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Lessons Learned from Asia and Europe



MARIO J. AGUJA AND HANS BORN (EDS.)



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The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is an international foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector. DCAF develops and promotes norms and standards, conducts tailored policy research, identifies good practices and recommendations to promote democratic security sector governance, and provides in-country advisory support and practical assistance programmes. Visit us at [www.dcaf.ch](http://www.dcaf.ch).

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## Germany

HARTMUT ADEN<sup>1</sup>

In the framework of the comparative study that focuses on the role of parliament within the context of wider police accountability, this chapter analyses the case of Germany.<sup>2</sup> The central research questions underlying this paper directly derive from this research framework: What are the characteristics of police accountability in Germany in comparison to other democratic countries? And what is the specific role of parliaments for police accountability in the centralised and decentralised polities of the German Federation? For policing and police oversight, the federal structure of the country is a predominant pattern, as policing is among the most prominent responsibilities of the 16 German States (*Länder*). Therefore the German police system can be characterised as semi-(de-)centralised.<sup>3</sup> Each State has its own police agency or agencies. Police officers are employed and paid by the States. The Federal State (*Bund*) has its own police forces. They include (1) the Federal Police (*Bundespolizei*) for the protection of the external borders, the railway system and the airports and (2) the Federal Criminal Police

Office (*Bundeskriminalamt*), mainly for the federal coordination of criminal investigation. Both are under the supervision of the Federal Ministry of the Interior (*Bundesinnenministerium*). Secret services are separated from the police in the German system. The Federal Customs Administrations (*Bundeszollverwaltung*), under the supervision of the Federal Ministry of Finance (*Bundesfinanzministerium*), also have a number of security-related tasks.

**Table 1: Police agencies in the German federal system<sup>4</sup>**

Police Agency	Functions	Number of Police Officers and Police Employees <sup>5</sup>
Bundespolizei (Federal Police)	Border, airport and railway police; formed units	38.000
Bundeskriminalamt (Federal Criminal Police Office)	Coordination of criminal investigation; international cooperation; prevention of dangers in cases of international terrorism;	5.000
Zoll (Federal Customs Administrations)	Tasks related to customs; criminal investigation in specific cases (illegal drugs; protected species; illegal labour et al.)	(34.000) <sup>6</sup>
Polizei Baden-Württemberg (Police Baden-Württemberg)	Prevention of dangers and criminal investigation	30.000
Bayerische Staatliche Polizei (Police Bavaria)	Prevention of dangers and criminal investigation	29.800
Der Polizeipräsident in Berlin (Police Chief Berlin)	Prevention of dangers and criminal investigation	22.000
Polizei Brandenburg (Police Brandenburg)	Prevention of dangers and criminal investigation	8.000
Polizei Bremen (Police Bremen)	Prevention of dangers and criminal investigation	2.500
Polizei Hamburg (Police Hamburg)	Prevention of dangers and criminal investigation	9.800
Hessische Polizei (Police Hesse)	Prevention of dangers and criminal investigation	18.000
Polizei Mecklenburg-Vorpommern	Prevention of dangers and criminal investigation	6.000
Polizei Niedersachsen (Lower Saxony)	Prevention of dangers and criminal investigation	24.000

Police Agency	Functions	Number of Police Officers and Police Employees <sup>5</sup>
Polizei Nordrhein-Westfalen (Police North Rhine-Westphalia)	Prevention of dangers and criminal investigation	50.000
Polizei Rheinland-Pfalz (Police Rhineland-Palatinate)	Prevention of dangers and criminal investigation	7.200
Polizei im Saarland (Police Saarland)	Prevention of dangers and criminal investigation	3.000
Polizei Sachsen (Police Saxony)	Prevention of dangers and criminal investigation	13.000
Polizei Sachsen-Anhalt (Police Saxony-Anhalt)	Prevention of dangers and criminal investigation	8.000
Polizei Schleswig-Holstein (Police Schleswig-Holstein)	Prevention of dangers and criminal investigation	6.500
Thüringer Polizei (Police Thuringia)	Prevention of dangers and criminal investigation	7.000
Total number of Police Officers and Employees (without customs)		287.800

Citizens, civil liberties advocacy groups, political decision-makers, police agencies, police unions and individual police officers have numerous different expectations about what should be the outcome of police oversight. Victims of police misconduct may expect sanctions for the police officers behaving badly or simply feel the need that a complaint should be taken seriously. Non-governmental organisations (NGOs) defending civil liberties often focus on the correct investigation into cases of police misconduct. Some NGOs also lobby for drawing policy consequences from typical complaints in order to improve police work in the sense of enhancing respect, especially with regard to human rights. Police agencies oriented towards a good relationship with the public may also be interested in drawing consequences from misconduct. Some police officers and their unions may rather be interested in preventing the sanctioning of police officers.<sup>7</sup> Members of Parliament and governmental representatives may sustain these expectations, which only partly overlap. Independent police oversight by parliaments, courts and civilian oversight bodies is therefore highly contested in Germany, as in other countries. Thus, police oversight institutions have been frequently reshaped and are a matter of trial and error.<sup>8</sup>

Most police agencies have internal affairs units investigating cases of police misconduct that come to the attention of an agency either by its own observations or outside complaints. However, in practice, such internal affairs units mostly show a number of shortcomings.<sup>9</sup> Police officers investigating cases of misconduct from their own colleagues may succumb to internal pressure. Police leaders might hesitate to communicate openly in the public about cases of misconduct, potentially affecting the agency's public reputation. Human rights groups have consequently criticised that internal investigations tend to be incomplete, slow and not sufficiently neutral.<sup>10</sup> When police officers are concerned by a complaint from outside of the police, police agencies sometimes tend to open criminal investigations against the complainant as a defence mechanism,<sup>11</sup> especially in cases where an encounter between police officers and the complainant verbally or physically escalated. In such a case, complainants have even more reasons to doubt the neutrality of internal investigations.

The paper analyses the specific role that the German parliaments play in this multi-actor system of police accountability from a trans-disciplinary legal, political and administrative science perspective.

## Police accountability framework

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Police accountability in Germany is closely linked to central characteristics of the country's political system. Germany, as it exists since 1949 (Federal Republic of Germany) and 1990 (reunification with the Democratic Republic of Germany), has a federal structure, relatively strong parliaments and a specific rule of law tradition. Public administrations, including the police, mostly have internal units dealing with cases of police corruption or misconduct.<sup>12</sup>

By contrast, Germany has a weak tradition of independent oversight institutions for public administrations as they are established in many other countries with ombudspersons or oversight commissions involving citizens.<sup>13</sup> In recent years three states have established independent ombudspersons with specific police oversight authority: Rhineland-Palatinate (2014), Schleswig-Holstein (2016) and Baden-Württemberg



(2016). In the past decades, independent data protection commissioners have been established in Germany. They also cover data collection and processing by police agencies.

NGOs that exert police control functions are independent from the police. They play an important role for independent reporting on cases of police misconduct.<sup>14</sup> Numerous German lawyers are engaged in civil liberty NGOs or networks (e.g. *Republikanscher Anwältinnen- und Anwaltsverien*; *Strafverteidigervereinigungen*; and *Vereinigung Demokratischer JuristInnen*).<sup>15</sup> They often support the non-state police oversight. Additionally, networks have been established to aid people in trouble with the police, mostly in connection with political demonstrations.<sup>16</sup> These NGOs do not have any formal authority to investigate cases of police misconduct. However, they can collect information (e.g. from victims or witnesses) and publish it. This puts the police agencies under pressure to prevent problems in the future and to change behaviour, especially if cases find an echo in the media. Other NGOs focus their activities on specific issues, such as police racism.<sup>17</sup>

According to the specific German rule of law tradition, as established in the 19th century, any state activity that restricts the citizen's fundamental rights is only allowed if parliament has given the administration, such as the police, a specific legal base for this restriction. This constitutional requirement has characterised German police law since the late 19th century.<sup>18</sup> In the 20th century, this tradition was further strengthened in two respects: The West German Constitution, the Basic Law (*Grundgesetz*) drafted under Western allied forces' supervision after World War II and in force since 1949, specifically underlines the legal value of the individuals' fundamental rights, more than any previous German constitution. Based on these two influences, the Federal Constitutional Court (*Bundesverfassungsgericht*) then further strengthened the legal value attributed to fundamental rights. The numerous cases that individuals bring before the Court open path-dependencies<sup>19</sup> in the sense that the Court establishes new doctrines, often extending the legal value of fundamental rights that become the starting point for further development in administrative practice, case law before lower courts and its own future case-law.

The strong position of fundamental rights became possible because of the individuals' right to bring cases directly before the Constitutional Court if legal remedies before the general courts are unsuccessful or a new legal provision directly endangers fundamental rights. Similarly to the European Court of Human Rights (ECHR), individual access to the German Federal Constitutional Court enables the Court to react to new developments that may endanger fundamental rights.

This has been particularly relevant for policing. The *Bundesverfassungsgericht* has further developed and often strengthened the fundamental rights relevant for policing, especially the right to life and physical integrity and the freedom of the person (both Article 2(2) of the *Grundgesetz*), the freedom of expression and of the press (Article 5(1)), the freedom of assembly (Article 8), the freedom of correspondence and telecommunication (Article 10) and the inviolability of the home (Article 13).

Due to the specific German rule of law requirements and the Constitutional Courts' fundamental rights case law, the laws governing police activity in the country tend to be detailed. Police tactics that restrict fundamental rights require an explicit legal base. In the early 1990s, this legal requirement was adopted and underlined by the ECHR in French cases concerning telephone tapping.<sup>20</sup> It is, therefore, now a European standard, but German laws in this field still tend to be more concrete and explicit than those of other European countries. This means that parliaments have to revise the laws relevant for policing on a regular basis, taking into account new developments of threats and dangers, police tactics and technology in the use for policing. For the Federal Parliament (*Deutscher Bundestag*), the Federal Council (*Bundesrat*) and the 16 State Parliaments (named *Landtag* or – in the three City States – *Bürgerschaft* (Bremen and Hamburg) or *Abgeordnetenhaus* (Berlin)), police oversight is primarily exerted by the legislative function.

Police accountability also includes internal control mechanisms with hierarchical supervision and disciplinary procedures for cases of police misconduct. These procedures may lead to sanctions up to dismissals. Most German police agencies have procedures for the handling of

citizens' complaints. However, these internal mechanisms have often been criticised as insufficient and not impartial.<sup>21</sup>

Cases of contested police tactics can be brought before administrative courts if a citizen feels that his or her fundamental rights have been inadequately restricted. Cases of police misconduct that infringe on criminal laws lead to criminal investigations against the police officers involved and proceedings before criminal courts. However, as the police, public prosecutors and criminal courts have to cooperate closely in criminal investigations, cases against police officers are often conceived as insufficiently neutral. The number of police officers convicted in criminal proceedings is low in relation to the cases of alleged police misconduct.<sup>22</sup>

Audit institutions at the Federal and State levels also play a role in police oversight, but they usually restrict their audits to the effectiveness and efficiency of policing.

In Germany, there is no specific legislation on the implementation of anti-corruption laws in the police. Police officers are under the same legal regime as officers in other public administrations. Criminal investigation into cases of police corruption is mostly the task of specific police units that are usually strictly separated from the units with the officers suspected of corruption.

The functions of independent “watch-dogs” for the police are mostly exerted by NGOs. Compared to other citizens, these NGOs do not have any specific rights in relation to the police according to German law so far.

## Police oversight functions of the German parliaments

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The following section explores the core functions that the Bundestag, Bundesrat and the 16 State Parliaments apply to police oversight.

### Legislative functions

The distribution of tasks between the Federal and State Parliaments is closely linked to the constitutional distribution of legislative powers.

Due to the specific German rule of law tradition and the Constitutional Court's case law, the legal framework for policing is dense and, compared to other countries, detailed.<sup>23</sup>

The German legal system strictly distinguishes between criminal procedure, which is only applicable when a criminal offense occurs, and the prevention of dangers (*Gefahrenabwehr*). Criminal law (*materielles Strafrecht*) and criminal procedure (*Strafprozessordnung*) are under federal legislation, as well as the law regulating the Federal Criminal Police Agency (*Bundeskriminalamt*) and the Federal Police (*Bundespolizeigesetz*). By contrast, the prevention of dangers is under State legislation. Each of the 16 German States therefore has its own *police law* regulating the organisation of the police and the prevention of dangers by the State police agency (*Landespolizei*). Federal legislation regulates the prevention of dangers by the Federal Police with limited authority, only including railway stations, railway lines and airports. The Federal Police also exerts auxiliary functions for State police agencies with its formed units ("anti-riot units").

The German style of federalism is usually labelled "cooperative" in comparison to states such as Belgium where federalism is the result of major conflicts among regions and citizens.<sup>24</sup> In practice, this means that the German federal government and the State governments have established permanent working structures that assure coordination and a minimum of uniformity, even in cases where the regulation of policing is under state legislation. The 17 ministries and police agencies coordinate their activities very closely in the administrative structures established by the conference of the federal and state ministers of the interior (*Innenministerkonferenz*). Cooperative federalism assures mutual assistance: For example, if a State police lacks enough officers for policing a major event (e.g. a political demonstration with many participants or a major sports event), other State police forces and the federal police will send officers in order to ensure adequate policing.

Legislation restricting fundamental rights can normally not be delegated to the government. Therefore, amendments to State police laws and federal laws that authorise and regulate the use of special powers (e.g. criminal procedure) have to be approved by the parliaments.

Parliament or the government can initiate the law-making process at the federal level the Federal Parliament, the Federal Council or the Federal Government (*Bundesregierung*).<sup>25</sup>

In recent years, law-making in the field of policing has been particularly relevant for the legal framing of technologies, such as the collection and use of personal data and their retention in databases, information-sharing or the collection and use of DNA data for policing. In 1983, the Constitutional Court proclaimed the right to *informational self-determination* as a fundamental right derived from human dignity (Article 1(1) *Grundgesetz*) and the right to free development of the personality (Article 2(1)). This is a specific variation of data protection or privacy underlining that individuals have the right to decide themselves what public administrations should know about them. Therefore, any kind of data collection or data processing by the police requires a legal base in a parliamentary law.<sup>26</sup>

In view of the shared competence and relevance of decentralised State authority for policing, these requirements lead to a quasi-permanent need to adapt the relevant laws. Political pressure to increase police authority tends to occur after major incidents, such as the September 11, 2001 terrorist attacks.<sup>27</sup> Since the late 1960s, the Constitution also gives emergency competences to the federal government,<sup>28</sup> but these powers have not yet become practically relevant.

The freedom of assembly (mainly relevant for political demonstrations; *Versammlungsfreiheit*, Article 8 *Grundgesetz*) has a high value according to the Constitutional Court's case law. The German political system is mainly based on representation by parliaments. This limits citizen participation to elections every four or five years. Referenda only play a minor role. In this perspective, the freedom of assembly is a compensation that ensures a pathway for citizens' political protest and participation in between elections. This has become particularly important since the 1970s, when NGOs organised protests against the use of nuclear power. At that time, some State governments massively restricted the citizens' right to political protest through police measures. In 1985, the Federal Constitutional Court declared such restrictions as unconstitutional.<sup>29</sup> Today, restrictions to the freedom of assembly have to be strictly

limited and necessary for the protection of other citizens' freedoms. Assemblies are therefore regulated under specific laws. The right to legislate was transferred from the federal state to the individual States in the 2006 constitutional reform of German federalism. Nevertheless, police conduct in connection with assemblies tends to be contested and is therefore regularly on the agenda of the relevant parliamentary committees.

For other forms of crowd management, such as in connection with football matches or concerts, not covered by the freedom of assembly, policing is currently less legally restricted. This will probably continue to be a field of parliamentary debate and possibly of more detailed legislation (e.g. on the organisation of the cooperation between the police and private security companies and the question of who has to pay for policing in connection with such kinds of events).<sup>30</sup>

### Internationalisation and Europeanization

International and European police cooperation has so far been less of a focus in German parliaments, compared to issues related to national or regional policing. As transnational policing was predominantly informal and therefore not subject to federal or State legislation until the 1980s, parliaments could only exert their legislative functions in connection with the ratification of "classical" international law instruments on issues such as mutual legal aid or extradition. This has partly changed with the trend towards extended and more official cooperation among police agencies in the European Union (EU).<sup>31</sup> Trans-border information sharing and cooperation have increasingly become issues for German parliaments, even at the State level.<sup>32</sup> However, these issues are still much less relevant and not everyday business, compared to the core questions of everyday policing.

### Police oversight functions

Parliamentary police oversight is, in the German case, concentrated on policy-making, legislation, and general oversight of the Federal and State government ministries of the interior. As policing is one of the core issues in their responsibilities, policing plays a central role in parliamentary oversight of these ministries. However, in the German political system, the extent and the impact of parliamentary

oversight are limited by the fact that federal and State governments are elected by the majority of the members of parliament. Therefore, critical oversight is mostly limited to opposition party groups, while party groups represented in the government mostly tend not to criticise “their” government in the public.

In German law, there is no legal obligation to produce programmatic documents for policing and security issues, in contrast to the Treaty of Lisbon (Article 68 TFEU). Periodically, such kinds of documents have been produced by governments with the conference of federal and State ministers of interior.<sup>33</sup> Parliaments are not directly involved in the preparation of these documents.

The organisation of the police, top appointments, as well as setting and implementing policing priorities, are among the governments’ responsibilities in the German political and administrative system. Parliaments have the right to be informed about governmental decisions and administrative practice and to discuss them, which usually takes place in the standing parliamentary committees for the interior. Parliaments can also conduct special inquiries if they believe that police practice goes wrong. Parliament has direct oversight only of the government and governmental decisions. According to Article 43 of the *Grundgesetz*, the federal parliament has the right to summon members of the federal government. As this constitutional right requires a majority vote in parliament, it is not very relevant in practice. Only parliamentary inquiry committees have the right to summon other government representatives as witnesses.<sup>34</sup> The hearing of government representatives under oath by the standing parliamentary committees is not foreseen by German law. In practice, parliamentary committees regularly ask the government to send top officials from the police to respond to Members of Parliaments’ questions, such as after a major political demonstration or if something has gone wrong in policing. Governments mostly give a positive response in such cases, but the Members of Parliaments’ right to force police officers to respond to their questions is limited to parliamentary inquiries.

In most cases, Members of Parliament have not been directly involved in police reform projects. Usually, governmental coalitions decide how

and by whom reform projects will be prepared, such as by a group of experts.<sup>35</sup>

### Budget control functions

Budget control functions are among the core functions of parliaments in the German political system. The annual budget has to be approved by parliaments. Amendments of the budget in the course of the parliamentary discussion are frequent. However, in practice, parliaments' influence is limited by the fact that governments are elected by the majority of Members of Parliament in the German democracy, making it not probable that parliaments use their budgetary power to force governments to change policies.

The general police budget has been rarely contested in German federal and State parliaments. The parliaments' budgetary decisions are rather relevant for major investments (e.g. for extending or reducing the number of police officers or for innovations in police technology). Both issues are often relevant after major incidents such as terrorist attacks or natural disasters. Electoral campaigns sometimes include promises to increase the number of police officers. The budget then has to be approved by the government's majority after the elections in order to transform such promises into reality.

German parliaments do not have the explicit task to scrutinise the effectiveness and efficiency of policing. However, if they wish, they can do so. This would be typically carried out in the framework of the parliamentary committee that covers policing and other policies under the authority of the ministry of the interior. Parliamentary committees also have a budget that enables them to hire external expertise (e.g. studies by university researchers).

As most other political systems, Germany has audit institutions that carry out audits not only on the legal conformity of the expenditure with the relevant legal rules, but also on the effectiveness of public administrations. The audit institutions are constitutionally independent.<sup>36</sup> Reports published by the audit institutions are primarily addressed to the audited administration. In major cases, or if a dissent remains, the Courts of Auditors will report to the parliaments' budgetary



control committees, which then decide on involving the committee for the specific policy in the further discussion.

## Parliamentary committees with police oversight functions

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Parliamentary committees are the core actors for the German parliaments' oversight role of public administrations. Members of Parliament specialised in a policy, often with a relevant professional background, meet in specialised parliamentary committees, overlapping the logics of party politics with specific policy-related expertise. German parliaments generally attempt to keep parliamentary committees free of party politics and "window dressing". This is the main reason for why committee meetings are generally not public – with possible exceptions, especially for hearings with invited external experts.<sup>37</sup>

The Federal and State constitutions do not define the composition and the role of parliamentary committees in detail. The Federal Constitution only includes the obligation to establish a committee on the European Union (Article 45 *Grundgesetz*), a Committee on Foreign Affairs and Defence (Article 45a), a Petitions Committee (Article 45c) and a Parliamentary Control Panel for the federal secret services (Article 45d). For the other policies, parliaments mostly establish committees corresponding to the portfolio of each government department. Generally, a minister and his or her administrative staff have to respond to one committee. In the 16 states, parliamentary committees are also mostly organised according to this principle. After a reorganisation of the government departments, parliaments will mostly adapt the structure of their committees to the new structure of governmental portfolios, which often happens after general elections. The number of seats that the party groups (*Fraktionen*) have in the committees is proportional to the composition of the plenary. The members of the committees are selected by the party groups. The party groups will have a number of committee chairs corresponding to their size in the plenary (cf. Table 2).

Policing is a core task of the committees specialised in interior policy and is sometimes combined with other responsibilities of the relevant government department (e.g. sports or immigration). German

parliamentary committees frequently organise public hearings, especially when new pieces of legislation are under discussion. As normally the party groups select the experts to be heard, the input depends on the kind of invited experts. Hearings may therefore be dominated by lobbyists, but are often used to integrating external experts, such as university professors, into the law-making process.

**Table 2: Standing parliamentary committees for police oversight (2014)**

Police Agency	Standing Parliamentary Committee exerting the oversight function	MPs as Members of the Committee
Bundespolizei (Federal Police)	Innenausschuss des Deutschen Bundestages	37
Bundeskriminalamt (Federal Criminal Police Office)	Innenausschuss des Deutschen Bundestages	37
Zoll (Federal Customs Administrations)	Finanzausschuss des Deutschen Bundestages	37
Polizei Baden-Württemberg (Police Baden-Württemberg)	Innenausschuss des Landtags	19
Bayerische Staatliche Polizei (Police Bavaria)	Ausschuss für kommunale Fragen, innere Sicherheit und Sport des Bayerischen Landtags	18
Der Polizeipräsident in Berlin (Police Chief Berlin)	Ausschuss für Inneres, Sicherheit und Ordnung des Berliner Abgeordnetenhauses	19
Polizei Brandenburg (Police Brandenburg)	Ausschuss für Inneres des Landtags Brandenburg	10
Polizei Bremen (Police Bremen)	Staatliche Deputation für Inneres und Sport	13
Polizei Hamburg (Police Hamburg)	Innenausschuss der Hamburgischen Bürgerschaft	13
Hessische Polizei (Police Hesse)	Innenausschuss des Hessischen Landtags	19
Polizei Mecklenburg-Vorpommern (Police Mecklenburg-Vorpommern)	Innenausschuss des Landtags Mecklenburg-Vorpommern	11
Polizei Niedersachsen (Police Lower Saxony)	Ausschuss für Inneres und Sport des Niedersächsischen Landtags	15
Nordrhein-Westfalen (Police North Rhine-Westphalia)	Innenausschuss des Landtags Nordrhein-Westfalen	27

Police Agency	Standing Parliamentary Committee exerting the oversight function	MPs as Members of the Committee
Polizei Rheinland-Pfalz (Police Rhineland-Palatinate)	Ausschuss für Inneres, Sport und Infrastruktur des Landtags Rheinland-Pfalz	16
Polizei im Saarland (Police Saarland)	Ausschuss für Inneres und Sport des Landtags des Saarlands	12
Polizei Sachsen (Police Saxony)	Innenausschuss des Sächsischen Landtags	19
Polizei Sachsen-Anhalt (Police Saxony-Anhalt)	Ausschuss für Inneres und Sport des Landtags Sachsen-Anhalt	13
Polizei Schleswig-Holstein (Police Schleswig-Holstein)	Innen- und Rechtsausschuss des Landtags Schleswig-Holstein	11
Thüringer Polizei (Police Thuringia)	Innenausschuss des Thüringer Landtags	13

The extent to which government departments have to answer to Members of Parliaments' questions has often been contested. This is particularly relevant for security-related issues, such as the work of police agencies or secret services that is usually characterised by a high degree of secrecy. Cases in Federal or State Constitutional Courts have mostly strengthened the parliamentarians' right to be informed.<sup>38</sup> However, for policing and security issues, conflicts remain concerning the extent of executive autonomy in relation to parliamentary control. Members of Parliament also have access to police premises in their respective jurisdiction. However, in practice, on-the-spot visits for oversight purposes are rare and very much depend on the individual Member of Parliament's engagement in this field.

Parliamentary committees of inquiry, foreseen for the Federal State in Article 44 of the Constitution, are important instruments for in-depth investigations into security-related issues by Members of Parliament. The establishment of a committee of inquiry is the right of the parliamentary opposition, requiring the support of a quarter of Members of Parliaments. In 2001, procedural issues of inquiry committees at the federal level were regulated by federal law.<sup>39</sup> The committees have the power to summon witnesses and have access to

all administrative documents. For secret documents, access is mostly restricted to Members of Parliament personally. They do not have the right to take away copies in this case.

The inquiry committees can also hear experts. Typically, inquiry committees are established after major scandals that have been broadly discussed in the public, but where the attribution of political and administrative responsibility remains at least partly unclear or contested. Inquiry committees have to publish a report on the results of their work. Dissenting votes are permitted and frequently used. These reports are usually interesting material for further policy-making and for scholarly research. Federal or State parliamentary committees of inquiry have regularly covered issues related to policing. In recent years, the Federal Parliament and several State Parliaments established inquiries into a major scandal caused by a series of murders and bank robberies committed by a group of far right terrorists. The police and secret services were unable to detect and stop these terrorists who lived in an East German city. Nine of the ten victims killed by the group were immigrants. Even if it was soon clear that it was a series of murders, police and secret services ignored the extremist background and even suspected the victims to have been involved in organised crime. The Federal Parliament and State parliaments published major reports on the case, requiring reforms in the police and secret services.<sup>40</sup> In the 1990s, a parliamentary inquiry committee of the State parliament in the city-state of Hamburg investigated cases in which the Hamburg State Police had mistreated immigrants and political protesters. The recommendations issued by the State Parliament in 1996, including improved police accountability mechanisms, have still not been fully implemented today.<sup>41</sup>

The budget committees (*Haushaltsausschuss*) and the budgetary control committees (*Rechnungsprüfungsausschuss*) may also play a role in the parliamentary oversight of police agencies. In practice, this is mainly relevant for major investments for policing, such as new computer systems.

The standing parliamentary committees, the inquiry committees and the single Members of Parliaments have staff in order to prepare their

tasks. However, it has always been contested if the number of staff is sufficient in order ensure an effective parliamentary control.

Citizens may send a complaint related to policing to the Petitions Committees that exist in the Federal and in all State parliaments. If citizens convince the members of the Petitions Committee that their request is justified, this kind of parliamentary intervention can be a relevant case by case contribution to police oversight.

In view of the size of the police and the numerous other tasks that Members of Parliaments have, police oversight by parliamentary committees is necessarily selective and punctual. Opposition party Members of Parliament tend to select issues interesting for the media that they can use to demonstrate shortcomings of governmental politics. Government party Members of Parliament tend to use more informal ways of influence if they wish to be informed about issues related to policing or criticize governmental activities in this field.

## Parliament-police liaison mechanisms

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German parliaments do not have institutionalised liaison mechanisms for the police. Information exchange is mainly organised via the ministries of the interior. This does not exclude informal contacts (e.g. between Members of Parliaments and police officers or police union representatives).

Typical forms of parliament-police interactions are therefore:

- senior police officers accompanying politicians appearing before parliamentary committees for police-related issues;
- police officers preparing answers for police-related issues that the interior ministry gives to Members of Parliament;
- representatives from the ministry of the interior presenting answers to questions raised by members of parliament at parliamentary committee meetings;
- in certain cases, information on statistics on policing is given to parliament on a regular basis, e.g. on police surveillance in private homes (Article 13 (6) *Grundgesetz*);

- police officers, mostly police leaders or representatives of police unions, invited as experts to hearings before parliamentary committees;
- police officers summoned to witness before parliamentary committees of inquiry; and
- informal contacts between Members of Parliament and police officers.

## Relationship with other overseers

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As there is only a weak tradition of independent civilian police oversight in Germany so far, there is no formalised relationship between independent civilian police oversight and parliaments. In the past, only NGOs completely independent from the police and public administrations were engaged in external police oversight. NGO representatives (e.g. from Amnesty International) communicate with Members of Parliament on a regular basis.

Independent civilian police oversight may be strengthened in the future if several States governed by coalitions in which the Green Party participates implement their plans to establish independent police complaint mechanisms. In 2014, the additional function of a commissioner for the State Police was attributed to the *Bürgerbeauftragter* (Ombudsman) of *Rhineland-Palatinate* (Rheinland-Pfalz). The Ombudsman is elected by and reports to the State Parliament (*Landtag*).<sup>42</sup> Similar institutions have recently been established in Schleswig-Holstein and Baden-Württemberg.

The Federal and State Data Protection Commissioners exert oversight functions for police data processing.<sup>43</sup> In this function, they are independent. Data protection is closely linked to parliaments in Germany, as the commissioners are elected by the federal or state parliament. They also regularly report to the parliamentarians. In 2015, the Federal Data Protection Commissioner's office was detached from the federal ministry of interior and became independent, reporting directly to the Federal Parliament.

In the German rule of law system, courts are important overseers of police activities. They have judicial independence (Article 97(1) of the

*Grundgesetz*) also in relation to parliament. Certain police measures and investigation tactics, such as telephone tapping, other forms of surveillance, arrests and police custody, require an authorisation by a court. Citizens may also bring cases before administrative or criminal courts in order to have them determine the legality of police measures in view of police law, respectively criminal procedure. There is no direct link between courts dealing with individual cases and parliaments. Parliamentary committees of inquiry may use court cases for their purposes. Judges may also be heard as experts in parliamentary hearings. Some laws allowing specific police measures (e.g. acoustical surveillance in private homes) require a statistical reporting to parliament on a regular basis.

Audit institutions are independent, but reporting to parliaments. German Federal and State parliaments regularly use reports by the external audit institutions. Committees may also hear representatives from the audit institutions as experts.

In conclusion, German parliaments are key players, bundling and evaluating the different elements of police oversight.

## Conclusions and recommendations

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In a comparative perspective, German parliaments have the power to make a strong contribution to the oversight of the police and other public administrations. Over time, Federal and State Constitutional Courts strengthened the right of parliaments to be informed by governments and have access to information. In this respect, the German legal and institutional framework may serve as an example for other countries.

However, German parliaments do not have the capacity to exert oversight of the everyday work of police agencies. This would require important administrative capacities specifically devoted to this issue, which German parliaments do not have in view of the broad range of their other tasks. Police oversight by courts and data protection commissioners is mostly limited to single cases brought to the attention of these institutions.

Even in countries, such as Germany, with a long tradition of a democratic polity, policing often leads to conflicts between police agencies or police officers, on the one hand, and individuals or groups of citizens, on the other. Policing political protests and socially disadvantaged urban areas are classic situations that have repeatedly escalated in the past. Therefore, police organisations in democratic countries are under pressure to solve problems in a more decent and de-escalating way and prevent conflicts. Most German police agencies have developed the ambition to become a “normal” modern, service-oriented public administration and to get away from the old image of maintaining public order with the help of (sometimes disproportionate) violence. Accountability of policing, including lawful police behaviour and high professional standards, has become an important issue over the past decades.<sup>44</sup>

Oversight by the ministries of the interior and internal police hierarchies is not always impartial in cases of wrongdoing.<sup>45</sup> Therefore the establishment of independent civilian police oversight bodies, as they exist in many other countries, would clearly contribute to improved police oversight. The political and scholarly debate on the establishment of such institutions has already been led for several decades.<sup>46</sup> An independent complaint and oversight institution, as it was recently established in the states of Rhineland-Palatinate, Schleswig-Holstein and Baden-Württemberg, may also strengthen parliaments, as reports and policy recommendations published by independent oversight institutions can be the base for parliamentary initiatives directed towards higher standards of professionalism and protection of human rights in policing.<sup>47</sup> Effective oversight institutions will be independent from the police agency for monitoring, but have the authority to request the information needed for an investigation. Effectiveness also requires intensive communication with police agencies. Independent police oversight will be effective only if oversight institutions are able to convince police officers, police leaders political decision-makers that it is necessary to learn from cases that went wrong. The trend that many police agencies wish to become a “normal” public administration may also lead to a convergence of external and internal accountability.<sup>48</sup>



Oversight institutions that are designed by and reporting to parliaments seem to be best placed to be independent and have sufficient influence upon administrative practice and political decision-making. Their attachment to parliaments also ensures democratic legitimacy.

## NOTES

1. Hartmut Aden is Professor of European and German Public Law, Public Policy and Public Administration at the Berlin School of Economics and Law, Department of Police and Security Management, and Deputy Director of the Berlin Institut for Security and Safety Research (FÖPS Berlin).
2. This study has been written and finalized in early 2015
3. Cf. Hartmut Aden, *Polizeipolitik in Europa. Eine interdisziplinäre Studie über die Polizeiarbeit in Europa am Beispiel Deutschlands, Frankreichs und der Niederlande* (Opladen/Wiesbaden: Westdeutscher Verlag, 1998); Hartmut Aden, "Fédéralisme et sécurité publique: Spécificité des politiques de sécurité en Allemagne," in Sebastian Roché (Hg.), *Réformer la police et la sécurité: Les nouvelles tendances en Europe et aux États-Unis* (Paris: Odile Jakob, 2004), pp. 169-187; and Hartmut Aden and Evelien De Pauw, "Policing Berlin: from separation by the "iron curtain" to the new German capital and a globalised city," *European Journal of Policing Studies*, vol. 2, no. 1, 2014, pp. 355-371.
4. The data is mostly from the period of 2013-14 (approximation).
5. Customs officers are usually not part of the category "police officers."
6. Cf. Hans-Jürgen Lange, *Innere Sicherheit im Politischen System der Bundesrepublik Deutschland* (Opladen: Leske+Budrich, 1999), pp. 75-118 on the development since the 1950s.
7. Cf. Hartmut Aden, "Polizeikennzeichnung – Konfliktlinien und Akteurskoalitionen in einer jahrzehntelangen Debatte," in Werner Jochen-Thomas and Thomas Ohlemacher (Hg.), *Empirische Polizeiforschung XIII: Polizei und Gewalt* (Frankfurt am Main: Verlag für Polizeiwissenschaft, 2012), pp. 143-157; and Hartmut Aden, "Wer soll das bezahlen? - Grundrechte begrenzen die Heranziehung von Verursachern für den Ausgleich von Polizeikosten," in Fredrik Roggan and Dörte Busch (eds.), *Das Recht in guter Verfassung? Festschrift für Martin Kutscha* (Baden-Baden: Nomos Verlag, 2013), pp. 245-256.
8. Cf. for the United States: Samuel Walker, *Police Accountability. The Role of Citizen Oversight* (Belmont, CA: Wadsworth/Thomson Learning, 2001), pp. 43-44; and for Hamburg: Werner Lehne, "Aus Fehlern lernen oder Fehlverhalten kontrollieren und sanktionieren? – Die Erfahrungen der Hamburger Polizeikommission," in Karlhans Liebl, *Fehler und Lernkultur in der Polizei, Schriften zur Empirischen Polizeiforschung Band 1* (Frankfurt (M.): Verlag für Polizeiwissenschaften, 2004).
9. Cf. for Germany: Amnesty International, *Täter unbekannt. Mangelnde Aufklärung von mutmaßlichen Misshandlungen durch die Polizei in Deutschland* (Bonn/ Berlin, 2010); for the United States: Samuel Walker, *The New World of Police Accountability* (London, Thousand Oaks and New Delhi: Sage, 2005), pp. 72-73; and for a number of other countries: Andrew J. Goldsmith, and Colleen Lewis (eds.), 2000: *Civilian Oversight over Policing. Governance, Democracy and Human Rights* (Oxford and Portland, Oregon: Hart Publishing, 2000).
10. Cf. for Germany Amnesty International (2010), pp. 78-105 with a number of cases documented.
11. Cf. on recent developments of the relevant criminal law in Germany: Tobias Singelstein, Tobias and Jens Puschke, „Polizei, Gewalt und das Strafrecht – Zu den Änderungen beim Widerstand gegen Vollstreckungsbeamte," in *Neue Juristische Wochenschrift (NJW)*, 2011, pp. 3473-3477.
12. Cf. for example on the Berlin Police: Klaus Hoffmann-Holland, Detlev Liepmann, Ines Müller, Tobias Lubitz, Kristina Kühl, and Inger-Maria Mahlke, *Beschwerdemanagement der Polizei. Eine empirische und rechtliche Analyse am Beispiel der Berliner Polizei* (Frankfurt/Main: Verlag für Polizeiwissenschaft, 2008).
13. Cf. Monica Den Boer and Roel Fernhout, *Policing the Police – Police Oversight Mechanisms in Europe: Towards a Comparative Overview of Ombudsmen and Their Competencies* (2008), available online at: [http://www.asef.org/images/docs/1270-Police\\_Oversight\\_Mechanisms\\_in\\_Europe.pdf](http://www.asef.org/images/docs/1270-Police_Oversight_Mechanisms_in_Europe.pdf) (accessed 30.1.2015); Walker (2001 and 2005); Samuel Walker, "The History

- of the Citizen Oversight (Chapter 1),” and “Alternative Models of Citizen Oversight,” in Justina Cintrón Perino (ed.), *Citizen Oversight of Law Enforcement* (Chicago: American Bar Association, Section of State and Local Government Law, 2006), pp. 1-20; Aden (2013); and Hartmut Aden, “Polizeibeschwerdestellen – von den USA lernen?,” in Rafael Behr and Bernhard Frevel (Hg.) *Die kritisierte Polizei, Empirische Polizeiforschung XVII* (Frankfurt/Main: Verlag für Polizeiwissenschaft (2015).
14. E.g. Amnesty International (2010).
  15. Cf. Hartmut Aden, “Einflussnahme oder Entpolitisierung? Menschen- und Bürgerrechtsorganisationen als Akteure der Sicherheitskultur,” in Hans-Jürgen Lange, Michaela Wendekamm and Christian Endreß (eds.) *Dimensionen der Sicherheitskultur* (Wiesbaden: Springer VS, 2014), pp. 238-239.
  16. Ermittlungsausschüsse, cf. for example “Homepage”, EA Berlin, accessed 17 December 2016, <http://ea-berlin.net/>.
  17. E.g. Kampagne für Opfer rassistischer Polizeigewalt: “Homepage”, KOP, accessed 17 December 2016, <https://www.kop-berlin.de/>.
  18. Cf. Hans Boldt and Michael Stolleis, “Geschichte der Polizei in Deutschland,” in Hans Liskén (co-founder), Erhard Denninger and Frederik Rachor (eds.), *Handbuch des Polizeirechts*, 5th edition (Munich: C.H. Beck Verlag, 2012), pp. 20-22.
  19. Cf. on the transfer of the neo-institutionalist theory of path-dependencies to court case law: Susanne K. Schmidt, „Gefangen im „lock in“? Zur Pfadabhängigkeit der Rechtsprechung des Europäischen Gerichtshofs;“ *der moderne staats*, vol. 3, no. 2, 2010, pp. 455-473.
  20. European Court of Human Rights, cases 11801/85 and 11105/84, *Kruslin and Huvig v. France*, judgments of 24.4.1990, cf. Aden (1998), p. 381.
  21. Cf. Amnesty International (2010); Tobias Singelnstein, „Institutionalisierte Handlungsnormen bei den Staatsanwaltschaften im Umgang mit Ermittlungsverfahren wegen Körperverletzung im Amt gegen Polizeibeamte;“ *Monatsschrift für Kriminologie und Strafrechtsreform* (MschrKrim), 2003, pp. 1-26; and Tobias Singelnstein, „Misshandlungen in polizeilichem Gewahrsam. Empirische Erkenntnisse zu Umfang und Struktur sowie zur Wirksamkeit von Kontrollmechanismen;“ in Deutsches Institut für Menschenrechte (Hg.), *Prävention von Folter und Misshandlung in Deutschland* (Baden-Baden: Nomos-Verlag, 2007), pp. 213-236.
  22. Cf. Manfred Brusten, “Strafverfahren gegen Polizeibeamte in der BRD. Empirische Anmerkungen zur Theorie der “schwarzen Schafe;” in ders. (Hg.), *Polizei-Politik, Kriminologisches Journal (Krim)*, Beiheft 4, 1992, pp. 84-115; Singelnstein (2003 and 2007); and Amnesty International (2010).
  23. Cf. Aden (1998).
  24. Cf. Fritz Scharpf, Bernd Reissert, and Fritz Schnabel, *Politikverflechtung: Theorie und Empirie des kooperativen Föderalismus in der Bundesrepublik* (Kronberg: Scriptor Verlag, 1976).
  25. Cf. for more empirical data: Wolfgang Ismayr, “Gesetzgebung im politischen System Deutschland;” in *Gesetzgebung in Westeuropa*. EU-Staaten und Europäische Union (Wiesbaden: Springer VS, 2008), pp. 383-429.
  26. On the consequences for German police law, see: Thomas Petri, „Informationsverarbeitung im Polizei- und Strafverfahrensrecht;“ in Hans Liskén (co-founder), Erhard Denninger, and Frederik Rachor (eds.), *Handbuch des Polizeirechts*, 5th Edition (Munich: C.H. Beck Verlag, 2012), pp. 717-913 (Section G).
  27. Cf. Hartmut Aden, “Der Zufall und andere „Themenmacher“ - Problemdefinition und Agendagestaltung in der Kriminalpolitik;“ *Monatsschrift für Kriminologie und Strafrechtsreform*, vol. 86, no. 2, 2003, pp. 105-116.
  28. For a critique, see: Jürgen Seifert, *Grundgesetz und Restauration* (Darmstadt/Neuwied: Luchterhand, 1974), pp. 35-39.
  29. Bundesverfassungsgericht, Judgment of 14 May 1985, BVerfGE 69, 315.
  30. On the constitutional and legal framework, see: Aden (2013), “Wer soll das bezahlen? - Grundrechte begrenzen die Heranziehung von Verursachern für den Ausgleich von Polizeikosten.”

31. Cf. Adden (1998); and Cyrille Fijnaut, "Revolution or evolution through the Treaty of Lisbon: police cooperation in Europe in a broader historical context," in Hartmut Aden (ed.), *Police Cooperation in the European Union after the Treaty of Lisbon – Opportunities and Limitations* (Baden-Baden: Nomos, 2015), pp. 25-48.
32. For example, when it comes to regulate the authority of foreign police officers present in Germany in the framework of staff exchange or project based cooperation (e.g. in connection with international sports events).
33. For a critical assessment, see: Heiner Busch, Albrecht Funk, Udo Kauß, Wolf-Dieter Narr, and Falco Werkentin, *Die Polizei in der Bundesrepublik* (Frankfurt/Main: Campus, 1985), pp. 227-235.
34. Untersuchungsausschussgesetz of 19. June 2001 (BGBl. I S. 1142), amended on 5. Mai 2004 (BGBl. I S. 718).
35. E.g. Kommission zur Untersuchung des Reformbedarf in der niedersächsischen Polizei, 1993.
36. Cf. Article 114(2) Grundgesetz for the Federal Court of Auditors – Bundesrechnungshof.
37. Cf. on the committees: the German Federal Parliament's Standing Orders (§§ 54-74 on the committees); and for empirical data on the German Federal Parliament: Klaus von Beyme, *Der Gesetzgeber. Der Bundestag als Entscheidungszentrum* (Wiesbaden: Westdeutscher Verlag, 1997), pp. 188-206.
38. E.g. Bundesverfassungsgericht, Judgment of 1 July 2009, BVerfGE 124, 161 (government's duty to answer to Members of Parliaments' questions related to secret service issues).
39. The law is named in German *Gesetz zur Regelung des Rechts der Untersuchungsausschüsse des Deutschen Bundestages, Untersuchungsausschussgesetz*
40. Deutscher Bundestag, Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses nach Artikel 44 des Grundgesetzes, Bundestags-Drucksache 17/14600, 2013; Thüringer Landtag, Bericht des Untersuchungsausschusses 5/1 "Rechtsterrorismus und Behördenhandeln, Landtags-Drucksache 5/8080, 2014.
41. Bürgerschaft der Freien und Hansestadt Hamburg, Bericht des Parlamentarischen Untersuchungsausschusses „Hamburger Polizei“, Bürgerschafts-Drucksache 15/6200, 13.11.1996; Lehne (2004).
42. Cf. Aden (2014).
43. Cf. on the role of Commissions in the German political and administrative system: Markus Franke, *Ein Ombudsmann für Deutschland?* (Frankfurt (M.): Verlag Peter Lang, 1999); and Julia Kruse, *Der öffentlich-rechtliche Beauftragte - Ein Beitrag zur Systematisierung der deutschen Variante des Ombudsmannes* (Berlin: Duncker & Humblot, 2007).
44. Cf. for an overview: Den Boer and Fernhout (2008); Walker (2001, 2005 and 2006); Goldsmith and Lewis (eds.) (2000); Norbert Pütter, „Kontrolle der Polizei - Demokratische Selbstverständlichkeit oder starker Staat: Eine Einleitung,“ in *Bürgerrechte und Polizei/CILIP*, vol. 99, 2011, pp. 3-14; and Commissioner for Human Rights, *Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police* (Straßburg: Council of Europe, 2009).
45. Cf. the examples from German police agencies reported by Amnesty International 2010.
46. Cf. Manfred Brusten, "Neue Wege zur demokratischen Kontrolle der Polizei," in Günther Kaiser, Helmut Kury, and Hans-Jürgen Albrecht (eds.), *Kriminologische Forschung in den 80er Jahren – Projektberichte aus der Bundesrepublik Deutschland* (Freiburg: 1988), pp. 157-182; Brusten (1992); Manfred Mahr, "Kontrolle der Polizei muss sein!," in Manfred Brusten (Hg.), *Polizei-Politik, Kriminologisches Journal (KrimJ)*, Beiheft 4, 1992, pp. 116-129; Hermann Borgs-Maciejewski, "Vertrauensbildung durch Kontrolle der Polizei und der Geheimdienste," in *Zeitschrift für Rechtspolitik (ZRP)*, 2006, pp. 41-44; Norbert Pütter, Norbert, „Polizeiübergrieffe – Polizeigewalt als Ausnahme und Regel,“ in: *Bürgerrechte und Polizei/CILIP*, no. 67, 2000, pp. 6-19; Norbert Pütter, „Kontrolle der Polizei - Demokratische Selbstverständlichkeit oder starker Staat: Eine Einleitung,“

- in *Bürgerrechte und Polizei/CILIP*, no. 99, 2011, pp. 3-14; Hartmut Aden, "Die Kennzeichnung von Polizeibediensteten," in *Die Polizei*, 2010, pp. 347-352; Hartmut Aden, "Polizeibeauftragte und Beschwerdestellen in Deutschland. Erfolgsbedingungen und neue Trends in den Ländern," in *Vorgänge 2013*, vol. 52, no. 4, 2013, pp. 10-20. Amnesty International (2010).
47. Cf. Rafael Behr, *Cop Culture - Der Alltag des Gewaltmonopols: Männlichkeit, Handlungsmuster und Kultur in der Polizei*, 2nd Edition (Wiesbaden: VS Verlag für Sozialwissenschaften, 2008); Martin Herrnkind, "Übergriffe und „Whistleblowers“ – Betriebsunfälle in der Cop Culture?," in Karlhans Liebl (Hg.), *Fehler und Lernkultur in der Polizei, Schriften zur Empirischen Polizeiforschung*, 1st Edition (Frankfurt (M.): Verlag für Polizeiwissenschaften, 2004); Aden (2013), ""Polizeibeauftragte und Beschwerdestellen in Deutschland. Erfolgsbedingungen und neue Trends in den Ländern"; Aden (2015).
48. Cf. Udo Behrendes, "Wechselwirkungen zwischen externer Kontrolle und interner Fehlerkultur der Polizei. Die Bürger(rechts)polizei als Exponentin des staatlichen Gewaltmonopols," in *Vorgänge*, vol. 52, no. 4, 2013, pp. 41-50; Walker (2005), p. 16, for the United States.