bureaucracy was at its best in drafting the unification treaty. Further, West German administration policy is assisting to adapt or to create administrative structures in the eastern part of the country. A transfer of personnel and organizations is considered necessary in order to put West German programs and routines into

operation and to establish the rule of law (*Rechtsstaat*) and a market economy. Creating a compatible administrative environment became a prerequisite for socio-economic transformation policies to facilitate, in the long run, "substantive" unification. Therefore, bureaucracy is playing an important role in the processes of unification and transformation of the eastern part of Germany.

The aim of this paper is threefold. First, the interplay between politics and administration will be sketched as it was observed in policy-making for unification. On a descriptive level it will be shown that what future historians might perceive as unique historical decisions by politicians actually required a professional bureaucratic apparatus to prepare and implement those decisions, albeit with an unusual amount of political management. Second, within this policy-making process, the strategy of using personnel policy as a means to politically control and professionally integrate the inherited eastern bureaucratic apparatuses became particularly important. In depicting personnel policy considerations with respect to the unification treaty and their subsequent implementation, comparisons to other East European countries in the transition to democracy and the market economy are made. During political regime changes one central problem is for the new political elites to overcome the resistance of civil, military, industrial, and monopoly party bureaucrats. Third, administrative organization policy and the question of to what extent structural conservatism or innovation occurred in this rapid transformation process will be dealt with. In conclusion, some limitations of administration policy for bringing about the ultimately intended socio-economic transformation will be indicated; it is argued that the effectiveness of personnel and organizational transfers is contingent upon contextual preconditions and concomitant programmatic and budgetary policy decisions that politically challenge the new FRG.

Politics and Administration in the Unification Process

Although historians are well advised to let time pass before assessing events of undoubted importance, political science discussion about the relative importance of situational factors and the role of individual politicians in the process of German unification started immediately after the event; some emphasized its "improvised" character (Lehmbruch, 1990), others stressed the interdependence between the exceptional situation and the temporarily charismatic traits of Chancellor Kohl (Hartwich, 1991), while the preconditions of international politics are occasionally recollected (von Beyme, 1991: 17–21). Certainly, there can be no doubt that, actively and/or reactively, political decisions without the usual bureaucratic preparation and partly against bureaucratic advice were taken between Chancellor Kohl's initial confederation plan of November 1989 and the treaty about German economic union of May 1990. When this state treaty and the second, so-called unification treaty between East and West Germany were elaborated and details had to be considered, the federal bureaucracy with its expertise and routine operations became more important. Furthermore, as bureaucracy itself was the object of negotiations between East Berlin and Bonn, the relationship between politics and administration apparently was almost inverted, as will be shown in the next section.

Political Management and Bureaucratic Expertise

When Chancellor Kohl published his ten-point plan for a German confederation on 28 November 1989 after the political destabilization of the East German regime,

and the new prime minister Modrow had indicated on 17 November his government's willingness to embark on "a union of responsibility," many observers were irritated (Hartwich, 1991: 253), not least because none of the usual political and administrative routines had preceded these declarations (Lehmbruch, 1991: 587). Nor had the Western allies been consulted or the ministries in Bonn (foreign ministry, ministry for inner-German affairs) been involved in designing the plan; it had obviously originated in the inner circle of the chancellor's office. After the fall of the Berlin Wall, the mass exodus from the east, and Modrow's initiative for a united Germany after his return from Moscow on 1 February 1990, the second strategic political decision of the federal government was to take up a January 1990 suggestion of the opposition Social Democrats and to confront Modrow in Bonn (13 February) with what later (1 July) became effective as the first state treaty about an economic, social, and monetary union. The decision to introduce the deutschmark in East Germany was made against the advice of almost all economic experts, including the president of the Bundesbank and the council of economic advisers (Hartwich, 1991: 254; von Beyme 1991: 23–25).

After the first free elections in the east on 18 March 1990 and the formation of a grand coalition under prime minister de Maizière, a consensus between the two Christian Democrat-led governments had emerged that aimed at unification through further international and national negotiations. Once this core decision was made, subsequent drafting of the unification treaty reflected familiar administrative decision-making patterns, notwithstanding a fair amount of political management. The main uncertainty was the speed of political developments, in the GDR and internationally, to which the negotiation process had to respond.

However, contingency planning in Bonn had begun on 7 February, when a special cabinet committee on "German unity" was established with all major ministers represented (foreign, interior, justice, finance, economics, inner-German affairs, ecology). Administrative work started the same day (Weiss 1991: 12). Six task forces were set up to deal with specific problem areas. While the finance ministry was the logical one to negotiate the economic union, the ministry of the interior's later coordinating function for the unity treaty must be viewed as an expression of the trust the chancellor put in minister Schäuble, who had previously served as minister in the chancellor's office. It would have been as logical to appoint the minister of inner-German affairs to this function (Hartwich, 1991: 264). In February though, the ministry of the interior was only responsible for the task force on state structures and public order, including civil service matters that, beside organizational and constitutional matters, are the traditional domain of the ministry of the interior. Thus, initially the ministry analyzed problems and the options for unification from a departmental perspective before taking on the role of central coordinator for all other departments (27 April) and prime negotiator with East Berlin (since July). Minister Schäuble (1991: 151) admits in his memoirs that he had given orders to the ministry to start comprehensive preparations for unification, including the clarification of constitutional options and consequences, as early as February 1990, in case events became more urgent—for most people thought unification unlikely before 1991.

There were, apart from the timing, two procedural uncertainties. First, it was difficult to anticipate what the procedure of unification would be: to draft a common constitution with a subsequent referendum (Article 146 of the Basic Law, the FRG constitution) or—what few thought realistic at that point—that the GDR would simply join the West German federation according to Article 23. If that happened, could the East Berlin government declare its entry in the federation or would new Länder have

to be established first, as Article 23 suggested? Second, the minister envisioned the necessity of special material transition laws to harmonize legal conditions in the GDR and the FRG because both systems were too contradictory to simply switch from one system to the other. Unilateral drafting of these transition laws had to be clandestine, for there was the danger of being blamed for preparing the "Anschluss" (conjoining) even before the first free elections had taken place in the east. However, the ministry soon encountered the problem of being unable to collect all relevant GDR laws, as they had not been codified. Therefore, other departments had to be involved to clarify special policy matters in their jurisdiction. It is worth noting how policy problems by necessity and according to the predominant juridical training of the bureaucracy as well as of most ministers (Derlien, 1990) were transformed into legal problems according to the division of labour between government departments.

In April 1990, minister Schäuble met with East German state secretary Krause (prime minister's office) in Bonn to elaborate "discussion elements," including amendments to the West German constitution. It was, however, left to East Berlin to produce the first draft of a unification treaty (Schäuble, 1991: 113). After all, the GDR wanted to join the FRG and not the other way round, and symbolic matters like the acknowledgement as equal partners, the site of the future capital, the flag, and the national anthem were of prime importance to East Berlin. Ultimately, however, East Berlin was in a desperate bargaining position in view of its deteriorating economic situation and the continuing migration to the west. But Bonn was afraid that the GDR might join the FRG unconditionally according to Article 23 of the Basic Law, which would automatically put, for example, the western system of financial redistribution between the poor and the affluent Länder into effect for the ramshackle east, with enormous repercussions on the old Länder. When an agreement between both governments was reached, after the first state treaty was signed on 18 May, to negotiate in three rounds starting on 6 July, with the second and third round scheduled for 1 and 27 August (actually 20 August), it was understood that disagreements were to be cleared up by bureaucratic experts between rounds. This tight schedule increased the pressure on the ministries enormously and, in the final stage of the negotiations, drafts were no longer marked by calendar days but dated by the hours of decisions (Weiss, 1991: 20).

Technically, one important material aspect for the working of the ministerial bureaucracy was whether, as a principle, during the necessary transition period East German law should persist with West German law as the exception, or whether it should be the other way round. In order to facilitate the badly needed western investments, Schäuble favoured the first option, for this meant, for example, that less restrictive environmental policy regulations would apply. The justice ministry, which had an equally prominent position in interdepartmental decision-making as the ministry of the interior, together with other special departments like Labour and Social Affairs and the Länder succeeded in establishing that West German law should prevail and East German law should be perpetuated only under exceptional circumstances as specified in the unification treaty. Although this decision had enormous socio-economic implications, it was the result of departmental perception of particular problems, for the departments in Bonn, of course, wanted to maintain their policy standards. Once East Berlin's initial resistance to this principle had vanished (Schäuble, 1991: 155) surprisingly, the drafting turned into a routine operation of the bureaucracy. Led by the ministry of the interior and in regular coordination with the finance ministry and the justice ministry, each ministry reviewed the body of western law within its jurisdiction regarding what applied to the new Länder.

Furthermore, departments in Bonn checked their position in cooperation with the respective ministries in East Berlin, which drew partly on the expertise of West German advisers. This was such a routine operation that Schäuble stated in retrospect: "I did not need to care about the details, but merely intermittently asked: Can you keep to the schedule, does it fit? There were no problems. Quite often I thought: These frequently bashed bureaucrats! In which other state would this proceed so smoothly?" (Schäuble, 1991: 152). Other politicians including the head of state later publicly applauded the ministries for the motivation (July and August was vacation time!) and their efforts. The names of individual state secretaries (west and east) and even a section head, who overnight produced the draft of the law regulating the transitory 1990 federal elections, were mentioned in the Schäuble memoirs.

Reviewing the decision process, it might be maintained that there occurred a centralization of political decisions upon the chancellor and the interior, finance, justice and foreign ministers, while the influence of the Länder and Bundestag factions as well as other ministers was curbed (Lehmbruch, 1991: 586ff.). This is typical of crisis decision-making in general and an expression of the foreign policy prerogative of the executive in particular. Administratively, though, the traditional pattern of horizontal interdepartmental coordination under a lead ministry prevailed. Ministers and the cabinet apparently acted according to management by exception, in particular when unresolved conflicts (in Bonn and with East Berlin) were moved up the hierarchy. However, conflicts tended to be dealt with at an early stage at the cabinet level and in coalition committees.

Also, the complicated machinery of federal and Länder consultations and the hearings by interest groups continued according to institutionalized procedures once the key decisions had been taken. Once the first state treaty was signed, the politicians' role changed from steering the internal decision-making process to building consensus in the Bundestag and with the Länder on conflictual matters such as accepting Berlin as the future capital or suspending the system of financial transfers to the new Länder until 1995.

The West German Länder were obviously a more severe problem in the final stage of negotiations than the East German government. After all, their consent (as well as that of the SPD opposition in the Bundestag) was needed to change the constitution's preamble and abandon, according to Allied wishes, Article 23 which opened the possibility for other Länder (first the return of the Saarland, now the GDR) to join the federation. Also, the unification treaty needed the consent of the federal chamber, in which a majority of votes was held by the Social Democrat-governed Länder. The interplay of politicians and bureaucrats in this case resembled the classical Weberian model of a functional division of labour between goal-setting and selection of means, consensus-building, and expert problem-solving, whereas under normal circumstances many policy initiatives originate in the bureaucracy and bureaucrats themselves get frequently involved in politics (Mayntz and Scharpf, 1975). Furthermore, conflict management and consensus-building by politicians as well as the amount of time they spent in negotiations were more obvious than usual. The expertise assembled and the actual paperwork done demonstrate, however, that the bureaucracy shifted into a higher gear, too.

Integrating the East German State Functionaries

Of the various matters finally included in the treaty, civil service ones were of particular practical importance and have some relevance for the theory of bureau-

crazy and elite theory under conditions of regime change. Whereas the new political elite (in East Berlin, as in Warsaw, and Prague) was excluded from state functions under the former totalitarian regime and thus administratively inexperienced, the bureaucratic apparatuses, because of their indispensability to society, normally would continue working under the new regime, as Max Weber observed (Weber, 1964: 165). The question thus is which strategies were available to cope with the problem of political control. Purging the bureaucracy is one method that is, however, limited by the availability of loyal experts; relying on a counter-bureaucracy is another. From the point of view of the East German ministers in 1990, the counter-bureaucracy sat in Bonn, and it was in the west that the elite reservoir for staffing the bureaucracy after unification was available.

Civil Service Policy

Initially, the ministry of the interior¹ suffered from a serious deficit of knowledge about the structure and functioning of the East German public service. The ministry started with the working hypothesis that some sort of parallel law would be required to transfer East German functionaries to the traditional West German civil service. To find out how this could best be done, historical antecedents were looked up in official records—the return of the Saarland into the federation in 1956, the solution found for the civil service in Berlin in 1952, and apparently (Weiss, 1991: 16) even the annexation of Austria in 1938. But these examples provided little help, for in all cases the professional civil service with its special training requirements and its career system based on education and merit had not been destroyed. Contrary to the restoration of the traditional civil service in the west after the catastrophe of the Nazi regime, in East Germany the institution of the civil service was abandoned after 1945 in a revolutionary move and replaced by a uniform system of labour relations which no longer differentiated between public functionaries, including cadres of the Communist party, and “peasants and labourers.” Furthermore, the notion of the neutral execution of office, like the overarching concept of *Rechtsstaat*, was alien to the communist system, while loyalty to the party and the explicit partisanship of “the masses” was the ultimate imperative (König, 1991). As in the Nazi period, not only was excessive stress put on political loyalty, but also the kind of expertise needed to run a democratic *Rechtsstaat* was no longer cultivated. Juridical training was the exception and vertical stratification based on the level of education between what is commonly regarded as the higher civil service and other grades was unknown. Owing to divergent developments, over 45 years in the east and the west, Germany for the first time after a regime change in this century was facing the problem of the politicized incompetence of public functionaries.²

Although these characteristics were gradually understood in Bonn and the task was perceived as one of securing expertise as well as a morally uncorrupted and constitutionally loyal future civil service, public functionaries in the east suddenly demanded from their government the introduction of the same status as in the western civil service with life-long tenure, obviously in order to gain security before unification became a reality. Bonn, though, influenced the de Maizière government to resist, first of all for financial reasons, since the East German service was heavily overstaffed. Thus, the economic union treaty of 18 May 1990 enacted serious reductions in the number of state functionaries and, implicitly, acknowledged the West German constitutional provisions for the civil service. A coalition agreement of 12 April 1990 had stated, among other things, that detailed civil service regulations

should be left to the second state treaty (Weiss, 1991: 17), as an investigation of Stasi (state security police) had started in East Berlin. After a government commission to abolish the Stasi had been set up in Berlin on 30 May, it became a political concern in Bonn, too, about how to cope with the "Stasi syndrome," that is with the secret police of 85 000 official and 180 000 "unofficial" collaborators, who had been cleaning out their personnel files and hiding in inconspicuous new jobs since March 1990. The problems of purging, reeducating, and incorporating 2.1 million functionaries into the western system gained paramount importance.

A serious conflict among Bonn ministries had to be settled before official talks with East Berlin about civil service matters could start on 20 July. Since the central government apparatus of the GDR was to be abandoned, Bonn worried about who should be in charge of the personnel. The foreign office favoured a solution that would transfer all East German functionaries to a central holding (similar to the federal "Treuhand" agency that was set up to privatize the 8 500 state enterprises). This proposal alarmed the minister of the interior because this model, if also applied to the East German army, customs, railways, and postal service—functions that would remain with the federal government—meant that he, as the traditional civil service minister, would ultimately be responsible for all these personnel. Thus, he pushed through a decision to decentralize personnel responsibilities to the respective departments and to the Länder still to be established. This solution avoided the impression on the part of state functionaries that they were to be dismissed if transferred into such a central holding (Schäuble, 1991: 201). A first draft of the civil service provisions made public on 13 June had already stirred anxieties among East German state functionaries (Weiss, 1991: 22). Thus, matters which at first glance appeared rather technical and belonging to the domain of the ministerial bureaucracy had far-reaching political implications and moved the politicians to act.

Consensus with East Berlin was reached on basic aspects and details were cleared on 24 July, so the regulations for purging and transferring the remaining functionaries into the western personnel structure were ready for the second round of negotiations. Although no objections were raised by the GDR in a meeting at the civil service level on 15 August, opposition had come from some Länder such as the SPD-governed Hamburg with an intervention as late as 10 August, although consultations with the Länder had taken place after each draft since 31 May through the established joint expert committee.

While the Länder basically objected to a premature transfer of civil service status to East German functionaries, the Greens in the Bundestag (1 June) and the public service union ÖTV (at a hearing on 26 July) aimed to abolish the traditional civil service altogether, thus reinstating a situation dating back to 1918. Behind this conflict stood the problem of the dual structure of the public service in Germany (public employees and labourers vs. civil servants, who among other differences are not allowed to go on strike). This problem, after an unsuccessful attempt in 1973 to introduce a homogeneous system, was created by the necessity of specifying in the treaty that authoritative state functions according to Article 33, section 4 of the Basic Law were to be preserved for civil servants. Career requirements were to apply that could not be fulfilled by East German state functionaries in the foreseeable future unless exceptions were made.

Thus special regulations for retraining and probation periods to secure professional expertise were devised; as well, future horizontal mobility between policy areas of those who were to receive tenure was to be limited, for it was assumed

that even retraining could not secure the normal multifunctionality. Functionaries could be let go for lack of qualification or lack of demand if agencies were abolished. As to loyalty and moral considerations, collaboration with the Stasi or past offences against principles of humanity and legality meant unconditional dismissal. In view of public opinion in the east, the possibility of a political amnesty, as in the peace treaty of 1648 for religiously motivated crimes during the Thirty Years' War, was not seriously discussed. However, it was decided early in 1991 that unless the former 2.3 million members of the Communist party had fulfilled prominent functions, simple party membership should not be regarded as an indication of a lack of future constitutional loyalty and thus did not constitute a criterion of exclusion from the public service.

Implementation of Civil Service Policy

The federal government was in charge of personnel policy after 3 October 1990, according to the vertical task distribution in the federation and insofar as central services of the GDR were inherited. However, civil service policy had to be discharged by the governments of the five new eastern Länder, which were themselves newly created.

In October 1990, the federal government inherited roughly 560 000 of the former 2.1 million GDR officials in 4 000 offices (Bundestag 12/916) and in January 1991 roughly half a million were still employed (Bundestag 12/304): 35 682 under federal ministry supervision in East Berlin; 51 600 civil employees of the army as well as 49 140 professional soldiers; 124 455 in the postal services; 232 000 railway employees; 17 300 in the 38 new labour offices. All other personnel were either taken over by the Länder or local governments or had already left the public service for various reasons (see below) before unification. For instance, the 8 481 employees of the former central social insurance system were taken over on 1 January 1991 by the new Länder and local institutions. Another 30 000 persons continued to be paid for up to nine months, but were, mostly unsuccessfully, awaiting new assignments, among these being 1 800 of the former 2 400 GDR diplomats and 860 military officers.

Within half a year after October 1990, 17 865 persons under federal jurisdiction were let go, predominantly owing to abolishment of their former offices (8 559), lack of demand in still existing offices (6 536), or insufficient qualification (887). While all these people had the chance to reapply for new functions on the Länder and local level and received transition payments, 1 883 persons taken over by the federal administration were fired, because of collaboration with the Stasi (1 818) or because of offences against humanity (65), the two causes that allowed for unconditional dismissal.

These 1 883 cases were just the beginning of what became a full-fledged purge once the federal office scrutinizing Stasi activities became fully active in 1991. These cases are the continuation of modest purges that had started in October 1989: most of the "nomenclatura", politicians and functionaries in various elite sectors had been ousted because of the compulsory retirement age being 57. Thus almost all former state secretaries disappeared under the first democratically elected government of de Maizière; also, most members of the high judiciary and the generals (army, Stasi, police), as well as the directors of the industrial Kombines and some 1 300 university professors, had left office by October 1990. However, this purge did not mean that these people had disappeared from the public sector. For, under the last communist government provisions were made to

transfer at least the second tier of the nomenclatura into new, inconspicuous functions: Stasi officers preferring to join the police, others joining the new labour administration and the Treuhand privatization agency. These shifts were bound to cause problems after reunification.

For instance, within the jurisdiction of the federal ministry of the interior, the transfer of 5 500 members of the GDR border police into civil service status according to Article 33, section 4 was delayed after it became evident by August 1991 that many had made false statements about involvement with the Stasi. 2 500 police were to be fired and by end of 1991 two-thirds of the 930 former passport inspectors, who turned out to have been organized in a special Stasi unit, were ousted, while 25 only were taken on as probationary civil servants. In the new labour administration, 20 of the 38 directors and 65 out of 159 office heads were dismissed by October 1991. In the Treuhandanstalt, of those 1 400 directors sacked by August 1991, 400 were dismissed because of their political past and 100 because of fraud.

Quite a number of politically questionable persons were kept in employment because they were regarded as indispensable on account of their expertise; the Treuhandanstalt in February 1992 had to admit after public criticism that it still employed seven former deputy ministers and one state secretary. In March 1992 the federal government acknowledged that 3 700 former Stasi officials were kept on, mostly with the railways (2 082), but also in the ministry of the interior (652), in the federal bureau of investigation (30 to protect certain objects), and some even in the Stasi scrutiny office where ten people (among these two high-ranking Stasi officers) were retained for a limited period to help explain the intricacies of the Stasi files.

On the Länder level, the most sensitive sector besides schools and universities is the judiciary. Of those judges and attorneys who had helped to stabilize the political system with its "telephone law" and politicized judgements, only some 75 percent tried to continue their careers. They had to pass scrutiny committees established by the GDR parliament in July 1990, an institution carried on by the Länder. Although comprehensive statistics are not yet available, it is estimated that two-thirds of the applicants will be accepted on probation (Wassermann, 1991).

For instance, in Saxony the six selection committees (each consisting of six members of the state parliament and four judges) confirmed 219 judges and 121 state attorneys, which equals 58 percent of the 380 and 55 percent of the 221 respective applicants. Sixty judges and three attorneys of the former cadre did not apply for confirmation. Sixty percent of those accepted were younger than 35 (*Frankfurter Allgemeine Zeitung*, 19 July 1991: 4).

The general insight that revolutions are often accompanied by a considerable rejuvenation of the elite applies in particular to an ossified gerontocracy like that of the former GDR. Not surprisingly, most new political executives in East Germany are on average no older than 50 (Derlien, 1991b: 27ff). This is the result of an elite succession within the former GDR parties and recruitment from new political formations in Brandenburg before the democratic Länder elections in October 1990. Nevertheless, even in the new Länder parliaments, in a self-cleansing process, about 6 percent of the MPs and five ministers, so far, have been revealed as Stasi collaborators.

When old structures are purged and/or new institutions established after revolutionary changes, the reservoir of new elites is obviously limited. Therefore, parallel developments can be observed as vacancies are filled in the political as well as in the judicial and administrative elites. Three out of five East German prime ministers were recruited from the western part of the country, as were four of the five justice ministers and the majority of the economics and finance ministers. This

massive elite import also occurred in the restored and differentiated (with administrative and labour courts) judicial system, where almost all the higher judges came from the west.

In Saxony, the 219 confirmed judges work alongside or under 70 "guest judges" from the Länder of Bavaria and Baden-Württemberg; another 100 younger jurists from the west have applied for permanent positions. The justice ministry under the only East German minister is dominated by 19 high-ranking administrative jurists, judges, and attorneys from Baden-Württemberg. The president and attorney general at the Dresden regional court are from the west, as are the directors of the eight county courts, the chairman of the confirmation committee for attorneys, and four judges working for the confirmation committees of judges (*Frankfurter Allgemeine Zeitung*, 19 July 1991: 4).

In the administrative branch the rule is that the higher the position, the larger the proportion of West German imports; thus almost every state secretary in the Länder ministries is a West German. For example, although constituting only 27.4 percent of the 1 428 public servants in the ministerial bureaucracy of Brandenburg, the West German share amounts to 52 percent of higher civil servants, reaching a maximum in the justice ministry (72 percent) while East Germans dominate in rather technical ministries like agriculture and environmental affairs (Linde, 1991: 295).

Going east is, among other things, encouraged by excellent promotion opportunities not available at home and by special incentives for those who stay only temporarily; not only is a considerable "bush-money" paid, but the special effort is taken into account in future promotions at home, too. Altogether, 10 000 West German civil servants have been helping in the east since 1991, 7 568 of them in federal agencies, but 387 federal civil servants were also delegated to Länder institutions. Relying on the partnership with individual "old" Länder, the five new Länder satisfied their demand primarily there and imported 2 883 personnel. Bavaria, for example, helped Thuringia and Saxony with 406 plus 700 short-term employees. However, Saxony received help from other Länder, too, mostly Baden-Württemberg: it got 321 plus 100 short term employees, while Thuringia was served by Rhineland-Palatine with 235 persons (Bundestag 12/916).

Although the post-war experience with de-nazification allowed a prediction that by and large what would happen in East Germany (Derlien, 1991b) was that the majority of the public service would be functionally indispensable and only the former elite and those who had committed crimes would be dismissed, the purge was more thorough after the 1990 regime change. In contrast, other East European countries are facing severe limitations on purging the old bureaucracies because, first of all, a democratic political counter-elite in many cases could not develop. Converted communists frequently constitute the new political elite and the bureaucracy is often perpetuated; attempts to purge it, as in Czechoslovakia or Poland, meet massive resistance. The situation is completely different in East Germany, where a purge of the political elite was possible because important administrative positions could be staffed to a historically unprecedented extent by importing professionally qualified persons who support the new constitutional system.

Transferring Executive Institutions

All East European countries that are becoming democracies have to reform their political constitutions and create a polity with new or additional political parties and other organizations to mediate between society and the state. But in East Germany, owing

to the concomitant processes of regime change and unification, the situation is categorically different. By joining the Federal Republic of Germany, not only the basic national institutions of the western constitution were accepted (and central government institutions in East Berlin abandoned), but also the major political parties (except for the communists) merged. Blueprints of functioning West German institutions were readily available to fill the institutional vacuum (Länder) or to reorganize existing structures. Within the confines of this paper not all administrative arrangements, particularly those in special branches like the health or education sectors, can be dealt with. Furthermore, it should be kept in mind that there are also institutions created by the GDR that I have mentioned in passing—the Treuhandanstalt, the biggest industrial holding in the world, which will itself be superfluous once privatization is accomplished, and the agency administering the Stasi records.

Reconstructing the Länder

Although Länder had been created in the Soviet occupation zone in 1947, this federal element was abandoned in 1952 and the GDR turned into a unitary state with 14 administrative districts. In reestablishing Länder by the legislation of 22 July 1990, the last GDR government adopted the old demarcations that subsequently served the citizens as a significant reference point for preserving their political identity (Seibel, 1992:186). The size and territorial shape of the new Länder, however, are smaller than those of the West German Länder. In 1973 a federal government commission had reconsidered the size of the old Länder and suggested forming, for example, a north German state incorporating the city states of Hamburg and Bremen. The existing differences in size and economic power among West German as well as among East German Länder and between all 16 Länder are considered unsatisfactory by experts, both with respect to the power distribution in the federation and in view of the Länder's future functions as regional units in the European Community (Scharpf, 1991). Once the five new Länder within their 1947 boundaries were reintroduced, a precondition for unification according to Article 23 of the Basic Law as only Länder (and not the unitary GDR) could join the federation, the attempt of the federal ministry of the interior to make it possible in the unification treaty to redress the Länder boundaries failed due to resistance from the threatened smaller West German Länder (Scharpf, 1991: 151ff.).³

The same structural conservatism, although for other reasons, can be observed in the filling of the administrative vacuum at the apex of the Länder. Although there had been suggestions for moderate reform of the structure of the ministerial bureaucracy in Bonn after 1969 and in Baden-Württemberg in 1985, these plans were not revived when the ministerial bureaucracy was established in the eastern territories in late 1990. Concomitant with the import of personnel, the Länder partnerships resulted in a process of institutional transfer which copied the structure of the ministerial bureaucracy in the individual West German provincial capitals. This copying led to odd results in some cases, as when two West German partners (ten Länder had to share the five new Länder) giving advice to the east resulted in Bavaria transporting its uniquely sized ministry of regional development and environmental affairs to Saxony, while the ministry of the interior was copied from the second partner, Baden-Württemberg. Obviously, the pressure to set up bureaucracies in October 1990 for the newly elected cabinets, which could immediately provide imported experts with a familiar working environment, ruled out major reform considerations, all the more because petty technical problems like

finding adequate buildings and modern communication devices were paramount. Also, by extending the civil service code to the east and adopting West German budgetary law, the very constraints were set which had previously impeded structural experimentation in the west.⁴

Merging Local Governments

The problem of the adequate size of administrative units is being faced on the local level, too. But local government amalgamation is bound to take place in East Germany by 1994 (the time of the next local elections) since the present 7 500 communes are far too small compared to those of West Germany (Schmidt-Eichstaedt, 1992). In the west between 1965 and 1978, the number of local governments was reduced from 24 000 to 8 500 in a series of reforms undertaken by individual Länder. Reform goals were administrative effectiveness (professional personnel, sufficient revenues, desirable infrastructure) and strengthening of local democracy by making rural units less dependent on the counties. Local resistance was overcome, for these decisions were ultimately taken in an authoritative way by state legislatures. Interestingly, none of the Länder will force small local units to abolish their political identity as based on local councils elected 13 May 1990; rather all five Länder will provide the opportunity for such units to join associations of local government, although this deviates from what had happened in some of the partner Länder 20 years ago. The corresponding reduction of the number of counties with their full-time administrative staff will be more politically painful. On the one hand, county and city administrations were almost the only administrative structures surviving the fall of the GDR and faced the burden of transition problems from the beginning; on the other hand, county commissioners, recently elected and frequently part of the political counter-elite, feel authorized to stay in office.

Reforms of Local Government Constitutions

As a first step towards democracy, the East Germans on 17 May 1990 reintroduced local government autonomy and developed a new local government constitution, even before the Länder were created. The best of the various West German constitutional models were chosen without necessarily harmonizing their elements. As the new Länder are about to individually legislate their local government constitutions, the uniform 1990 constitution is likely to be replaced by a variety of models that will probably resemble what is customary in their West German partner Länder. Maybe, though, the new Länder will design local government constitutions based on specific experiences since 1989 (as is the case with devising Länder constitutions). At the same time, there is a tendency in some western Länder to replace the British model (dual leadership of mayor and manager) and the collegiate magistrate model by the south German model with its directly elected mayor, who in addition is local chief executive and council chairman. It remains to be seen to what extent reform plans that cannot be implemented in the west, for instance in North-Rhine-Westphalia, will be adopted by the eastern partner Länder.

Regional Units

The character of East Germany as an experimental field can also be observed in the process of reconstructing the Länder administration on the regional level.

Although some West German Länder (such as Saarland and Schleswig-Holstein) had abolished or reduced the number of regional coordination agencies, the Napoleonic prefect system adopted by Prussia is the rule. In East Germany, the same pros and cons were discussed and again the decision was taken partly under the influence of the West German partner Länder; thus Mecklenburg-Vorpommern followed the example of Schleswig-Holstein and abolished regional authorities, not least because they were the strongholds of the communist administrative system. In Thuringia and Brandenburg, though, regional authorities are not to be created although their western partners have them.

Thus, besides the general impression of structural conservatism there are indications of adaptation at the local and regional levels of administration. Structural diversity will probably increase in the future, as it is up to individual Länder to organize these matters. In particular, the local level is likely to produce organizational innovations. Pressure is less now than it was when Länder and their ministries had to be created. The pressure of time could explain why the dominant influence of the West German partner Länder and their imported personnel worked towards structural conservatism at the Länder level. In the west, too, there is less structural variation among the ministerial bureaucracies than among local administrations. In an analysis of the restructuring of the East German research sector, Renate Mayntz (1992) has pointed out that the unmodified transfer of the western model was caused by a broad institutional consensus in the west. Thus, contrary to the stress-theory of innovation, innovations obviously do not take place if satisfactory solutions are available. Notwithstanding transient organizational solutions in the health and education sectors as well as privatization of the command economy, traditional West German structures are by and large regarded as satisfactory. There is neither bureaucrat-bashing nor the kind of managerialist thinking so widespread in the Anglo-Saxon world. One could argue that in confrontation with the administrative situation of the east the urgency to find solutions to problems reinforced traditional principles like those of the civil service (Derlien, 1991a). Of course, from an East German point of view this import of organization and personnel structures is revolutionary. Another reason why East Germany did not develop into an experimental field for West German solutions might have been the lack of politically motivated resistance or sabotage.

The Limits of Administration Policy

It remains to be seen whether these transplantations will adapt to the surrounding tissues or be rejected or modified. What has been described so far are merely formal personnel and organizational structures that have to be put into operation in a different political and socio-economic environment. There are indications that East Germans, except in the judiciary, feel colonized by the intake of West German experts. Also, trust in institutions and a civic culture in general have to develop before the bureaucratic apparatus can work satisfactorily; for instance, the rule of law presupposes that citizens are prepared to appeal to the administrative courts of justice, which are totally alien to the East Germans. Thus, changes in the environment will have to be carefully monitored.

The new institutions are confronted with endogenous problems, too. First, there is a tremendous program overload that is confronting insufficiently specialized bureaucratic field offices. The laws and programs that had accumulated in the FRG over forty years have, with a few exceptions, to be implemented immediately. For

instance, tax law is so complicated that the tax offices that had filled completely different functions in the socialist economy are virtually paralyzed, all the more so because their stable environment of state-owned industries is dissolving and being replaced by a multitude of private entrepreneurs. Second, privatization takes time and private investment is sluggish while at the same time unemployment is critically high. This combination of adverse economic factors is destroying one illusion of unification (Seibel, 1992), namely that transformation would be self-financing. Instead, consumption transfer payments to the east (as opposed to investment) and public debt in the west are skyrocketing thus exacerbating conflict between east and west. To cope with these problems, a new political impetus is needed and innovations are required. Bureaucracy obviously cannot substitute for policy. As shown above, it can assist politics and execute policy, but even mature administrative structures cannot replace political crisis management, let alone political guidance. Last, but not least, because of the undersized new *Länder*, one of the greatest challenges of German politics (by 1995) is to retaylor the financial (re-)distribution system.

Looking at Eastern Europe as a whole, one could, instead of wondering why unification was not used more often for innovation or to indicate urgent budgetary and policy problems, ask the more fundamental question of why there was no resistance to regime transition in East Germany. Neither the military nor the Stasi, nor "the party" nor the industrial conglomerates, all of whom were threatened, engaged in opposition, let alone sabotage. This is so, first of all because the former regime was utterly delegitimized and because the communists lost leverage in the 1990 elections on local, *Länder*, and federal levels. Second, none of the ousted functionaries is starving but can live on his or her pension and property (consumer goods being not in short supply) or is relatively conveniently established in the social security system, which is financed by huge transfers from West Germany. Further, a relatively well-functioning market takes on the coordination function of the former planning bureaucracy, and all central state functions were taken over by Bonn and the remainder decentralized among the *Länder*. Thus former structures are no longer required nor can they serve as focal points for organized resistance. However, the country is crucially dependent on the economic success of the new order.⁵

Notes

1. The internal considerations of the Ministry of the Interior, its contingent plans and principles to cope with the technical problems associated with the unification of the two completely different states and bureaucracies are unusually well documented by Weiss (1991).
2. I have used this label in my 1991a and 1991b papers to come to terms with the empirical evidence. I should like to acknowledge in this paper that the category was developed by my colleague Collin Campbell (1986: 16–19) in his analysis of how the White House functions.
3. Only for the merger of the city state of Berlin and of Brandenburg were special provisions made.
4. Possibly less a reform than a thorough shake-up will result from the move of the federal bureaucracy to Berlin in a couple of years time, as some ministries will stay in Bonn and others will be separated. Also, the transfer of federal agencies and courts of justice to the east could be viewed as a reform, although not a structural one.
5. The xenophobic riots that occurred in Rostock and other places (in East and West

Germany) after this paper was completed might be the result of high regional unemployment, a still underdeveloped civic culture, and lack of routine procedures in the police and law enforcement apparatuses.

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