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A Theory of Congruence:
Federalism and Institutional Change
in Belgium and Germany

A Thesis submitted to the Faculty of Graduate Studies and Research
In partial fulfillment of the requirements of the degree of Doctor of Philosophy

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0-612-78681-1

Résumé

Pourquoi les institutions politiques changent-elles? Voici la question qui sera au cœur de cette étude qui tentera aussi de comprendre ces transformations et de prédire les changements à venir. En d'autres mots, cette recherche postule que les institutions politiques évoluent pour pouvoir s'harmoniser à la société.

C'est en étudiant le cas de deux fédérations, la République fédérale d'Allemagne et la Belgique, que le changement sera analysé. Entre 1949 et 1993, la Belgique est passée d'un État unitaire à une fédération très décentralisée, tandis que la fédération allemande s'est consolidée dans un processus de centralisation des pouvoirs. Cette recherche doit donc attaquer de front ces évolutions en posant la question suivante: «pourquoi les institutions de 1949 n'ont-elles pas survécues?».

La logique institutionnaliste qui a cours présentement en politique comparée veut qu'une fois en place, les institutions socialisent les acteurs politiques au sein des structures existantes en leur fournissant un droit de regard sur le renouvellement des structures au fil du temps. Tel n'a cependant pas été le cas. De plus, impossible de comprendre pourquoi le changement a pris deux formes différentes, la centralisation et la décentralisation, malgré plusieurs caractéristiques communes à la Belgique et l'Allemagne.

Cette étude se fonde sur la théorie de la congruence qui stipule que les institutions politiques évoluent pour refléter les structures sociétales sous-jacentes. Plus spécifiquement, les institutions politiques au sein de structures fédérales se transforment pour correspondre à la composition ethnolinguistique du pays. En effet, la Belgique unitaire s'est adaptée pour pouvoir satisfaire les Flamands, les Wallons et les Bruxellois, tandis qu'en Allemagne, plusieurs domaines ont été centralisés, et ce malgré des articles contraires très clairement inscrits dans la Constitution.

D'après la théorie de la congruence, lorsqu'elle fait face à un environnement ethnolinguistique qui ne correspond pas aux institutions en place, la structure politique se transforme à cause des pressions découlant des buts poursuivis par les acteurs. C'est en fonction du groupe ethnolinguistique que sont prises les décisions politiques. Les options dont disposent les acteurs politiques sont limitées par ces démarcations sociétales. Les élites peuvent avoir des points de vue divergents au sujet des politiques à adopter, mais ils s'accordent pour fixer leurs choix en ayant la «Nation» ethnolinguistique comme cadre de référence. En cas d'écart entre les structures ethnolinguistiques et les institutions politiques, les enjeux publics vont exercer une pression vers une harmonisation en différenciant la collectivité sociale pour qui les décisions prennent une forme différentes de celles mises en place par les institutions politiques. Ainsi, si la «Nation» déborde le cadre établi par l'agencement institutionnel, alors la tendance sera à la centralisation et à une amalgamation des différentes sous-unités de la «Nation». D'un autre côté, si la «Nation» est plus petite que la configuration institutionnelle existante, alors il y aura des forces décentralisatrices qui s'exerceront auprès des institutions unitaires.

Cette recherche empirique a été conduite dans deux champs précis, l'éducation et les médias, en comparant la Flandre à la Wallonie dans le cas de la Belgique, et la région de Bade-Wurtemberg à celle de Rhénanie-du-Nord-Westphalie en ce qui concerne la République fédérale d'Allemagne.

Abstract

The main focus of this study is on the question of why political institutions change. By extension, the study is also about explaining and predicting the direction of change. Put simply, the study postulates that political institutions will change in order to be congruent with the society.

Change is analysed within the context of two federal structures, the Federal Republic of Germany and Belgium. During the same time period from 1949 to 1993, one transformed from a unitary state into a loose federation while the decentralised federation consolidated and became central. The puzzle which the research project deals with is about this change: Why did the institutions of 1949 fail to survive?

The prevailing institutionalist logic in comparative politics would suggest that once in place, institutions would have socialised the political actors into the existing structure by providing veto points in such a way that institutions would have been reproduced over time, but this has not been the case. Furthermore, why has change come about in two opposing directions, centralising and decentralising, despite many common characteristics between the two cases?

This study is based on a theory of congruence which argues that political institutions change in order to reflect underlying societal structures. More specifically, the argument is that political institutions in federal structures change to correspond to the ethno-linguistic make-up of the country. Accordingly, the unitary state of Belgium has changed its political institutions in order to accommodate the Flemings, Walloons and Bruxellois; while Federal Germany has centralised many issues despite explicit constitutional clauses against such changes.

According to the theory of congruence, when confronted with an ethno-linguistic structure that does not match the political one, the political structure changes; not automatically, but through the pressure of public policy concerns pursued by political actors. The ethno-linguistic community is the primary collectivity for which public policy decisions are made. The choices available to political actors are constrained by the demarcations of this societal composition. Decision makers might disagree over the substance of the policies, but they share the choice of venue in the form of the ethno-linguistic 'nation'. In case of a discrepancy between the ethno-linguistic societal structure and the political structure, public policy concerns would exert a pressure towards congruence by demarcating a social collectivity for which policies are made different from the one set up by the political institutions. Thus, if the 'nation' is bigger than the unit that marked off by political institutions, the tendency would be towards amalgamation with the other subunits of the 'nation' and centralisation. If, on the other hand, the 'nation' is smaller than the unit defined by the political institutions, there would be devolutionary pressures on the unitary institutions.

The empirical research was carried out on two policy areas, education and mass media, through a paired comparison of Flanders and Wallonia in Belgium and Baden-Württemberg and North Rhine Westphalia in the Federal Republic of Germany.

Acknowledgments

The position of the supervisor is of central importance for a doctoral dissertation, consequently, supervisors often end up having the greatest impact on the final product. Therefore, I would like to thank my doctoral cosupervisors Mark Brawley and Hudson Meadwell for their academic guidance and support. When I approached them about the possibility of cosupervision on a doctoral research combining international relations and comparative politics, Professors Meadwell and Brawley urged me to write down a tentative proposal to clarify my ideas. They have read countless versions of proposals I handed to them thereafter. I think after the eighth version I stopped putting numbers on the proposals so I don't know exactly how many versions they ended up reading. In the meantime, the research project became a study in comparative federalism as the international relations element gradually disappeared. Mark Brawley constantly urged me to pitch the research in theoretically interesting terms. I don't know if I managed to do this, but at least it helped me to shed some of the even drier prose of earlier drafts. One piece of advice I got from Hudson Meadwell was particularly useful. He told me that one cannot think out certain things before writing, some of the ideas come out through the writing. This was certainly the case. At the end of the day, I have benefited immensely from their supervision. While I acknowledge their help, I should also mention that I am solely responsible for all faults and inaccuracies which might exist.

I would like to thank Alain-G. Gagnon for his support and encouragement over the years. He has had an important impact on my thinking on federalism. In the reading course on comparative federalism I did with him he pointed out that even the seemingly technical aspects of federal issues have normative underpinnings and repercussions. Jeff Osweiler, Christine Strähle, Raffaele Iacovino at McGill and Niels Lange at Philipps Universität-Marburg read parts of earlier drafts and provided suggestions. Peter Moore at University of Miami, Yepim Bayar and Brian Greene at McGill gave ideas for revisions. I have also benefited from the discussions I have had over the years with Louis Bickford at the University of Wisconsin-Madison and Anthony Matthews at the University of Toronto. During various stages of the work, Antonia Maioni, Filippo Sabetti and Alan Patten at McGill, Steffan Schneider at Universität Augsburg, François Rocher at Carleton University, Jocelyn Maclure at the University of Southampton, and Emmanuel Martinez at Radio-Canada provided suggestions. Individual chapters have benefitted from comments made by the anonymous reviewers of three political science journals. I am thankful for the comments, criticisms, and suggestions of the three reviewers of the 'Canadian Journal of Political Science' on an article manuscript based on Chapter 6, the three reviewers of 'Publius: The Journal of Federalism' on an article manuscript based on Chapter 7, and the three reviewers of 'Politique et Sociétés' for an article manuscript based on Chapters 8 and 9.

Field work is one of the important building blocks of academic research. On this front, I am especially grateful to Murat and Idil Lütem in Bad Godesberg for their hospitality, friendship and support. I owe them more than they know since they really made field research in Germany possible. The Kölsch definitely helped as well. Similarly, Timur and Hüma Söylemez in Brussels provided me with a nice room in Ixelles and much needed weekend breaks to Zeeland.

The empirical research benefited from the assistance of the staff of various libraries, documentation centres and archives. In Germany, I received much help at the general library, political science institute, and the law library of Friedrich-Wilhelms-Universität Bonn, the archives of the Ständige Konferenz der Kultusminister in Bonn and especially Guido von Raskaj, Bund-Länder-Kommission für Bildungsplanung und Forschungsförderung in Bonn, Bouvier university bookstore in Bonn, the library of Universität zu Köln, the Mayersche bookstore in Cologne, the law library of the Ruhr-Universität-Bochum and the Iserlohn Goethe Institut.

Likewise in Belgium I should thank those who work at the general library, law library and the bookstore of the Université Libre de Bruxelles, the Fnac, Standaard and Bruylant press bookstores in Brussels, the library of the Katholieke Universiteit te Brussel, the social sciences library of Vrije Universiteit Brussel, the Centre de recherche et d'information socio-politique (Crisp) in Brussels, the social sciences library of the Katholieke Universiteit te Leuven and especially Geert Bouckaert in the Department of Public Administration and Wilfried Dewachter in the Department of Political Science, Standaard and Acco press bookstores in Leuven, and Guido Dierickx in the Department of Political Science of Universiteit Antwerpen.

In Montreal, the McLennan-Redpath library of McGill University was the early location for the research project while it was at the proposal stage. I should acknowledge the friendly help of the inter library loans desk. I also had to frequently use the facilities of the law and social sciences libraries of the Université de Montréal for material on Belgium. Helen Wilicka at the Department of Political Science, McGill was of great help and support over the years. I would also like to thank Susan Bartlett, Angie Coppola, Emilia Scognamiglio and Sonia De Gannes at the Department of Political Science, McGill, Marc Coppens at the Malpertuis Dutch-language school in Montreal, Josef Schmidt at the Department of German Studies, and Roch Deslauriers at the Department of French Studies, McGill.

They are probably unaware, but I floated some of the ideas of this dissertation before my students in the courses 160-212 'Government of Politics of the Developed World' and 160-328 'Emergence of Modern European Politics'. The level of intellect possessed by McGill's political science students never fails to amaze me. If certain ideas don't convince these students it is probably because these ideas are wrong. I have benefitted a lot from the raw common sense of McGill undergraduates yet untarnished by the theoretical debates in the canon.

Over the course of years, a number of awards and fellowships contributed to the research. In 1997-1998 I was awarded with the 'Max. E. Binz' Major Fellowship at McGill University, in 1998-1999 I received 'J.W. McConnell' Major Fellowship at McGill University. In 1999-2000 The Department of Political Science gave me a Faculty of Graduate Studies and Research Dissertation Fellowship. In 1999 I received a German Academic Exchange Office (DAAD) award for a language course at Iserlohn Goethe Institut, Germany. And in 2001 I was able to follow a Dutch language course at the University of Ghent and undertook further research through a scholarship of the Ministry of Higher Education and Scientific Research of the Flemish Community. Since it is stipulated in the terms of the grant, I am obliged to gratefully acknowledge the very generous support of \$1,250 Cdn given by the Faculty of Graduate Studies Social Sciences and Humanities Subcommittee Research Grant for six months of field work in Germany and Belgium.

Efficiency during the writing stage depends on certain intangible qualities of the work environment. In this respect, I should thank the petulant and elusive beauty of the city of Montreal, whose very problems only add to her indelible charm. Mother nature has not given her a beautiful climate, but has surely endowed her with beautiful people. Her many 24 hour cafés deserve much credit for the café allongé and nicotine induced creative breakthroughs in this research. It would have probably been more appropriate if I was writing poetry rather than a macro-social deductive inquiry into educational policy and mass media regulation in Belgium and Germany, but I guess none of the patrons realised. Despite her merciless winter, Montreal is undoubtedly a queen of a city and I owe her a lot for an atmosphere conducive for academic work.

In the final days of writing, my father died following a tragic traffic accident. At the age of sixty-five he was an academic still carrying out research and publishing, albeit in an entirely different field. The fields of cardio-vascular surgery and political science are as different as it gets, but my father continuously asked questions about my research methods and the empirical analysis. He has set very high standards of scholarship for me and from him I have learned to value academic honesty over material success. I dedicate this work to him, something I could not have done had he been alive since I am sure he would have strongly disagreed with some of the ideas included herein.

Can Erk
August 2001, Montreal

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Chapter I

A Theory of Congruence

Institutions, Structures and Federalism

Nationalism is primarily a political principle, which holds that the political and national unit should be congruent.

*Ernest Gellner*¹

1. Introduction

This is a study about change. The main focus is on the question of why political institutions change. By extension, the study is also about explaining and predicting the direction of change. Put simply, the study postulates that political institutions will change in order to be congruent with the society. The theoretical formulation developed in this chapter and the ensuing empirical examination use the notion of congruence to explain institutional change.

¹Ernest Gellner (1983), *Nations and Nationalism*, Cornell University Press: Ithaca, New York, p.1.

Institutional change is analysed within the context of two federal structures, the Federal Republic of Germany and Belgium. During the same time period from 1949 to 1993, the unitary state of Belgium was transformed into a loose federation while the decentralised German federation consolidated and became central. The puzzle which the research project deals with is about this change: Why did the institutions of 1949 fail to survive?

The prevailing institutionalist logic in comparative politics would suggest that, once in place, institutions would have socialised political actors into the existing structure in such a way that prevailing institutional arrangements would have been reproduced over time. This has not been the case, however. Furthermore, why has change taken opposing directions, centralising and decentralising, despite many common characteristics between the two cases?

There are many single-case stories explaining the changes in these two states. The interesting question is whether a general theoretical explanation can be found which can account for the contrasting changes in the two cases by using the same theoretical principle. This study seeks to provide such an explanation by using a theory of congruence which argues that political institutions change in order to reflect underlying societal structures. More specifically, the argument is that political institutions change to correspond to the ethno-linguistic make-up of the country. Accordingly, the unitary state of Belgium has changed its political institutions in order to accommodate the Flemings, Walloons and Bruxellois; while Federal Germany has centralised many issues despite explicit constitutional clauses against such changes.

Congruence is a theoretical principle that can explain the simultaneous changes in opposite directions in Belgium and Germany. But like all macro-social structural theories, it can fall into the trap of determinism unless formulated in a way that brings in agents and takes into account processes. The point at issue is to transform a macro-social deductive theory with deterministic tendencies into a falsifiable one.

To operationalise the theory of congruence, a set of secondary assumptions are used. Political institutions may provide the veto points in many issue areas and thereby induce societal actors to conform, and thus to contribute to institutional continuity. But political institutions cannot break the primacy of the ethno-linguistic structure. The ethno-linguistic community is the primary collectivity for which public policy decisions are made. When confronted with an ethno-linguistic structure that does not match the political one, the political structure changes; not automatically, but through the pressure of public policy concerns pursued by political actors. The choices available to political actors are constrained by the demarcations of this societal composition. Decision makers might disagree over the substance of the policies, but they share the choice of venue in the form of the ethno-linguistic 'nation'. In case of a discrepancy between the ethno-linguistic societal structure and the political structure, public policy concerns exert a pressure towards congruence by demarcating the social collectivity for which policies are made different from the one set up by the political institutions. There is pressure towards congruence whenever these collective boundaries do not coincide with the jurisdictional boundaries of political institutions. Thus, if the 'nation' is bigger than the unit marked off by political institutions, the tendency would be towards amalgamation with the other subunits of the 'nation' and centralisation. If, on the other hand, the 'nation' is smaller

than the unit defined by the political institutions, there would be devolutionary pressures on the unitary institutions.

As will become clear in the empirical chapters, political actors in both countries have made choices which reflect their ethno-linguistic backgrounds. In the Federal Republic of Germany, regardless of their political affiliation, decision makers have taken Germany and all Germans as their frame of reference and not their respective Länder. In Belgium, on the other hand, despite the existence of unitary institutions, decision makers have demarcated their frame of reference according to their linguistic communities and have sought policies that correspond to these. In both cases, there has been a fair degree of disagreement across the political spectrum concerning the contents of public policies, but these political battles have been fought in arenas which correspond to the underlying ethno-linguistic composition; in Germany the entirety of the country, in Belgium Dutch-speaking and French-speaking halves.

In both countries, societal tendencies towards congruence have induced political institutions to gradually change in order to be congruent with the frames of reference employed by the political actors. Political actors have not consciously pursued congruence, but they have sought public policies for the collectivity they take as their 'nation'. In Germany, this has been the whole of the country; in Belgium, the constituent cultural groups. The empirical research demonstrates that only after a sufficient degree of congruence, do other indicators of political behaviour, i.e. class, religion, ideology, individual self-interest, become useful tools for analysis. Until congruence, the most helpful tool for predicting political behaviour is the ethno-linguistic social structure and the constraints and choices it imposes on political actors.

Simply put, it could be said that the research project contrasts two conceptualisations of 'politics': on the one hand, the politics of distribution along Harold Laswell's(1936) formulation of 'who gets what, when, how' , which takes place provided there is a congruence between the society and the political institutions; on the other hand, the politics of recognition, or the politics of 'who gets to decide', which exerts pressures towards congruence through public policy concerns. In the first model of politics, the contents of the policies are important, in the second, it is the question of who has control over the policies.

The findings of the research project have broader relevance for federal experiences elsewhere. After establishing strong empirical proof for the soundness of the logic of congruence in the context of Germany and Belgium, a plausibility probe is carried out in the final chapter to explore how congruence theory reverberates within the context of federalism in the United States, Canada, Switzerland, Spain, Austria and Australia. There are strong indicators suggesting that the logic of congruence can provide useful avenues of inquiry in the study of other federal systems.

2. Comparative Federalism

Although the empirical inquiry is limited to institutional change in two areas of public policy in Belgium and Germany, the research project draws on the broader literature of comparative federalism. This section will review the field of comparative federalism

based on the theme of society-based and institution-based approaches to federalism in order to place the theory of congruence in the wider context of federalism studies.

The term federalism originates from the Latin word, *foedus*, covenant. Historically it has represented the contractual relationship between groups which have come together in an association. One of the most important intellectual forefathers of federalism was the 16th century German Calvinist thinker Johannes Althusius. Originally from Westphalia, Althusius had settled in the town of Emden in the neighbouring Dutch province of Friesland. His thinking about political associations was formed at a time when the seven Dutch provinces were joining forces through the Union of Utrecht (1579). Althusius' ideas about political authority were very different from the notion of sovereignty put forward by his contemporary Jean Bodin. Bodin's ideas of a strong monarchy, common public interest, and absolute sovereignty provided the theoretical foundations of a unitary French state. In contrast, Althusius theorised about divided political authority. A contractual union between the constituent entities was at the core of his argument. Althusius called this union a *pactum foederis*.² During the Reformation, such contractual ideas became quite influential in the Low Countries, Switzerland, and eventually the United States. Althusius used the term *consociatio* to denote the eventual association that would result from the pact. Thus, Althusius' idea on divided political authority can be seen as the theoretical antecedent to both federalism and consociational democracy.

² Johannes Althusius (1964), *The Politics of Johannes Althusius*, translated by Frederick S. Carney, an abridged translation of the Third Edition (1614) of *Politica Methodice Digesta, Atque Exemplis Sacris Et Profanis Illustrata*, Boston: Beacon Press, p.ix.

While the provinces of the Low Countries were coming together in a federal union, the Swiss cantons were joining forces in a much weaker confederal union. Initially the three Alpine regions that established independence from the Holy Roman Empire in 1273 established the core of the Swiss confederation. The three *reichsfreie* communities of Uri, Schwyz and Unterwalden agreed on their contractual union, the *Eidgenossenschaft*, in 1291 which then became the name of the country. The confederation gradually expanded to include thirteen cantons where two religions and four languages coexisted. Just as the United Provinces of the Netherlands fell under the domination of its largest province Holland, the Swiss confederation also faced centralist pressures from the richer Protestant cantons. There were deep divisions between the conservative rural Catholics who resisted a strong national executive and radical Protestants from the industrialising cantons who pushed for a stronger union. Eventually the conflict led to a civil war in 1847 which the radicals won. The outcome was a federal constitution which stripped the cantons of sovereign state rights and turned them into members of a federation.

The most interesting experiment with federalism, however, had taken place in America. The confederation of 1776 between thirteen former colonies was replaced by a new constitution in 1787 which combined federal principles with republicanism. During the ratification process a collection of letters in support of the new constitution were published by Alexander Hamilton, James Madison and John Jay under the pseudonym 'Publius'. There are frequent references to the Dutch and Swiss experiences with federalism in these letters which later came to be known as the 'Federalist Papers'. According to Rossiter:

The Federalist...converted federalism from an expedient into an article of faith, from an occasional accident of history into an enduring expression of the principles of constitutionalism.³

There were 'Antifederalist' papers as well (Dry 1985; Main 1961). The antifederalists were a less coherent group who were largely seen as the defenders of state rights who wanted a weaker national government.

In the meantime, the Ottomans had imposed their *millet* system in the Balkans. This system gave the religious groups autonomy over their internal affairs under the overarching authority of the Ottoman state. The millet system was an inspiration for Austrian Marxists Karl Renner and Otto Bauer who believed that a non-territorial form of federalism which would give autonomy to religious/ethnic groups would solve the problems facing the Austria-Hungarian Empire in the Balkans. However, the First World War ended both Ottoman and Austria-Hungarian rule in the Balkans.

Until the end of the Second World War federalism was seen as somewhat of a 'second best' path towards political existence. According to Ronald Watts prior to 1945 federalism was treated with benign contempt as an incomplete national government or a transitional model of political organisation.⁴ In his provocatively entitled *The Obsolescence of Federalism* for example, British Labour politician and academic Harold Laski argued that federalism produced weak governments, which were in turn, incapable of dealing with the big questions of industrialisation and mass democracy of the 20th

³ Clinton Rossiter (1961), "Introduction" to Alexander Hamilton, James Madison and John Jay (1961), New York: Mentor, p. xii.

⁴ Ronald Watts (1994) "Contemporary Views on Federalism", in Bertus de Villiers (ed.), *Evaluating Federal Systems*, Dordrecht, Boston and London: Martinus Nijhoff, p.2.

century⁵. But since the Second World War, federalism has come to be accepted as a potential way to manage diverse societies, and correspondingly, a literature of comparative federalism has emerged dealing with the theoretical and empirical questions of federalism.

A major contribution to the field has been the clarification of the conceptual distinction between 'federalism' and 'federation'. Building on the works of two French authors (Marc 1961; Voyenne 1976), Preston King introduced this distinction into the Anglo-American literature on federalism (1982). According to King's formulation, federalism is a 'value concept' or an ideology based on the commitment to divided political authority, whereas federation is a particular institutional form where this ideology is represented in various guises. So federalism can exist without the constitutional form of a federation. This point is best made by Burgess: "the *absence* of federation should not blind one to the *presence* of federalism."⁶ The theme of differentiating federalism from federation was further developed by Michael Burgess and Alain-G. Gagnon (1993) in an edited collection. Most of the comparative federalism literature, however, still uses the two terms interchangeably and there seems different connotations of the terms in different languages.

'Federalism' can mean different things in different countries. In Canada, for example, the term federalist carries with it a centralist significance whereas in Spain, Belgium and Germany the same term conveys a position in favour of increased substate

⁵ Laski wrote the article after a visit to the United States. It is a critical assesment of the Federal Government's ability to manage the political economy of large scale capitalism. Harold Laski (1939), "The Obsoloscence of Federalism", *New Republic* 3, pp. 367-9.

competences. In Britain its use is associated with support for stronger centralised European institutions, often with negative overtones attached to such supranational European federalism by the defenders of British national sovereignty. In Italy, on the other hand, the term also refers to the deepening of the European integration process, but in this case, with positive connotations.

Some might say that disagreements are unavoidable due to the normative foundations of the very concept of federalism. In Western Europe there exists a strong utopian federalist tradition that advocates the creation of a united Europe (Spinelli 1989; Pinder 1991; Burgess 1986). During the late nineteenth/early twentieth century an anarchist strand of federalism associated with thinkers like Proudhon and Margall captured the imagination of socialist activists throughout Europe. The same time period witnessed a Christian Democrat variant of European federalism in reaction to the secular and democratic reforms carried out by state bureaucracies. Characterised by an opposition to the nation-building efforts of state machineries, the Christian Democrat tradition of federalism, based on Catholic social philosophy, champions the cause of local autonomy for smaller units. In America the dominant normative base is a Jeffersonian federalism which extols the virtues of small government, divided political authority, and citizen participation. This tradition stresses the importance of dispersing political power through federalism and bringing democracy closer to the citizens.

However, despite all the differing interpretations, there seems to be some common lowest denominator in agreeing that federalism denotes a political structure where

⁶ Michael Burgess (1995), "Federalism and the European Union: Political Change and Continuity in the European Community", in C. Lloyd Brown-John (ed.), *Federal Type Solutions and European Integration*, Lanham NY and London: University Press of America, p. 68.

authority is divided among one or more levels of government. A particularly clear description of federalism is given by Stevenson:

[Federalism] is a political system in which most or all of the structural elements of the state (executive, legislative, bureaucratic, judiciary, army or police, and machinery for levying taxation) are duplicated at two levels, with both sets of structures exercising effective control over the same territory and population. Furthermore, neither set of structures (or level of government) should be able to abolish the other's jurisdiction over this territory or population. As a corollary of this, relations between the two levels of government will tend to be characterized by bargaining, since neither level can fully impose its will on the other.⁷

The descriptive lowest common denominator based on a political structure where authority is divided among one or more levels of government should not suggest that the comparative federalism literature shares the same theoretical premises. Theorising about federalism can be divided into society-based and institution-based approaches. In very broad terms, it can be said that society-based approaches take the federal structure as the dependent variable, while institutionalist approaches use the federal structure as the independent variable.

The division between society-based and institution-based approaches to federalism appears to be an underlying theme in the literature. In his study on Australian federalism, Aaron Wildavsky introduced a distinction between structural federalism and social federalism⁸. According to Wildavsky, social federalism is where economic, ethnic, religious diversities correspond to political boundaries. Structural federalism, on the other hand, refers to the federal institutional structure. Wildavsky did not expand on this conceptual difference, but it is an indication of the prevalence of the theme of society vs. institutions in comparative federalism.

⁷ Garth Stevenson (1982), *Unfulfilled Union: Canadian Federalism and National Unity*, Revised Edition, Toronto: Gage, p.8.

Until the 1950s the study of federalism was the study of federal constitutions. In fact, the very origins of comparative federalism lie in the field of comparative constitutional studies. Traditionally the study of federalism employed a formal legal analysis. The constitutional division of competences between the federal state and the substate authorities (provinces, states, cantons, Länder) remained the main focus for long time. The most influential work within this tradition has been that of K.C. Wheare (1946). Wheare's legalistic analysis, which defined federalism as a form of governance where the orders of government are coordinate and independent, has often been quoted as the authoritative definition of a federal system. But there has been a parallel approach employing a society-based perspective. The most important thinker of this persuasion has been a French thinker more widely known for his anarchist ideas, Pierre Joseph Proudhon.

Pierre Joseph Proudhon's *Du principe fédératif* is one of the earliest examples of sociological federalism. Proudhon saw social and economic diversity as the reason for adopting federal political institutions, rather than seeing these institutions as the cause of diversity. In the introduction to the first English translation of Proudhon's *Du principe fédératif*, the translator Richard Vernon provides the following summary of Proudhon's ideas of federalism based on socio-economic diversity:

For a high degree of social and economic diversity -the differences coinciding with territorial boundaries- will produce a federalism in which issues of a general scope are unlikely to emerge.

⁸Aaron Wildavsky (1967), "Party Discipline Under Federalism: Implications of the Australian Experience", in Wildavsky (ed.), *American Federalism in Perspective*, Boston: Little, Brown and Company, p.178.

The society will therefore tend to be managed by multiple decentralised (provincial) processes, and will approximate what has been termed interstate federalism.⁹

Some of the intellectual descendants of Proudhon's idea of federalism can be found within the political economy approach to federalism. According to this perspective, the socio-economic differences between regions influence the workings of a federal system. In the Canadian context, Garth Stevenson (1982) employed political economy as the explanation for particular forms of federalism. According to Stevenson different industrial interests have dominated different levels of government and have therefore shaped Canadian federalism. A similar political economy approach which sees class conflict as central to the workings of federal systems is also employed by Gagnon (1985). Gagnon and Montcalm (1990) also use a political economy approach to explain Quebec's 'Quiet Revolution' and the subsequent federal difficulties.

One of the leading advocates of the sociological approach to federalism is William Livingston. In literature reviews on federalism it is common practice to cite Livingston's 1956 *Federalism and Constitutional Change* and his notion of 'federal society' as the major example of a society-centered approach to federalism. Livingston had first developed the idea of federal society in an article in *Political Science Quarterly* in 1952:

[I]nstitutional devices, both in form and function, are only the surface manifestations of the deeper federal quality of the society that lies beneath the surface. The essence of federalism lies not in the institutional or constitutional structure but in the society itself.¹⁰

⁹ Richard Vernon (1979), "Introduction" to Pierre Joseph Proudhon [1863] *The Principle of Federation* [*Du principe fédératif et de la nécessité de reconstituer le parti de la révolution*], translated and edited by Richard Vernon, Toronto: University of Toronto Press, p.xxi.

¹⁰William S. Livingston (1952), "A Note on the Nature of Federalism", *Political Science Quarterly*, Vol.67, p.84.

Writing in response to the prevailing institutional/constitutional perspective in the study of federalism, Livingston believed that societal factors were more important than the institutions. He argued that a federal society made federalism necessary. For Livingston a federal society was one where diversities were grouped territorially. This society-based perspective led to a number of articles that expanded on the notion of federal society. For example Michael Stein tried to specify what a federal society meant:

Where a society is constituted of territorially based communities which are clearly differentiated by language and ethnicity, then one can find a federal society.¹¹

According to Stein, religion, geography and economics might reinforce these territorially based ethno-linguistic differences, but it was ethno-linguistic patterns that were fundamental. The federal society argument was also taken up by Charles D. Tarlton in an article in 1965. Here Tarlton used Livingston's federal society to build a dichotomy between symmetrical and asymmetrical federalism. Tarlton's asymmetrical federalism was one where political units corresponded to the differences in the society:

...[F]ollowing Livingston, an asymmetrical federal government is one in which political institutions correspond to the real social 'federalism' beneath them.¹²

A somewhat neglected aspect of Livingston's federal society argument, however, is its more broader implications. The argument about federalism and federal society actually implied a more general theory of politics. Livingston argued that federal institutions would reflect the federal society. If this is indeed the case, the reverse should hold true as well. That is to say, if the society is not federal and if federal institutions are

¹¹ Michael Stein (1971), "Federal Political Systems and Federal Societies", in J. Peter Meekison (ed.), *Canadian Federalism: Myth or Reality?*, Second Edition, Toronto: Methuen, p.34.

¹² C.D. Tarlton (1965), "Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation:", *The Journal of Politics*, Vol.27, p.869.

in place, then the latter should change to reflect the characteristics of a 'non-federal society' and become centralised.

The broader applicability of the federal society argument can be seen in connection with Carl Friedrich's point about seeing federalism as a 'process'. Friedrich (1968) sought to move beyond the traditional formal-legalistic approach by formulating federalism as a course of changes rather than a particular institutional configuration. Friedrich saw federalism as '...a process, an evolving pattern of changing relationships rather than a static design regulated by firm and unalterable rules'¹³. Friedrich's formulation of federalism is a useful way to look at change in federal structures. In many ways, his view is closer to the society-based approaches. The journey of the federal process Friedrich talks about, often seems to be in the direction towards a better fit with the society:

The study of social structure in relation to federalism has, therefore, helped us to understand better the dynamic nature of federal orders, to look upon a federal system as subject to continual change, rather than a static design fixed forever in an immutable distribution of factors.¹⁴

Such society-based perspectives to federalism, however, are in minority in a field dominated by institutionalist approaches.

Canadian scholars have provided a disproportionate contribution to the field of comparative federalism. Their works have generally stressed the role of institutions in federal systems (Simeon 1972; Cairns 1977; Smiley 1984; Watts 1966). These approaches often take the federal structure as the independent variable and seek to explain its role in shaping the society and politics. But this institutionalist approach that seems to dominate the study of federalism nowadays was once a reaction to society-based

¹³Carl Friedrich (1968), *Trends of Federalism in Theory and Practice*, New York: Praeger, p.173.

perspectives. In his presidential address to the Canadian Political Science Association in 1977, Alan Cairns called for institutionalist inquiries as a response to what he calls 'sociological reductionism':

The impact of society on government is a common theme in the study of democratic politics. Less common is an approach which stresses the impact of government on the functioning of society.¹⁵

The same year Richard Simeon published an article in the third edition of Peter Meekison's *Canadian Federalism: Myth or Reality?* where he advocated the use of political institutions as independent variables in the study of federalism:

[I]nstitutions are not simply the outgrowth or products of the environment and they are not just dependent variables in the political system. They can be seen as independent forces, which have some effects of their own: once established they themselves come to shape and influence the environment.¹⁶

In between society-based and institution-based approaches to federalism, there have been studies which seek to link the two. One such approach focuses on political parties as an explanatory variable. Political parties are seen as the middle ground between the underlying societal structure and the overarching political institutions. These studies emphasise the role of political parties in explaining the differences between federal systems (Riker 1964; Wildavsky 1961).

In addition to studies which explicitly focus on federalism, either as independent or dependent variable, there have been studies which use the federal structures as the intervening variable. Some of the theoretical issues dominating other fields of comparative politics have found their way into the study of federalism through studies

¹⁴Friedrich, *Ibid.* p. 54.

¹⁵ Alain Cairns (1977), "The Governments and Societies of Canadian Federalism", *Canadian Journal of Political Science*, X:4, p. 694.

that focus on federal structures only indirectly. For these studies, federalism is another layer of institutions in the study of public policies (Banting 1987; Coleman 1990; Maioni 1998; Skogstad 1987). This type of research does not tackle federalism directly, and instead, uses federal institutions as the filtering intermediate variable between independent variables and outcomes.

The study of nationalism has also been closely linked with comparative federalism. There have been studies combining theories of consociationalism and federalism (Lijphart 1979 and 1984). Federalism has been of interest in this field because of the problem of accommodation in societies with territorially concentrated social and cultural differences. More recent work has explicitly taken up the issue of how political institutions might be designed in multinational societies in order to balance justice and stability (Gagnon and Tully 2001; Erk and Gagnon 2000, Kymlicka 1995; Tamir 1993; Miller 1995). The distinction between territorial and multinational federalism is often made in this literature in order to emphasise the distinctive problems of accommodation that are present in multinational societies. This literature on minority nationalism and the larger literature on comparative federalism is relevant to the present study; but it should be emphasised that the theory of congruence, which is the central analytical device in this dissertation, is not a theory of minority nationalism, nor only a theory of comparative federalism. It is, rather, a theory of the social bases of political institutions in general. The approach to this problem of social foundations is informed at several places by work on federalism and nationalism. However, the theoretical interest is in the long term

¹⁶Richard Simeon (1977), "Regionalism and Canadian Political Institutions", in J. Peter Meekison (ed.), *Canadian Federalism: Myth or Reality?*, Third Edition, Toronto: Methuen, p.297.

equilibrium between political institutions and social structures, particularly ethno-linguistic structures. To elaborate an argument consistent with this interest, this research seeks to take the analysis beyond the work on nationalism and comparative federalism.

3. Congruence

The quote from Ernest Gellner which opened up this chapter is one example of the idea of congruence, i.e. political institutions will be congruent with the society. Many fields of study have produced variants of a theory of congruence: nevertheless, they all suffer from the same problem of operationalisation.

For example, a neo-Marxist argument about congruence is made by Carnoy and Levin in the study of education.¹⁷ Writing on the limits of educational reform, Carnoy and Levin argue that regardless of reforms made, the educational system ultimately reflects the larger social, economic and political context. Carnoy and Levin call this the 'correspondence principle'. The authors argue that education is embedded in the broader structure of corporate capitalism. For Carnoy and Levin, the correspondence principle is, therefore, between education and production patterns. The idea that institutions would change in order to reflect the societal structures is not very different from the starting

¹⁷ Martin Carnoy and Henry M. Levin (1976), *Limits of Educational Reform*, New York and London: Longman, p.23.

point of this study, but the authors provide no processes that would account for this supposed tendency toward correspondence.

A similar argument is put forward by Siebert *et. al.* in the field of media. The authors simply announce that "...the press always takes on the form and coloration of the social and political structures within which it operates"¹⁸; another interesting insight left underdeveloped and unexplored. Siebert *et. al.* argue that the press reflects the way that society sees the nature of man, knowledge and truth, but there is no conceptual link to explain the convergence between the structures the authors emphasise and the outcomes they foretell.

None of the authors above explicitly use the term 'congruence' however. The term is unequivocally associated with Harry Eckstein. Throughout his long and prolific career, Eckstein always maintained an attachment to the idea of congruence but never developed it into a general theory. The first appearance of the notion of congruence is in his work on Norway¹⁹. Here he reflected on the relationship between authority patterns of the society (i.e. in families, schools, and economic organisations) and the authority patterns of the government. He believed that a congruence between authority patterns ensures stability:

...[D]emocracies (and perhaps also other kinds of rule) tend to be stable if governmental and social authority patterns are highly congruent -if they involve considerable resemblances and thus have a certain fit.²⁰

¹⁸ Fred S. Siebert, Theodore Peterson, Wilbur Schramm (1956), *Four Theories of the Press*, University of Illinois Press: Urbana, Chicago, London, p.1.

¹⁹ Harry Eckstein, (1966), *Division and Cohesion in Democracy: A Study of Norway*, Princeton, NJ: Princeton University Press, pp.186-192, 232-241.

²⁰ *Ibid.* p. 186.

Among Eckstein's publications, the work that comes closest to an attempt to formulate a general theory of congruence is *Patterns of Authority: A Structural Basis for Political Inquiry* (1975) coauthored with Robert Ted Gurr. The core idea seems to be the influence of the nature of the social structure on governmental stability. For Eckstein, the nature of the social structure is reflected in what he calls the authority culture, which in turn, makes certain political systems more appropriate for certain social structures. Quite clearly, this is a theory based on the general idea of congruence between society and polity. On the other hand, there are many confusing issues regarding the notion of social authority patterns. Do these patterns change? If there is a mismatch between the social authority patterns and the political institutions, does the political system change in order to correspond to the social authority patterns? ²¹ Despite these internal tensions in his theory of congruence, Eckstein's ideas are important for highlighting the importance of macro-social variables in the study of politics. The micro-macro dichotomy has been a running theme throughout Eckstein's career. In fact, after moving to the University of Irvine from Princeton, Eckstein reorganised the Department of Political Science of Irvine along a macro- and micro- politics division. The traditional American Politics, International Relations, Comparative Politics and Political Theory curricular division was replaced by Micropolitics and Macropolitics. In his contribution to the special issue of *Comparative Political Studies* on Eckstein, David Laitin sets up the following table displaying the main differences between the two approaches Eckstein juxtaposed:

²¹ For criticism of the work of Eckstein, see in particular, Ronald Rogowski (1998), "Eckstein and the Study of Private Governments: An Appreciation, Critique, and Proposal", *Comparative Political Studies: Special Issue: A Tribute to Harry Eckstein*, Vol.31: 4, 1998.

Figure I
Micro- and Macro- Approaches Compared

	Micro	Macro
Unit of Analysis	Individual (median of a population)	Group (mode of a population)
Focus of attention	Human agency (structure as a parameter or a delimited choice set explained by an equilibrium)	Structural constraint (agency follows from structural conditions)
Perceived regularities	Mechanisms	Patterns
Sources of change	Actors	Variables
Predictions based on	Identification of equilibria (and supported with comparative statistics)	Probability estimate (and supported by case studies, strategic comparisons, and in large- <i>n</i> cases by regression analysis)
Choices actors make	Endogenous (choices are mutually determining, knowing what is exogenous is not sufficient to understand choice)	Exogenous (choices determined by common external forces and can be sufficient to explain choice)
Research goal	Explain choices	Discover causal laws

Source: David D. Laitin (1998), "Towards a Political Science Discipline: Authority Patterns Revisited", *Comparative Political Studies*, Vol.31: 4, p. 438.

The micro- macro- politics divide is at the heart of this comparative study on German and Belgian federalism [see Figure I]. A macro-social deductive logic is used to explain the process of congruence. Consequently, many of Laitin's above observations about macro theories apply to the formulation of the research project. There is a focus on structural constraints, and the aim of the research project is to discover causal relationships. At the same time, there is an emphasis on how macro-politics translate into choices made by actors at the micro level. In this respect, the research project tries to combine the respective benefits of both approaches. The driving theoretical lens is

macro-social, but in order to establish the plausibility of this theory, micro level in-depth empirical research is carried out.

4. Institutions, Structures, and Actors

4.1. Institutions

Institutionalist perspectives have recently become the dominant approach in comparative politics (March and Olsen 1989; North 1990; Steinmo *et. al.* 1992; Weaver and Rockman 1993; Koelble 1995; Pontusson 1995). Institutionalism used to be the in-depth study of formal structures and constitutions. But the new institutionalist wave is different from the old approach. The focus is more comparative and institutions are seen as an intermediate layer constraining and influencing politics. In this context, the emphasis is on the institutional arrangements that shape political strategies and distribute political power. There are broad and narrow formulations of 'institutions'. For example Douglas North believes that institutions "provide a set of rules of the game that define and limit the choice set"²². These include the informal practices, conventions and constraints as well as formal rules. For purposes of this research project however, institutions are taken as formal organisations rather than informal rules of the game. This 'thin' definition of institutions allows the research project to contrast political institutions and social structures. Institutions are conceptualised in a minimalist sense to refer to formal political

²² Douglas North (1990), "Institutions and Their Consequences for Economic Performance", in Karen Schweers Cook and Margaret Levi (eds.), *The Limits of Rationality*, Chicago and London: University of Chicago Press, p.383.

organisations and legal/constitutional structures. Consequently, social structures are separated from political and legal institutions.

The dichotomy between political institutions and social structures is used to highlight the inability of the institutionalist perspective to explain institutional change. What an institutionalist logic would suggest is that actors would try to take advantage of the available channels for political activity. They would be socialised gradually into the institutions as they form their preferences within these rule-bound settings. Interests of these actors would come to be nested in prevailing institutional arrangements. However, this pattern has not prevailed in the two cases under focus. A Belgian 'nation' has not emerged to fit its political institutions, but institutions have changed to reflect underlying divisions. In the German case, an institutionalist logic would expect that the federal division of responsibilities would lead to the development of substate interest group mobilisation at the Länder level. However, the German federal system has not socialised the German nation into a federal society. In the end, German society has not changed, institutions have. What is common in both Belgian and German cases is the relative ease with which new institutions have been created while existing institutions were changed or bypassed.

An institutionalist perspective is useful in determining which political actors would be in a position to influence decision-making in formative moments, yet it has no means of explaining the direction of change. In a recent review article Jonas Pontusson draws attention to this problem: "the problem of explaining institutions -why they differ across countries and how they change over time- brings out the limits of institutionalist

analysis most clearly”.²³ Pontusson believes that institutional change can be explained by broader structural variables: “to understand the impetus for change, we need to analyse the process whereby ‘extra-institutional’ forces reshape the interests of powerful actors.”

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A macro-social theory of congruence between social structure and political institutions can help explain the changes by identifying the macro ‘extra-institutional’ tendencies at play. Of course, there is always a propensity towards determinism in such structural approaches since the processes of change are often assumed and not demonstrated. The challenge is, therefore, to connect social structures and political outcomes by paying explicit attention to political actors and processes of change.

4.2. Structures and Actors

Quite clearly, the macro-social theory of congruence that characterises this project is an example of a society-centred structural approach. However, theoretical perspectives of this persuasion are no longer fashionable in contemporary political science. Society-centered approaches in political science were largely products of the behavioural revolution which dominated social sciences until the 1970s. The most important examples of such approaches are pluralism and structural-functionalism. And of course, Marxism managed to retain its position as an influential society-based theory even after the behaviouralist fervour.

²³Jonas Pontusson (1995), “From Comparative Public Policy to Political Economy: Putting Political Institutions in Their Place and Taking Interests Seriously”, *Comparative Political Studies*, Vol.28: 1,p.137-8.

Despite their often beguiling blanket generalisations, these grand theories have little room for contingency and are difficult to falsify. Gradually they lost their appeal to as they came to be seen as suffering from inherent structural determinism. Yet, their all-embracing explanatory reach is still admirable, if only a dose of contingency could soften their fatalism. This study tries to do this. It combines the strong deductive logic of structural perspectives with agency and process as a way to bring in contingency. As stated in the Introduction, this is done by using a set of assumptions about public policy:

In polities with relative societal homogeneity the contents of public policies and efficiency in delivering them are the issues of concern, whatever the institutional design. Political actors compete to impose their version of public policies, and political struggles are over articulating the 'best' policies for society. Whether or not these concerns translate into good or efficient public policy is a moot point. What is important is that the choices made by political actors are driven by the acceptance that the 'nation' is the unit of governance regardless of the institutional division of power, and that the policies should correspond to this unit.

In polities with territorially based distinct societal groups on the other hand, the foremost concern is to acquire control over those policy areas which are important for the self-perpetuation of distinctive subcultures. The frame of reference employed by political actors is their ethno-linguistic community. This exerts decentralising pressures on the political institutions in the direction of congruence. The primary concern of the political actors is to acquire self-rule in these areas for their ethno-linguistic communities. Once this is achieved, concerns for efficiency would emerge as the contents of public policies

²⁴*Ibid.* p.142

gain importance, only within the premises of subcultural boundaries though. With a sufficient degree of congruence, political actors can now pursue the Laswellian politics of 'who gets what, when, how'. Here what is done is more important than who does it, and therefore the substate-federal division is unimportant as long as the job gets done. But until the realisation of a satisfactory congruence, it is the politics of 'who gets to decide'.

Focus on public policies helps bring social and institutional perspectives closer, and in due course attaining a fuller apprehension of the political patterns at play. The two ideal models of federal state and unitary state are useful benchmarks to evaluate the political institutions, but a deeper understanding of the workings of the system has to accompany classification. Examination of public policies would likely show that the workings of a unitary state with a federal society might be less unitary than what the institutional set-up conveys. And similarly, in federations with non-federal societies the workings of the system might be more unified than what the *de jure* federal structure suggests. That is to say, one would very likely see an increasing standardisation and nationalisation of those policies within substate competence even while the constitution remains federal.

Figure II

	Unitary Political Institutions	Federal Political Institutions
Non-Federal Society	full congruence (national policies)	standardisation of substate policies (national standards) substate initiatives for policy harmonisation federal involvement
Federal Society	division of national policies into linguistic halves devolution towards substate policy competence	full congruence (policies correspond to constituent communities)

The top-right and bottom-left boxes show the processes towards congruence when social structure and political structure do not coincide. The two case studies of this research display some mobility between the ideal models outlined in Figure II. The Federal Republic of Germany started with substate competences and an accompanying degree of diversity in public policies in 1949. It has since changed to fit the model described in the top-right box. Its move to the top-left box is impossible under the Constitution, i.e. the federal character of the German state cannot be changed by constitutional amendment. The Belgian State started its life as a unitary state with unitary policies; it has then changed its institutions in a way as to reflect the ideal model in the bottom-left box. The most recent constitutional changes have brought the Belgian State closer to the bottom-right model. Had the complexity of Brussels not existed, i.e. predominantly Francophone but in geographically in Dutch-speaking Flanders, the fit with the bottom-right box would have been complete.

As the empirical chapters will demonstrate, both cases display tendencies towards a closer fit between the society and institutions. The process of congruence, however, does not lead to a sudden automatic reconfiguration of institutions, but represents a longer term macro tendency instead. In a broader context, it is necessary to highlight the fact that federations with federal societies have an accompanying degree of diversity in public policies corresponding to the substate constituent units, while federations with non-federal societies opt for nation-wide solutions.

4. 3. Congruence and Ethno-Linguistic Structure

As Section 3 demonstrated, congruence theories come in many forms. Political culture, social authority patterns, federal society, and capitalist production patterns have been used in making arguments about social structure. This research project uses the ethno-linguistic social structure -a unifying force in Germany and a 'cleavage' in Belgium- as basis for inquiry. One of the most influential studies on political cleavages was carried out by Seymour Martin Lipset and Stein Rokkan (1967). Here the authors identified four sets of cleavages which left a mark on European politics. Two of these, state-church and centre-periphery cleavages, resulted from national revolutions. The remaining two, land-industry and employer-worker cleavages, resulted from the industrial revolution. The perspective of cleavages was taken up and expanded by many (Rae and Taylor 1970; Zuckerman 1975; Bartolini and Mair, 1990; Lane and Ersson 1991; Knutsen and Scarbrough 1995; Mény and Knapp 1998).

Generally, the term 'cleavage' denotes a politically salient social division. But those who employ the perspective of cleavage differ between a those who see it as a part of the social structure and those who see it as a mobilised 'closed' group fueled by common interest ²⁵. This research employs a view closer to the first interpretation in the sense that a cleavage is not seen as an active political opposition but the source of collective identity within which traditional politics of distribution takes place. In other words, it is the social base of demarcating borders of a collectivity, an 'us' community. For Germany, the following illustration might be give voice to the concerns at play:

²⁵Stefano Bartolini and Peter Mair (eds.) (1990), *Identity, Competition, and Electoral Availability: The Stabilisation of European Electorates 1885-1985*, Cambridge: Cambridge University Press, p. 216.

We are a nation beyond the borders of Baden-Württemberg and North-Rhine Westphalia. We might differ over many issues, especially whether or not we believe in a three-tiered education system or whether or not we support private broadcasting, but we fight our political battles at our national stage.

In direct contrast, in Belgium the boundaries of 'us' stop at the linguistic border when it comes to education and media. Walloon concerns, for example, might be portrayed as follows:

In Wallonie we don't care about how Flamands organise their schools or run their media. We are only concerned about our education and our media. But at the same time, we might have many disagreements amongst ourselves concerning our public policies.

Of course similar views are mirrored in Flanders. The above two statements embody the essence of the social side of the picture, that is to say, a social collectivity that does follow the borders of political institutions: all Germans above the federal institutions, Francophones and Flemings below the unitary institutional structure. An important point to reiterate, however, is that the process of change comes through the choice of public policy provider, not through a grand design towards congruence.

By definition, all theories of congruence take the social structure as a given but not something to be explained. Naturally, the same perspective guides this research. The ethno-linguistic social structure is employed as the independent variable in order to explain institutional change. Accordingly, the ethno-linguistic composition of Germany and Belgium is taken as the starting point. The preceding long process of ethnic identity formation is thus left out as since it is beyond the scope of the inquiry.

Many studies on nationalism take national identity as something to be explained; the dependent variable in other words. In this context, factors like the role of the elites, patterns of mass mobilisation, linguistic standardisation, education and historical revisionism are employed to explain nationhood. In his impressive study on the nation-

building efforts of the French Third Republic, Eugen Weber demonstrates how national education and conscription turned 'peasants into Frenchmen' (Weber 1976). But late nineteenth century was a time when states could do such things. Suffrage was restricted, poverty was widespread, literacy was low. In other words, the social landscape was still malleable, open to political engineering. The congruence model this research uses, however, is a theory of modern post-WWII politics. Modern European politics has created a setting where politics of congruence can have an impact on political institutions. There are certain enabling factors that provide the background for the theory of congruence. So the research model is predicated on the assumption of:

- (a) a free modern democratic system;
- (b) an international subsystem which has eliminated the threat of warfare amongst neighbours which has in turn removed the urgency of nation-building efforts preparing the young men for the trenches;
- (c) the historic compromise between the Left and Right in face of the Soviet threat;
- (d) Keynesian economics and the welfare state which underwrote this compromise;
- (e) an increase in living standards accompanying the post-war economic boom; and
- (f) the expansion of the role of the state in public life and the proliferation of new issues which require public policies.

In addition to these background factors, there are more proximate developments which have allowed the ethno-linguistic structure to assume an important position in the society. The importance of ethnicity has depended on the decline of other significant social cleavages in terms of their political relevance. Decline in class voting is one such development (Evans 1999; Korpi 1983). The other one is the increasing secularisation of

European societies and the subsequent decline in religion as a politically salient social cleavage (Mol 1972; Martin 1978). More specifically, the settlement of the schools question in Belgium during the 1950s has brought the divisive Catholic-secular rift to an end. The Bonn Republic, on the other hand, started its existence with a unique religious balance. Loss of predominantly Protestant Eastern German territories led to a numerical parity between Protestants and Catholics for the first time. This led the German Catholics to abandon their defensive solidarity against Prussian domination and embrace the modern politics of Bonn. As a result, Catholicism lost its role as a dominant political identity for the German Catholics. Combined, all these above factors allowed the ethno-linguistic structure to become the key societal collectivity in both countries.

The historical process of ethno-linguistic identity formation in Germany and Belgium is not the object of inquiry in this research project. Instead, the focus is on the impact 'nationhood' has on political institutions between 1949 and 1993. Taking the ethno-linguistic landscape as a given is an in-built characteristic of a macro-social structural theory of congruence. By 1949, the German ethno-linguistic character was firmly established in the Federal Republic of Germany. In Belgium, on the other hand, Flemish and Walloon identities were already solidified at this time as well. The problematic one, i.e. Bruxellois/Brusselaar identity, remains a complicating factor and the lack of a consolidated ethno-linguistic identity in Brussels continues to thwart a tidy institutional settlement for the country. So even this fluidity in identity plays an important part in explaining institutional changes.

Many Germans refer to 1949 as *Stunde Null*, the zero hour, in order to describe a new beginning and complete denazification. For this study, the stunde null is the ethno-

linguistic composition of both countries in 1949. A theory of congruence follows this starting point and studies the incremental process of change towards closer match between 'society' and 'state'.

4.4. Congruence and Incremental Change

Once the social structure is taken as a starting point, the task then becomes accounting for the process of institutional change towards congruence with the social structure. The most frequently employed model of change is one of defining moments of important change. Social sciences have frequently imported theories from the natural sciences, and this model of massive change is one such example.

In order to explain continuity and change, social scientists have frequently made use of the 'punctuated equilibria' theorem of Niles Eldredge and Stephen Jay Gould (1972). Based on the gaps found in fossil records, these two evolutionary biologists put forward a theory based on sudden bursts of change with long periods of evolutionary stagnation. In the social sciences, this logic has been used to explain long periods of structural stasis followed by rapid radical realignment with a subsequent new stasis around this new equilibria. However, punctuationist arguments are by no means universally accepted in the field of evolutionary biology. The alternative view is often associated with Richard Dawkins (1986) who holds a more gradualist approach to change closer to Darwin's original formulation. This view of course does not imply a constant rate of change but a more graduated approach characterised by a slower and more variegated process of evolution with heterogeneous turning points.

Empirical field work carried out for this research project paints a picture closer to the theory of Dawkins. There were many defining moments of change spread over the policy areas which produced an incremental process towards congruence. Changes in the individual policy areas and case studies were also related to broader political realignments. There were quite a few formative moments spread throughout the political landscape rather than one or two big moments. At the end of the day, change appears to have come about gradually, not necessarily at a constant rate, but through a variegated diverse process towards a closer match between social structures and political institutions rather than a big bang of radical change.

To sum things up; the structure is the ethno-linguistic composition of the society which in turn, influences the choices made by agents in public policy. This theory of congruence is complemented by an institutionalist perspective which helps to highlight the moments of change and to identify the influential political actors. And at these turning points, the deductive logic of congruence brings in the missing element to institutionalist approaches, i.e. a theory about the direction of change. An important question which remains, however, is about the choices the actors make. In this context, contingency is of vital importance: how do the underlying ethno-linguistic structures affect the choices made by political actors at formative turning points? At issue then is the proper way to incorporate contingency into a structuralist argument.

The social structure predisposes decision makers to demarcate their political communities in line with ethno-linguistic boundaries, and thus constrains the options available them. One has to be careful, however, to avoid the semblance of an iron cage

determinism in making such structural arguments. It is necessary to bring in contingency as a conceptual tool to operationalise the theoretical points. Furthermore, extensive and in-depth empirical research is needed to demonstrate the plausibility of the arguments. Unless macro-social structural theories are supported by extensive detailed examinations of case studies, their arguments will remain defenseless against accusations of structural determinism.

Empirical research carried out for this project, covering the fifty years of the Federal Republic of Germany, shows that political affiliation played no role in the choice of a nation-wide approach to public policy. Regardless of political affiliation and the level of government, all German decision makers had the tendency to view educational policy and mass media regulation in terms of nation-wide concerns, and acted accordingly.

In the Belgian case, on the other hand, political affiliation was a relevant factor because of the close overlap between the Socialists and the Walloons, the Christian Democrats and the Flemings, and the Liberals and the Bruxellois; but the empirical research discovered similar structural forces at play. The choices made by the actors were influential in terms of the political settlements, but these choices did not deviate from the expected pattern of behaviour dictated by the ethno-linguistic composition of the country.

This brief look into the findings of the empirical research brings us back to the micro- macro- politics division outlined earlier. The focus of attention in this research project is the structural constraints of society, and their impact on the choices made by human agents. As stated before, the decisions available to political actors are demarcated by structural factors. That is to say, the ethno-linguistic community provides the primary

structural boundary. Decisions are made within the confines of this 'national community', without regard to the political structure which may in fact conflict with the ethno-linguistic one. It is this discrepancy between the social and the political that explains institutional change. If the 'nation' is bigger than the political structure, the tendency for change would be in the direction of centralisation. If the 'nation', on the other hand, is smaller than the political structure, the reverse process takes place.

In other words, ethno-linguistic factors are not mobilised by political entrepreneurs for reasons of self-interest, rather ethno-linguistic factors demarcate the primary group of collectivity for which decisions are made. So it is less of a conscious attempt at exploiting differences, but more of a theory based on the primacy of ethno-linguistic social structures. Contingency is present because social structures need decisions made by actors to be translated into political outcomes, but the options available to political actors, on the other hand, are constrained by the ethno-linguistic composition of the society.

Chapter II

Methodology

Seek simplicity, and when you find it, distrust it.

Alfred North Whitehead

An explanation is adequate when the mind comes to rest.

David Hume

The methodologically aware social scientist is often subject to fears and doubts and is frequently not self-assured and sometimes even unhappy scholar. Unlike the case study analyst, the comparativist is not protected by the self-confidence that is generated by an in-depth knowledge of the topic at hand; by reliance on a large body of literature sharing the same configuration; or by the surrounding conventional wisdom that states that what is done makes sense...Constantly worrying about the combination of an *esprit de finesse* with an *esprit de géométrie*, the comparativist must balance both the full knowledge of the risk falling under Pascal's dictum: '...les esprits faux ne sont jamais ni fins, ni géomètres'.

*Stefano Bartolini*¹

1. Introduction

The opening phrase by the mathematician Alfred North Whitehead captures the two characteristics of scientific inquiry: quest for clarity combined with a prudent skepticism towards the findings. This research project hopes to remain within this scientific tradition by seeking explanations through the clarity provided by simplification, yet presenting these explanations only in a probabilistic manner. One has to simplify in order to make sense of the buzzing welter of information, however, it is the refutability of the

propositions used in this simplification which leads to scientific progress. In this respect, this study is ambitious in its attempts to simplify, yet modest in its claims in having found the explanation. And Hume's warning is the eventual conclusion.

Bartolini's remarks, on the other hand, summarise the difficulties facing the comparativists who employ such scientific methodology in their inquiries. Contemporary political science is demarcated by the two opposites of reductionism and historical storytelling. This research project takes the path in between, an approach followed by most students of comparative politics.

2. Data and Methodology

The research project is a historical/comparative case study (Skocpol 1984), which pursues the method of focused comparison (George 1979). At the core of the research project lies a macro-level deductive argument applied to particular events where the analysis seeks to combine a general structural theory with historical contingency and human agency. The focus is on the important turning points of particular cases, but the inquiry is based on the premise of broader applicability to other cases.

The core of the empirical research was carried out using archival material. Preliminary research on secondary sources had suggested a number of key formative moments in the post-war political history of the Federal Republic of Germany and Belgium. The field work tried to capture these turning points of institutional change through the analysis of archival material, but original language secondary literature was

¹ Stefano Bartolini (2000), *The Political Mobilization of the European Left, 1860-1980*,

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also used to help identify issues that deserved focus. The archival research was based on primary sources in German, French and Dutch. Parliamentary minutes, public opinion polls, court decisions, publications of special bodies and advisory committees, treaties, agreements, ministerial reports, political party policy documents, publications of numerous semi-public and public bodies were examined. This pattern of empirical inquiry was duplicated for each substate case study and also the federal level. Therefore, it was necessary to analyse archival material belonging to the Flemish Community, the French Community, the Walloon Region and the Brussels-Capital Region as well as Belgian federal institutions. Similarly, archival material on North-Rhine Westphalia and Baden-Württemberg was complemented by nation-wide material.²

In the German case, empirical research showed that throughout the key moments of institutional change in educational policy and mass media policy, the federal division of responsibilities were of secondary importance to concerns about the contents of public policies. In the Belgian case, on the other hand, contents of public policies and efficiency in delivering them became a concern only after the communities acquired a considerable degree of self-rule. Until then, the overriding concern for the subcultures had been the acquisition of control over education and mass media. Political actors in Belgium linked their policy concerns to the boundaries of their respective linguistic communities. Details of the empirical inquiry are provided in the two case studies.

Cambridge: Cambridge University Press, p.2.

² All citations and quotations from primary sources are translated into English in the text. But the original forms in German, French and Dutch are provided in the footnotes for verification. All translations, including those from secondary sources, are author's. In cases where the English equivalent fails to fully capture the meaning of a term, the original word is provided in brackets.

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The aim of the study was to provide a 'thematized story' of congruence in Belgian and German federal systems by combining formal theory and history. McCloskey describes this middle ground in the following way: "A thematized story, or a dynamized model, stands between the pure (and mere) metaphor and the pure (and mere) story."³ This approach is justified by its aim to provide an explanation while capturing empirical complexity at the same time. But the narrative of this study is a segmented one. Instead of telling one big story, the research tells a few smaller stories of institutional change. There is less of a narrative flow of unbroken sequences of events which is associated with the story-telling of historical sociology and the analytical narrative of rational choice theory (Bates *et.al.* 1998; Levi 1997). The segmented narrative of the research project is due to the existence of two cases and two policy areas. Still, within these subcategories, the method of empirical inquiry was the 'analytical narrative' which retains "sensitivity to the particularities and richness of stories while actually offering the microfoundations that permit illumination of general theory."⁴; which in turn, helps combine explanation in principle and explanation in detail⁵.

In many ways, this research started with an explanation in principle, followed by explanation in detail to see if the principle held true in face of facts. It follows a research methodology elaborated by rational choice theorists, but differs in one important respect: while rational choice theorists use a micro-level deductive theory to approach the cases,

³ Donald N. McCloskey (1991), "History, Differential Equations, and the Problem of Narration", *History and Theory*, Vol.30, p.22.

⁴ Margaret Levi (1997), *Consent, Dissent and Patriotism*, Cambridge: Cambridge University Press, p. 6.

⁵ This point is made by Kiser as he refers to Philip Abrams (1982), *Historical Sociology*, Somerset: Open Books, pp.211-2; in Edgar Kiser (1996), "The Revival of Narrative in Historical

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this research project uses a macro-level deductive theory in its inquiry. The theory of congruence which guided this research was spelled out in the first chapter; the empirical inquiry was carried out through the parameters set by this theory. However, the initial theoretical formulation was occasionally revised during the empirical research based on certain factual findings which only emerged during the field work. For example, based on the linguistic division, it was initially assumed that Belgium would have a social structure with two constituent cultural groups. Consequently, the recent institutional changes were expected to be in the direction of congruence with the French-speaking and Dutch-speaking halves of Belgium. During field work, however, the degree of divisions within French-speaking Belgium became clear. Brussels and Wallonia had joined forces as Francophone Belgium, but they lacked and continue to lack a uniform ethno-linguistic identity similar to what Flemings possess. Especially the case of Brussels is a problematic one. Although it is a partner with Wallonia, as a French speaking enclave within Flanders Brussels residents have a separate Bruxellois/Brusselaar identity; albeit less consolidated as a 'national' identity than that of Walloons and Flemings. This fluidity of identity, in turn, explains the problems of devising new institutions for Francophone Belgium. Many of the institutions of Francophone Belgium reflect this difficult duality. Had the theoretical framework solely based on French-language and Dutch-language remained, an important factor explaining the asymmetry between Flanders and Francophone Belgium would have been overlooked.

The successive interaction between theory and data produces a tighter knit study. However, even if revised along the way in face of evidence, the presentation still starts

with the theoretical arguments. Therefore, the steps towards the presentation of theory and empirical findings in this research project are not very different from those described by Margaret Levi:

The process of inquiry begins with a deductive model, but the inductive investigation transforms and produces a fuller elaboration of the deductive model. However, in the written text the presentation of the model precedes the presentation of the cases.⁶

The analytic narrative is a useful tool to combine scientific objectives with respect to history. It is a way to attain a tightly knit, elegant explanation that makes sense of the complexity, but which also remains firmly couched within the case studies. There is an inherent tension between rigour in historical precision and the quest for scientific generalisability. One does not want history to turn everything into a *sui generis* configurative story; after all, social science is about attempts to move towards some sort of scientific generalisation. At the same time, one does not want the theory to rewrite history in order to fit it in with the research model.

Without doubt, good scholarship is about theorising in order to explain the puzzle. This introduces a degree of simplification to bring order to the case and variables to build an explanatory argument. However, one should not forget that this process is in order to better represent reality. As Green and Shapiro have aptly put it:

Formalization...cannot be an end in itself; however analytically tight and parsimonious a theory might be, its scientific value depends on how well it explains the relevant data.⁷

Focus on parsimony should not equal arbitrary collection of convenient data and a superficial model which omits or lumps with little understanding of what the variables

p.256.

⁶ Levi (1997), *Ibid.* p. 14.

⁷ Donald Green and Ian Shapiro (1994), *Pathologies of Rational Choice Theory*, New Haven and London: Yale University Press, p.10

signify. In other words, parsimony is useful insofar as it helps illuminate reality. For a reliable and valid explanation, one needs full immersion in the context to understand what the variables represent. Since comparative politics emerged as a discipline during the behavioural revolution in reaction to the earlier historical/institutional study of comparative government, it has always contrasted itself with configurative historical single case studies and has thus inflated the importance of large-n case studies in building the scientific foundations of this new social science discipline. But generalisability, explanatory power, and scientific inquiry are not necessarily in conflict with descriptive accuracy and small-n case studies. A thicker description of cases does not mean that one is sacrificing explanatory zeal at the expense of historical story-telling. On the contrary, this is carried out in order to dig deeper and reach for the closest approximation of social reality while the premise of generalisability is retained. The editors of a recent volume devoted to benefits of small-n comparative studies defend their methodology in the following terms:

The social sciences today are torn apart by a tension between two desires: to richly describe the world, showing its complexity and variability, and to robustly model the world, showing its relationships and regularities. We argue in this volume that engaging in comparisons of a few, well-understood cases reduces this tension.⁸

This perspective about social inquiry based on small-n comparative studies is closer to the emerging school of 'scientific realism' in philosophy of science. Ruth Lane explains the basic tenets of this school in the following way, which also captures the aims of this research project.

⁸John R. Bowen and Roger Peterson (1999), "Introduction: Critical Comparisons", in Bowen and Petersen (eds.), *Critical Comparisons in Politics and Culture*, Cambridge: Cambridge University Press, p.1.

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Where positivism judged research on statistical significance, which could be satisfied by correlations between variables that were conveniently available, realism demands scientific significance, a deeper search into actual political processes and the development of explanations that satisfy an audience of peers, lay persons and officials, all of whom demand real answers.⁹

In addition to the small-n research design, the comparison between Belgium and the Federal Republic of Germany is further limited to a paired comparison between two substate units for each country and two policy areas. Details explaining the choices are explained in the next section, but the reason for such a limited focus deserves some clarification beforehand. In addition to manageability, a focused comparison allows for more reliable conclusions regarding the theoretical issues at play. William Riker has suggested that focusing on well-defined small events rather than undefined grand questions is a more promising way for scientific progress.¹⁰ Building on Riker's point Miriam Golden argues that:

[A] narrow focus to attain a proper solution is a better research strategy than a broad focus that fails to generate conclusive results...By narrowing the focus of the phenomena under study, we reduce the trade-off between analytic rigor and empirical accuracy.¹¹

This research project also seeks to strike the satisfactory balance between analytical rigour and descriptive accuracy which Golden draws attention to. Having established the methodological concerns driving the research project, the following section will explain the logic behind the choice of the case studies and the particular policy areas under examination.

⁹ Ruth Lane (1996), "Positivism, Scientific Realism and Political Science: Recent Developments in the Philosophy of Science", *Journal of Theoretical Politics*, 8:3, p.378.

¹⁰ William Riker (1990), "Political Science and Rational Choice", in James E. Alt and Kenneth A. Shepsle (eds.), *Perspectives on Positive Political Economy*, Cambridge: Cambridge University Press, pp.170-1.

3. Comparing Belgium and Germany

The most powerful justification for using the comparative method is Alexis de Tocqueville's masterful remark: "without comparisons to make, the mind doesn't know how to proceed". Without juxtaposing these two cases, it would have been impossible to highlight the social factors that account for institutional change. Germany and Belgium thus form a paired comparison which isolates social structure as the independent variable in this study. It is not the conclusion that the two cases are comparable, but in fact, the starting point for scientific inquiry.

In order to isolate social structure in explanations for institutional change, one has to build a 'most similar system' research design. In other words, the research design has to ensure that the cases are reasonably alike, and focus on the differences which separate them. The assumption is that factors common are irrelevant in explaining the differences. Other than the phenomenon to be investigated the rest should be as similar as possible. No two cases are exactly the same, but one can limit the number of potential competing explanations by selecting cases that are reasonably close.

Both Belgium and Germany are industrialised and stable West European democracies who are both EU and NATO member states. But there is an obvious difference in terms of size and population. The research project tries to eliminate this asymmetry by focusing on two substate entities from each country. In Belgium, the two

¹¹ Miriam Golden (1999), "Case Studies in Contemporary Job Loss", in John R. Bowen and Roger Peterson (eds.), *Critical Comparisons in Politics and Culture*, Cambridge: Cambridge University Press, p.116.

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constituent linguistic communities are compared with two West German Länder. This enables a reliable most-similar-systems comparative study of federal institutional change.

As discussed in Chapter I, the German and Belgian case studies represent an interesting pair: the strictly decentralised federal structure of the Federal Republic of Germany moved towards centralisation at the same time as the unitary Belgian state was devolving its powers to constituent substate communities. In order to explain these simultaneous processes of change in opposite directions, the research project conducts a paired comparison of the Flemish and French communities of Belgium with two German Länder, Baden-Württemberg and North Rhine-Westphalia.

In the Belgian case, the choice of the substate entities is preordained, i.e. there are no other. The choice of the two German Länder, on the other hand, is an important one in order to narrow the focus down to the ethno-linguistic social structure. The choice should eliminate alternative explanations for centralisation. In other words, the chosen two should be those who are least likely to be dependent on the centre and the left-right divide should be incorporated into the research.

Baden-Württemberg, situated in the south-west corner of the German federation, has a population of over 10 million. Baden-Württemberg's population is divided almost evenly between Protestants and Catholics. North Rhine-Westphalia, on the other hand, is the most populous Land in Germany with a population of almost 18 million, again with an even divide between the two denominations. Both Baden-Württemberg and North Rhine-Westphalia are economically strong Länder with large territories and populations. This suggests that, they have the economic and political resources for autonomous action. North Rhine-Westphalia is a Land with a consistent left voting record, while

Baden-Württemberg has a Christian Democrat voting tradition. In addition, both are post-war creations by the Allies. The choice of such two subunits eliminates alternative explanations for nationalisation based on size, dependency or partisan political traditions. Further details concerning the selection of the two Länder are provided in Chapter V.

One important point is the choice of terms to denote tendencies towards centralisation and decentralisation. In Germany, the term 'nationalisation' seems to capture the complexity of the process towards congruence. Political institutions were not only centralised in the formal sense, but this process was complemented by a standardisation of Länder-based public policies leading to uniform all-German outcomes. In Chapter III under the subheading of 'Federalism in German Political Thought', related terms like unitarisation, centralisation, standardisation and uniformity are discussed.

In Belgium, on the other hand, the term 'communitarisation' reflects the decentralist tendencies better. In addition to formal decentralisation, control over some competences were devolved to the constituent linguistic communities while they were formally still situated at the centre and some federal public policies were divided into two linguistic halves. Besides, it is the term used by Belgians themselves (i.e. *communautarisation* / *communautarisering*) to describe the process towards congruence in their country. The details of the communitarisation process in Belgium are provided in Chapter IX.

Another issue that deserves clarification is the choice of the two policy areas to be investigated, i.e. education and mass media. The Basic Law of 1949 gave the German Länder exclusive jurisdiction over cultural policies, in other words the so-called cultural sovereignty (*Kulturhoheit*). Education and mass media were the two subcategories under

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the heading of cultural policy. At the same time in Belgium, these two policy areas were within the jurisdiction of the central government. Fifty years later, Belgium has communitarised education and media while in Germany many aspects of education and media have been nationalised by (a) either a nation-wide standardisation of Länder policies, or by (b) bringing the Federal Government into exclusive Länder jurisdiction, or by (c) the creation of national bodies to administer these policies. Since education and media were the only policies within the exclusive jurisdiction of the Länder, the comparison between Belgium and Germany becomes a theoretically interesting one. In all other policy areas where the Federal Government had joint responsibility with the Länder, one cannot build this contrast between Belgium and Germany. There would be many complicating factors that arise from shared responsibility which then could be seen as potentially centralising pressures.

The research project does not examine the substantive contents of education and media regulation in detail, these policy areas are examined in order to determine the tendencies towards nationalisation or communitarisation. To demonstrate the processes of congruence, findings from the empirical inquiry on these two public policies are presented in a similar format, but the empirical research followed different lines of examination: in Germany, education and mass media can be studied separately, in Belgium they are enmeshed within the communitarisation debates which led to the successive state reforms. The presentation, however, is done in a similar way in order to highlight the contrasting tendencies of centralisation and decentralisation.

4. A New Multi-Level Europe

In an increasingly integrated Europe, it is almost impossible to talk about contemporary politics without bringing in the European Union. One cannot study the domestic politics of member states without accounting for the impact the European integration process has on the political landscape, and of course, vice versa. The role of the European Union in reducing the centrality of the national level is recognised by most observers. The altered face of European politics characterised by the increasing salience of the substate and supranational levels at the expense of the member state one has led to a body of work which defines Europe as a multi-level entity composed of substate regions, member states and European Union institutions (Marks, Hooghe and Blank 1996; Hooghe 1995; Jeffery 1996; Loughlin 1996; Bulmann 1994; Mazey and Mitchell 1993; Leonardi and Nanetti 1990; Keating and Jones 1985; Marquand 1991; Coombes 1991). Marks, Hooghe and Blank describe this layered perspective as follows:

As a whole, European Union decision making can be characterised as one of multiple intermeshing competences, complementary policy functions, and variable lines of authority - features that are elements of multi-level governance¹².

Multi-level Europe does not mean that the national level has lost its importance, but it suggests that the substate and supranational levels have increased their standing as a result of the European integration process. Regions like Scotland and Catalonia have made use of the opportunities multi-level Europe provide and have recently asserted their distinctiveness at the European level. But while the EU allows the regions to assume a much stronger role in European politics, it also acts as a cap on the process of devolution

¹² For example see, Gary Marks, Liesbet Hooghe and Kermit Blank (1996), "European Integration From the 1980's: State-Centric v. Multi-Level Governance", *Journal of Common Market Studies* 34, No 3.

since its Constitution is based on the inter-state treaties of Rome and Maastricht. For example, the German Federal Government takes advantage of Article 24 of the Basic Law, which gives the Federal Government the responsibility over foreign policy, to conduct its European policy even in areas where the Länder enjoy exclusive competences. In Belgium, on the other hand, the substate units have devised mechanisms to continue conducting a uniform Belgian European policy.

Kerremans and Beyers note that EU issues were high on the agenda during the 1993 Belgian state reform in contrast to the state reforms of 1970, 1980 and 1989 which were dominated by domestic issues. The explanation they provide is the problems with the implementation of EC Directives and the newly acquired foreign policy competences of the substate entities which made the coordination of EU policy necessary¹³. Despite the domestic divisions, Belgium still has to speak with one voice as a member state at the Council of Ministers of the EU. As a result, the substate entities and the federal government have a joint interest in reaching a common Belgian position in the Council¹⁴. Article 146, as revised by the Maastricht Treaty, allows substate representation at the Council meetings, however, member states cannot split their votes and regardless of the composition of the representatives, the voting is binding on the member state as a whole. Differently put, since Belgium cannot split its five votes it either has to speak with one voice or abstain from voting. In order to ensure consistency of the Belgian position at the EU, the federal government and substate entities have signed a cooperation agreement

¹³ Bart Kerremans and Jan Beyers (1998), 'Belgium: The Dilemma Between Cohesion and Autonomy', in Kenneth Hanf and Ben Soetendorp (eds.), *Adapting to European Integration, Small States and the European Union*, London and New York: Longman, p.16.

that regulates the coordination and the representation.¹⁵ The efforts of the institutions traditionally responsible for coordinating the Belgian European policy, i.e. the Directorate General for Political Affairs of the Ministry of Foreign Affairs and the Permanent Representation at the EU, are increasingly supplanted by informal and spontaneous networks.¹⁶ To sum up, the new opportunities available to the substate entities in a multi-level Europe are capped by the role member state governments play in representing 'national' positions at the EU institutions.

At the end of the day, the substate, member state and supranational levels of governance are altering the face of traditional European politics. The multi-level European entity produced by the European integration process is now part of contemporary politics. However, its explanatory value for this puzzle at hand is limited. What we have is both decentralising and centralising trends in a paired comparison. Both cases have been members of the European Communities experiment from the outset. Both Belgium and the Federal Republic of Germany were a part of the original six member states of the European Coal and Steel Community of 1951 and the European Economic Community and the European Atomic Agency of 1957. They have both actively pushed for further integration with the 1987 Single European Act and the 1992 Maastricht Treaty on the European Union. Since both are within the EU and have similar

¹⁴ Bart Kerremans and Jan Beyers (1996), "The Belgian Sub-National Entities in the European Union: Second or Third Level Players?", in *Regional and Federal Studies* Summer 1996, Vol.6, No.2, pp.47-51

¹⁵ This agreement of March 1994 sets the procedures for coordination between the federal government, the communities and the regions; and regulates the composition of the Belgian representation at the EU Council of Ministers. Kerremans and Beyers (1998), *Ibid.*, p.22.

¹⁶ Hooghe draws attention to the preference that decision makers have for informal contacts over institutionalised exchange. Liesbet Hooghe "Belgian Federalism and the EC" in Barry Jones

pro-European policies, there is no variation across cases. The usefulness of 'multi-level Europe' in explaining the institutional changes in opposing directions in these two cases is therefore limited.

5. Organisation of the Study:

The following chapters present two detailed theoretically-driven case studies.. Each case study is composed of five chapters. The first chapters of the case studies provide basic historical and political background. Chapter III entitled *Germany: A History of Unification through Federalism* sets the German case in its historical context. In particular, this chapter deals with the role federalism has played in German history and the various formulations of federalism in German political thought. The chapter also includes a discussion of the German political parties and the voter base they represent. Chapter VIII on Belgium entitled *Belgium: A Deeply Divided Society* provides a similar historical background to the Belgian case. The discussion centres around the theme of the division between Francophones and Flemings in Belgium and the political parties which occupy the centre stage in representing this social cleavage.

The second chapters of each case study trace the broad patterns of change in the two cases. More precisely, chapter IV entitled *Federal Germany and its Non-Federal Society: 1945-1995* looks at the centralist tendencies in the Federal Republic of Germany. Here the main line of inquiry follows the contrast between the institutional decentralisation of the Bonn Republic and the societal unity of the German nation.

and Michael Keating (eds.), *The European Union and the Regions*, Oxford: Clarendon Press,

Chapter IX, *Communitarisation of Unitary Belgium: 1945-1995*, on the other hand, outlines the process of communitarisation the Belgian state went through. A discussion of the ethno-linguistic divisions within Belgian society is followed by an overview of the federalisation process which turned this once unitary state into a federal polity through consecutive state reforms.

The third chapters of the case studies set up the parameters for research and outline the issues, actors, policies and institutions which will be discussed. Under the title *Studying Nationalisation and Institutional Change*, Chapter V describes the steps carried out during empirical research on Germany and explains the reasons for emphasising the experiences of two German Länder, North Rhine Westphalia and Baden-Württemberg. Chapter X on Belgium entitled *Studying Communitarisation and Institutional Change* also describes the framework employed for inquiry. There is a discussion of the impact societal divisions have on public policy concerns in Belgium and helpful ways to interpret the developments.

The last two chapters of each case study constitute the core of the empirical research. These chapters present an analytical narrative of the changes in the policy areas of education and media as institutions gradually became congruent with the underlying social structure. These core chapters contain much of the empirical evidence which is presented by an analytical narrative focusing on the significant turning points in the evolution of the institutions. It is here where the structural macro-level argument interacts with actors and processes at the micro-level, thus documenting the historical process towards congruence.

p.143; also see B.Kerremans and J.Beyers (1998) in *Ibid.* pp.28-29.

II. Methodology

Most of the theoretical issues were discussed in the previous chapter. Chapter I laid out the building blocks of the theory of congruence and the concepts being used. In order to place the theory of congruence within the comparative federalism literature, an extensive literature review was also carried out. In particular, the focus of the review was on the interaction between society-based perspectives and institutionalist approaches. These questions about society and political institutions were set within the broader context of comparative politics. The present chapter on methodology has followed this theoretical discussion by dealing with some of the methodological concerns. There is a discussion of the comparative method in light of the recent debates on scientific inquiry in the social sciences. In addition, the choice of the two policy areas and the substate units in focus has been explained. There was also a section dealing with the European integration process, the emergence of multi-level Europe, and its impact on national and subnational politics.

The last chapter entitled *Conclusion: Congruence and Institutional Change* highlights some of the interesting theoretical points which emerge from the findings of this study. The most important section of this chapter deals with the applicability of the arguments raised in this research project to federal systems elsewhere. To this end, a plausibility probe is carried out for the theory of congruence in the context of six prominent federal experiences in the industrialised world. The result of the probe suggests that positive indicators exist for the argument in the United States, Canada, Switzerland, Spain, Australia and Austria. An overview of federalism in these six cases shows that the relationship between federal institutions and the underlying social structures tends to follow the pattern established for Belgium and Germany. The research

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project is brought to an end by a summary of the findings and their broader theoretical implications.

As result of the broad scope of the research project, there is an extensive bibliography attached to the end of the dissertation. The bibliography is divided into three separate sections. A general section covering the theoretical literature and comparative federalism is followed by two separate bibliographies for Belgium and Germany. Each section is further subdivided along themes. The above overview on the contents of each chapter was done in order to show the steps being followed; accordingly, it is time to start presenting the cases.

Case I

FEDERAL REPUBLIC OF GERMANY

Chapter III

Germany: A History of Unification through Federalism

I am not worried that Germany has not become one...Before anything
however, it is one in love for each other!

Goethe¹

1. Historical Background

The date for German unification is generally accepted as 1871 when the southern German states acceded to the union led by Prussia after victory over France, but German sources tend to trace the origins back to earlier times. The Holy Roman Empire is seen as the political entity representing the German nation, and hence called the Holy Roman Empire of the German Nation (*Heiligen Römischen Reichs Deutscher Nation*). Thus, German sources are often inclined to discern a longer record of national unity, and consequently, a pattern of historical continuity which is absent in the Anglo-American literature:

After all, despite all the breaks and ruptures, it is possible to draw an all in all plausible historical line starting from the Holy Roman Empire (the so-called Old Reich) with its autonomous

¹ "Mir ist nicht bange, daß Deutschland nicht eins werde...Vor allem aber sei es eins in Liebe untereinander." from a conversation Goethe had with Eckermann, quoted in H. von Srbik (1940), *Goethe und das Reich*, Munich, cited in Ernst Deuerlein (1972), *Föderalismus: Die historischen und philosophischen Grundlagen des föderativen Princips*, Munich: Paul List. p. 72.

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territories and the special role of the everlasting Reichstags to the present-day Bundesrat and the state character of the contemporary German Länder.²

The Holy Roman Empire ended its existence in 1806 as it was run over by Napoleon's armies. As he did in many European countries that he occupied, Napoleon installed a new political system for Germany. Thirty-nine German states, cities and principalities were united under the so-called Rhine Federation (*Rheinbund*) in July 1806. Following Napoleon's defeat, the map of Europe was redrawn at the Congress of Vienna in 1815. Prussia pushed for a centralised German federation which it hoped to dominate, but Austria managed to block its northern Protestant rival's plans and ensured that the German states retained their sovereign character. The outcome was a loose confederation of German states created by the federal act (*Bundesakte*) of 8 June 1815. The federal act brought the 'sovereign princes and the free cities of Germany' (*souveränen Fürsten und die Freien Städte Deutschlands*) together. The final form of this confederation was agreed at the Vienna Treaty of 15 May 1820. According to Article 1 of this treaty:

The German Confederation is an association under international law for the independence and inviolability of those termed States who are in the union and for the preservation of the domestic and foreign security of Germany.³

The central council of the German Confederation was the bicameral *Bundestag* which met in Frankfurt am Main. The largest German states, Prussia, Austria, Bavaria, Hannover and Württemberg had four votes each at the lower house. The remaining

² "Schließlich ist es, trotz aller Zäsuren und Brüche, auch möglich, eine insgesamt historisch plausible Linie vom Heiligen Römischen Reich (dem sogenannten Alten Reich) mit der Autonomie seiner Territorien und der besonderen Rolle des Immerwährenden Reichstages bis zum heutigen Bundesrat wie auch zur Staatlichkeit der heutigen deutschen Länder zu ziehen", in Heinz Laufer and Ursula Münch (1998), *Das föderative System der Bundesrepublik Deutschland*, Opladen: Leske und Budrich, p.41.

³ "Der Deutsche Bund ist ein völkerrechtlicher Verein der Unabhängigkeit und Unverletzbarkeit ihrer im Bunde begriffenen Staaten und zur Erhaltung der inneren und äußeren Sicherheit

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smaller members had between one and three votes depending on their size. The upper house was dominated by Austria where the large states had a vote each against the total of six votes for the remaining members. Prussia led the move towards a German customs union (*Deutscher Zollverein*) between most of the members of the Confederation except Austria and a few others in 1833.

This time period was marked by Austrian and Prussian competition to gain control over the smaller German states, but also growing demands from various influential German figures for an all-German national state. Lack of political unification did not prevent nationalist feelings about German unity. February 1848 Revolution in France fueled the republican ideas about German unity which were brewing for quite a while. The Liberals led the move towards the first German National Assembly convened in Frankfurt am Main in 1848. Liberals and their allies on the left wanted a unitary Republic and the elimination of the dynasties, especially the Hohenzollern and the Habsburgs. The right, on the other hand, was in favour of the protection of regional particularisms. After lengthy negotiations, in its 20 October 1848 resolution the Assembly proposed a compromise:

A new federal model in the form of a federation, which stands in the middle between the unitary government and the former form of confederation, according to the general opinion, can only satisfy the demands, and can only fully correspond to the existing relationships and interests of Germany.⁴

Deutschlands", in Ernst Deuerlein (1972), *Föderalismus: Die historischen und philosophischen Grundlagen des föderativen Princips*, Munich: Paul List. p. 70.

⁴ "Eine neue Bundesform, die zwischen der Einheitsregierung und der bisherigen Form des Staatenbundes in der Mitte steht, die Form des Bundesstaates, kann nach der allgemeinen Ansicht allein in den Forderungen genügen, nur sie kann zunächst den bestehenden Verhältnissen und Interessen Deutschlands entsprechen", in Ernst Deuerlein (1972), *Föderalismus: Die historischen und philosophischen Grundlagen des föderativen Princips*, Munich: Paul List, p. 81.

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The rivalry between Prussia and Austria finally led to the 1866 war which resulted in Prussia's victory and the creation of the North German Federation (*Norddeutschen Bundes*) in 1867 under its leadership. The Federal Council of the North German Federation (*Bundesrat*) was dominated by Prussia where it had seventeen of the forty-three votes. The Federal Council was responsible for electing the Federal Chancellor. The powerful Prussian Chancellor, Bismarck, was the main architect of this Prussian led system which had the Prussian King as the symbolic head of state. Following the 1870-1 Franco-German war, many southern German states which had remained outside the Prussian-led union joined the federation. In 1871 the German Federation acquired its new Imperial Constitution and the Prussian King of the Hohenzollern House, Wilhelm I, became the German Emperor. Prussia continued to dominate the new structure as well. It was by far the strongest of the twenty-five members of the union. Prussia by itself made up almost sixty-five percent of the new State's territories and had seventeen of the fifty-eight total votes at the Bundesrat. The closest in size to Prussia was Bavaria with six votes while most of the remaining states had merely a vote each.

In a well-known strategic move Bismarck introduced direct universal male suffrage to the second house of Parliament, the *Reichstag*, in order to counter the Liberal opposition to his autocratic rule. This was coupled with the creation of a welfare-state to check the emergence of working-class socialism and middle-class liberalism as potential challenges to his rule. The Reichstag replaced the Bundesrat as the hub of German politics and became the arena for party competition. All German males of twenty-five years of age, with a minimum of a year of residence in the member state they were voting in, had the right to vote for Reichstag elections.

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In general, Liberals and Social Democrats viewed the federal principle of the state as an impediment to parliamentary democracy since it allowed small German monarchies to continue to exist and potentially block the democratic reforms that might be implemented at the centre. The centralist predisposition was certainly shared by Bismarck and his allies as well. Occasionally there would be resistance from Länder governments and bureaucracies, but most of the opposition came from smaller conservative groups who tried to resist the unitarisation and centralisation processes.

Throughout Western Europe the situation was much the same; Liberals and Social Democrats wanted unitary central states with strong parliaments to carry out reforms, while proponents of federalism and decentralisation were often reactionary peripheral alliances between landed interest and clergy. However, by securing the support of the land-owning Junkers, Bismarck was able to marginalise the peripheral opposition.

Religion, or more precisely Catholicism, gradually emerged as a uniting force for those opposing the Prussian state consolidation efforts. The rivalry between Prussia and Austria for German unification had brought in a religious element to the conflict. Prussia was the Protestant side and Austria represented the Catholic one. Prussia had emerged as the successful side bringing about German unification by uniting most of the German-speaking lands and it had ended up acquiring territories with Catholic majorities or where Catholics constituted significant parts of the population. Two Catholic areas in Rhineland, i.e. the Palatinate and Westphalia, were added to Prussian territories by the Congress of Vienna. There was also a sizable Catholic minority in Württemberg, and predominantly Catholic Baden was ruled by a Protestant House. Prussian leadership was

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inclined to view its Catholic citizens with suspicion, fearing that their loyalties lied elsewhere, i.e. to Vatican and to the representative of the Catholic cause, Austria.

While many Protestant Churches were Lutheran state Churches presided by the heads of state in the constituent Länder, the Catholic Church was free from political control and had direct links to the Vatican. The first conflict between the aspirations of the German Reich and the Catholic Church was over the control of education. In the Lutheran Länder, Churches had simply become agents of the state and therefore did not oppose the expansion of state education. The Catholics, however, went on the defensive against state education. The ensuing tension between the Catholic Church and the State led Bismack to unleash his 'Cultural War' (*Kulturkampf*) against Catholics in 1870. Many Catholic schools were banned, the appointments of priests and bishops were brought under state control, Catholics whose patriotic loyalties had now become doubtful were purged from bureaucratic ranks. Bismarck also had the strong support of the Socialists and Liberals who tended to view organised religion as a barrier to democracy and progress.

As voice of Catholic defence, the Centre Party (*Zentrum*) became a force which united all Catholics across class and ideological affiliation. The Catholics isolated themselves into their cultural milieu and stayed outside the political conflicts between the Liberals, Nationalists and Socialists which dominated the national political scene. Since the Catholic working class was a part of the Catholic socio-cultural milieu, it was only the Protestant working-class which ended up developing a 'class' identity.

The federal structure was not a sufficient safeguard for the Centre party as all decisive political battles were fought in Berlin. The Prussian predominance in the

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German Reich between 1871 and 1918 has led many observers to question the federal principles which was supposed characterise the political structure. For example, Karl Heinz Walper labels the federal structure of the Second Reich as a 'federalism of appearance' (*Scheinföderalismus*)⁵.

The Weimar Republic, which replaced the federal German Reich in 1918, had strong unitary characteristics with some representation for the Länder. The discussion during the Second Reich of 1871-1918 had been whether or not the political structure should be a new federation (*Bundesstaat*) or a confederation (*Staatenbund*) along earlier experiences. During the Weimar Republic confederal ideas had entirely lost their relevance and the discussion was now one between choosing a federal model or a unitary one. The result was an uneasy balance between the two political principles. What had not changed, however, was Prussian dominance. Despite the loss of its territories, Prussia still constituted more than half of Germany's land mass and population.

The Centre party continued its presence during the Weimar Republic as the representative of the Catholic population. The three other main parties, i.e. Conservatives, Liberals and Social Democrats, depended on the Protestants for support. The Centre Party, however, was no longer marginalised and became an important political actor within the fluctuating Weimar politics. It had strong ties with the Bavarian People's Party (*Bayerische Volkspartei*) and participated in almost every coalition government. It gradually became a broader right-wing party committed to social conservatism and shed its character of a narrow Catholic alliance of different classes and ideological positions.

⁵ Karl Heinz Walper (1966), *Föderalismus*, Berlin: Colloquium Verlag, p.24.

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The government during this time period was often a coalition of the Centre Party, Social Democrats and progressive Liberals. But increasingly the system came to a standstill as the growing animosities between left and right paralysed Weimar politics. The quasi-federal political structure aggravated the problem.

The demise of the Weimar Republic partly originated from an unsuccessful balance between federal principles and unitary ideals. The attempted merger between Weimar's strongest constituent state Prussia's Land organs and central German institutions in 1932 in order to stem political violence was annulled by the Constitutional Court. Prussia's disregard for the federal divisions led the other states to support the Court's position. The climate of increased tension between left and right and bickering between democratic organs paved the way for the electoral success of the German National Socialist Workers Party led by Adolf Hitler in the March 1933 elections. The following years witnessed strong centralisation as all remnants of the federal system were steadily replaced by the unified control of the National Socialist State and the personal authority of the Führer. The rest is well-known.

2. Federalism in German Political Thought

One major difference between Belgium and Germany is the long-standing legacy of federalism in German political thought. In Belgium, by contrast, there is no comparable philosophical tradition. Federalism in Belgium is a very recent phenomenon, a product of the last twenty years. This points out to a major distinction between German and Belgian notions of federalism: in Belgium, federalism has been the outcome of a process of

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devolution as subunits have demanded more self-rule. In Germany, on the other hand, federalism has historically been used as a tool towards the political unification of Germans. The institutional structure of Federal Republic of Germany was based on Allied designs, but the intellectual heritage of earlier theories of federalism must have found its way into the workings of the federal system of the Bonn Republic.

Important examples of the German tradition of federalism theory are: Georg Waitz (1853) *Das Wesen des Bundesstaats*, Max von Seydel (1872) *Der Bundesstaats Begriff*, Georg Jellinek (1882) *Die Lehre von den Staatenverbindungen* and Otto Gierke (1868) *Das deutsche Genossenschaftsrecht*, and more recently, Ernst Rudolf Huber (1958) *Deutsche Verfassungsgeschichte seit 1789*. But by far, the most influential German thinker on federalism has been Carl Schmitt. His 1928 work *Verfassungslehre* has had a major impact. His work was often associated with the conservative causes during the Weimar period, and later he became closely connected with National Socialism. To give an idea of his conceptualisation of federalism two brief points from his *Verfassungslehre* are cited below:

The linkage of democracy and federalism leads organizationally to a distinctive type of state -a federal state without a federal foundation...The federal foundation and federalism itself are destroyed by the democratic concept of the constitutional power of the whole people.⁶

Federation is legally and politically possible only when there is homogeneity. Substantial homogeneity is the essential precondition of every particular constitutional provision. Where this is lacking, federation is a futile and deceptive enterprise.⁷

⁶ Carl Schmitt (1928), "The Constitutional Theory of Federation", edited and translated by G.L. Ulmen from the *Verfassungslehre des Bundes*, Fifth Edition, Berlin: Duncker and Humbolt, in *Telos* 1992, Vol.91, p.55.

⁷ Carl Schmitt (1928), "The Constitutional Theory of Federation", edited and translated by G.L. Ulmen from the *Verfassungslehre des Bundes*, Fifth Edition, Berlin: Duncker and Humbolt, in *Telos* 1992, Vol.91, p.40.

Despite the time-honoured tradition of German political thought on federalism, there is a great deal of confusion and disagreement over various aspects of federalism in Germany. The following excerpt is an interesting glimpse into the assortment of views held on federalism in Germany. Under the heading 'Federalism- Unappreciated or Unknown?', Ernst Deuerlein presents a collection of headlines from articles on federalism published in German newspapers and journals:

Has federalism failed? - Nationalism and federalism / structural principles of the old and the new Europe? - Occupation's federalism on high gloss? - Federalism in television test - German reality against Chancellor federalism - From a sick to a healthy federalism - Federalism: Design from yesterday or revolution of tomorrow? - Chancellor federalism pushed to the front: New dangers for the federation - Imperturbable federalism under the magnifying glass - Federalism in the technological age - Overdue reform: Crisis and probation of federalism - We are seeking a new federalism - Discomfort with federalism - On the spirit and unspirit of federalism - Renaissance of federalism? - Federalism in culture - 'Great society: Plan for a 'creative federalism' - Federalism of the future - On the road to cooperative federalism - From legislative to administrative federalism - Subsidies: A danger of federalism? - Federalism: Restraint or push? - Facade federalism - The Federal Republic is sick from too much federalism.⁸

Deuerlein believes that federalism acquires different meanings and characteristics due to this vagueness. He is not satisfied with the conceptual inexactitude and laments the fact that federalism has come to be seen in the following terms simultaneously:

...as relic of the reeducation obsessed occupation powers, as a disguise for Bavarian particularism hostile to the whole state (*Gesamtstaat*), as pretext for Catholic distinctiveness and

⁸ "Föderalismus - verkannt oder unbekannt? - Hat der Föderalismus versagt? - Nationalismus und Föderalismus/ Strukturprinzipien des alten und des neuen Europa - Besatzungs-Föderalismus auf Hochglanz? - Föderalismus im Fernseh-Test - Deutsche Wirklichkeit gegen Kanzlei-Föderalismus - Vom kranken zu einem gesunden Föderalismus - Föderalismus: Schablone von gestern oder Revolution von morgen? - Der Kanzlei-Föderalismus drängt vor: Neue Gefahren für den Bund - Unbeirrbarer Föderalismus unter der Lupe - Der Föderalismus im technischen Zeitalter - Reform überfällig: Krise und Bewährung des Föderalismus - Wir suchen einen neuen Föderalismus - Unbehagen am Föderalismus - Vom Geist und Ungeist des Föderalismus - Renaissance des Föderalismus - Föderalismus im Kulturellen - 'Große Gesellschaft: Plan eines 'schöpferischen Föderalismus' - Der Föderalismus vor der Zukunft - Auf dem Weg zum kooperativen Föderalismus? - Vom Gesetzgebungs- zum Verwaltungsföderalismus - Subventionen: Eine Gefährdung des Föderalismus? - Föderalismus: Hemmnis oder Antrieb? - Fassadenföderalismus - Bundesrepublik krankt an zuviel Föderalismus", in Ernst Deuerlein (1972), *Föderalismus: Die historischen und philosophischen Grundlagen des föderativen Princips*, Munich: Paul List, p.9.

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particularism, as an explanation for Hanseatic detachment, or as an instrument for the antiquated bureaucracy.⁹

Despite Deuerlein's complaints about the different ends federalism is put to in German politics, it has to be noted that historical attention to the topic in German political thought has helped to create a rich conceptual terminology. The German language is capable of capturing some of the important nuances the English language has problems with. Federalism, *Föderalismus*, is a political principle about divided political authority. A major German textbook on federalism uses the following description:

Federalism denotes the organisational principle for a segmented community, in which fundamentally equal and autonomous members join an overarching political whole.¹⁰

Federalism in practice, on the other hand, uses a word from another origin, i.e. *Bund*, which means a union. If federalism as an organisational principle is employed within a state then the term *Bundesstaat* is used to describe this federal state. If the principle is between states in order to create a union, then the term used is *Staatenbund*. This union between sovereign states based on federal principles is closer to the notion of a confederation. The confusion that exists in the English language between federalism, federation and confederation is thus averted in German.

Terminological richness exists in subsidiary concepts as well. There seems to be a general consensus over the terms being used which is in contrast with the English

⁹ " ...als Relikt der auf Umerziehung besseren Besatzungsmächte, als Tarnung des gesamtstaatsfeindlichen bayerischen Partikularismus, als Vorwand katholischer Absonderlichkeiten und Eigenarten, als Erklärung hanseatischer Distanziertheit oder als Instrument antiquierter Bürokratie", in Ernst Deuerlein (1972), *Föderalismus: Die historischen und philosophischen Grundlagen des föderativen Prinzips*, Munich: Paul List, p.11.

¹⁰ "Föderalismus bezeichnet das Organisationsprinzip für ein gegliedertes Gemeinwesen, in dem grundsätzlich gleichberechtigte und eigenständige Glieder zu einer übergreifenden politischen Gesamtheit zusammengeschlossen sind", Heinz Laufer and Ursula Münch (1998), *Das föderative System der Bundesrepublik Deutschland*, Opladen: Leske und Budrich, p.15.

language literature. Many terms which are used interchangeably in English are clearly set apart in German. An important distinction which the English language literature does not make is between the concepts of unitarisation (*Unitarisierung*), centralisation (*Zentralisierung*) and standardisation/uniformity (*Vereintlichung*). Unitarisation and centralisation are different paths to uniformity. In Unitarisation there is a conscious effort by the constituent units to reach uniformity.

The degree of unitarisation describes the scale of organisational unification within a state. The stronger the political responsibilities are exerted towards creating fundamentally unified ground norms and unified problem solving as possible, the more unitary the state is.¹¹

Centralisation, on the other hand, describes the institutional/constitutional concentration of power. Uniformity is less of an outcome of deliberate cooperation and collaboration between the constituent units, but more related to the political centralisation in the system. In other words, a political system with institutional division of powers can still produce uniform policies if there is a political will amongst the constituent units. The empirical chapters demonstrate that such a political will has existed among the German Länder, and that subsequent uniformity has exerted centralist pressures on the institutional structure. The political actors who bring about these changes are Länder and Federal Governments, including the bureaucracy and political parties in power. Therefore, it is necessary to provide a brief description of the political parties in the Bonn Republic.

¹¹ "Der Grad der Unitarisierung beschreibt das Ausmaß der organisatorischen Vereintlichung innerhalb eines Staates. Je stärker die politisch Verantwortlichen bemüht sind, über die grundsätzlich einheitliche Grundnormen hinaus auch eine möglichst einheitliche Problemlösung zu erreichen, desto unitarischer ist der Staat.", Heinz Laufer and Ursula Münch (1998), *Das föderative System der Bundesrepublik Deutschland*, Opladen: Leske und Budrich, p.17.

3. Political Parties

Chapter 8 of the Belgian case study includes a section where Belgian political parties are covered in-depth. Since political parties have been the major actors in bringing about the federalisation of the country, such an extensive exploration is necessary for Belgium. In the German case, political parties are a part of the broader social structure which tilted the system towards congruence, but they have not been active agents of change like the Belgian political parties. Their role in the federal changes the country has experienced is an indirect one. An important difference between Belgium and Germany is that German political parties do not represent cultural distinctiveness to the extent that Belgian ones do. The existence of nation-wide political parties is surely a sign of centralisation, but this is an outcome of broader unitary tendencies rather than a cause. It is a reflection of a general trend in the Bonn Republic when political interests surpass the federal demarcations and organise at the national level.

The empirical research covering the fifty years of the Federal Republic of Germany demonstrates no correspondence between political parties and different attitudes towards federalism. The three major parties, Christian Democrats, Social Democrats and Free Democrats have all shared the common disposition to regard educational policy and mass media as issues which should be dealt with at the national level. Consequently, individual characteristics of political parties are not central to the discussion of German federalism. It is, of course, still necessary to provide a brief layout of the political parties of the Bonn Republic; but this is more for sketching out the political background rather than identifying the agents of change.

The years following the end of the war witnessed the emergence of many short-lived political parties. The German Communist Party (*Kommunistische Partei Deutschlands*, KPD) was initially quite influential; but due to its Soviet ties, it encountered a strong opposition from the Allies in the west and was finally declared illegal.

On the right there was also an influential political movement. Refugees from the east had organised themselves into the powerful Block of the Displaced and Disenfranchised (*Block der Heimatvertriebenen und Entrechteten*, BHE). The BHE was later coopted into the Christian Democratic union, but managed to continue exerting strong anti-communist influence. Its impact has especially been strong on the Bavarian CSU.

The *Deutsche Partei* was another right-wing party separate from the Christian Democratic movement mobilising to fill the vacuum on the political right. It did not survive long, however, as most of its members were absorbed by the Christian union parties who managed to create a catch-all alliance on the right of the political centre.

The Christian Democratic parties of the Bonn Republic are new post-war political formations. But both the Christian Democratic Union (CDU) and the Christian Social Union (CSU) of Bavaria share a common heritage in the Catholic Centre party. After the war, however, the leaders of the Christian Democratic movement decided to appeal to a much broader spectrum of voters, and thus avoided a direct denominational link with the Catholic Church. Consequently, the Christian Union parties have managed to attract a considerable portion of the conservative Protestant vote. Despite its occasional dissenting

rhetoric, CSU is firmly entrenched within this Christian union. In fact, it can be seen as CDU's provincial wing in Bavaria.

Within the new political system set up in 1949, the CDU sought to be a *Volkspartei*, i.e. a people's party attractive to all Germans. Its appeal went beyond the traditional constituencies of centre-right parties to attract working-class voters. Its ability to attract diverse support from both Catholics and Protestants and from all social classes made it a catch-all party. There is, however, still a very strong Catholic character to the Christian Union. In the immediate post-WWII, CDU drew strength from the popularity of its leader Konrad Adenauer who served as chancellor from 1949 to 1963.

The CDU/CSU union stays clear of ideological issues and prefers pragmatism and tries to portray such an image. It follows an active role in managing the economy while not altering its market and free enterprise orientations. During its long years in power, the Christian union has enacted a wide range of social-insurance and social-welfare benefits, giving Germany a vast welfare state.

After the unification, CDU extended its base and became the leading party in the east save for Berlin. The fact that Protestant East Germans who had lived under fifty years of atheistic Communism voted for Christian Democracy came as a surprise to many observers. But recently their success has been shadowed by allegations of financial irregularities. Following the electoral defeat in 1998 Helmut Kohl had resigned from the party chair. But the party got mired in a corruption scandal concerning undocumented contributions to the party coffers during Kohl reign. Kohl's successor Wolfgang Schäuble was also implicated in the scandal along with his predecessor. Last April, an

easterner, Andrea Merkel became party chair, and she has since tried to repair the tarnished image of the party.

While the Christian Democrats represent the centre-right, centre left is held by the Social Democrats. The German Social Democratic Party dates back to the late-nineteenth century. Throughout its early years in the Bonn Republic, the SPD struggled to reconcile its Marxist notions of revolution with its commitment to parliamentary democracy. This tension seriously undermined its electoral appeal beyond the radical leftists. But at the 1959 party congress in Bad Godesberg, SPD adopted a new party programme which was a major turning point because the party decided to break entirely with Marxist ideological principles. Since there was no party to its ideological left, the SPD was able to broaden its political base without losing the radical left vote. As a result of Bad Godesberg, it became a catch-all party not unlike the Christian Democrats. In 1960 the SPD managed to get enough votes to form a government in coalition with the Free Democrats. While Christian union parties still carry a Catholic character, Protestant vote is overrepresented in SPD's constituency.

SPD's economic programme is not very different from that of the CDU/CSU. They share the same attachment to low inflation and a stable currency, to economic growth and a wide-ranging welfare state. The first SPD chancellor of the Bonn Republic Willy Brandt, and his successor Helmut Schmidt have brought the party into the mainstream centre of German politics. In due course, they lost some of the radical leftist elements who left the party to join the ranks of the burgeoning Green movement.

During Kohl's reign, the Social Democrats were constantly defeated in federal elections, unable to unseat the Christian union/Free Democrat coalition. Following

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Rudolf Scharping's and Oskar Lafontaine's unsuccessful bids to replace Kohl, Gerhard Schröder finally managed to form a coalition government with the Greens and replace the Christian Democrats. Despite the problems within the party pitting the radical leftist elements against the business-friendly centrist ones, the economy seems to be on the recovery path and the party is faring well in recent opinion polls and Länder elections.

A much smaller third party has traditionally played a part incommensurate with its size in the Bonn Republic. The Free Democrat party has assumed the important role of a coalition broker. Following the unification, the Free Democrats have witnessed their electoral support erode, and have even ran the risk of failing to pass the five per cent threshold necessary to enter the Bundestag. Recent polls suggest that they are in the process of regaining some of the support they have lost in the last ten years.

The Free Democrat Party embodies the European liberal tradition. They are liberals both in social and economic issues and have traditionally championed free-thinking anticlericalism. As religion has lost its centrality in European politics and as many social reforms are implemented and civil liberties firmly entrenched, the Free Democrats have lost much of their *raison d'être*. But it is likely to remain a third option party. The FDP is essentially seen as a middle-class Protestant party with strong support among white collar workers, civil servants and liberal professionals. It has also been the choice for protest vote for those disillusioned with the performance of the two major parties.

Historically, the German Liberals have been strong supporters of a unitary German republic, or a federal state with strong unitary characteristics. Their impact on the Bonn Republic has been minimal, but a trace of the intellectual heritage is still

discernible in the Free Democrats' stance on federal issues. They generally tend to favour national level solutions to Länder level ones, but their size does not warrant inordinate attention. In other words, it would be misleading to credit the Free Democrats with the unitary tendencies which has led to the federal changes of the last fifty years.

Recently, the Greens (*Die Grünen*) have replaced the Free Democrats as the third party. But for the time period under focus in this research project, their impact has been marginal. The Greens have emerged in the late seventies as the federal structure had already changed in response to the unitarist tendencies. The Greens are a political party which emerged out of the environmental and anti-nuclear protest movements of the 1970s. It is a combination of radical leftists and ecologists together with various peace and counter-culture groups. Following the unification they have formed a union with the East German *Bündis 90* group of idealist intellectuals who were the initiators of the demonstrations in the east. The Greens generally have tended to get support from a younger and educated constituency, but lately they have run into major problems. Recent polls suggest a steady erosion in their support as the party is divided between those who want a more mainstream role for the party, exemplified by the current Minister of Foreign Affairs Joschka Fischer, and those who want the implementation of radical policies. On the issue of federalism the Greens lack a distinctive agenda, much like the other parties, and have decided to fight their battles on the national stage.

Due to the five per cent threshold, fringe parties have so far failed to gain representation in the Bundestag. The former Communist party in East Germany, now under the name Party of Democratic Socialism (PDS), is gradually transforming itself

into a regional protest party. PDS is likely to remain a player in local elections and Länder elections, but a nation-wide success seems unlikely.

The extreme right is divided between the Republikaner, the Deutsches Volks Union (DVU) and the Nationaldemokratische Partei (NDP). Their success has been more sporadic and they have failed to move beyond a loose alliance of extreme right fringe elements. In the recent years DVU has steadily increased its support. Recently it got 13% of the vote in Land elections in the Saxony-Anhalt. The Republikaners, on the other hand, have failed to match their 1992 victory in Baden-Württemberg when they received 11% of the vote. More recently, the Nationaldemokratische Partei (NDP) has emerged as another party of the extreme right. Its electoral performance is yet to be seen.

Chapter IV

Federal Germany and its Non-Federal Society: 1945-1995

Wir sind ein Volk [We are one nation/people]

The slogan of the demonstrations in East Germany and Berlin, 1989

1. The Federal Republic of Germany

The federal structure of the Bonn Republic is an Allied design. Within the immediate post-war context, the western Allies were determined to prevent the reemergence of a strong German state comprising all Germans. Germany was divided into four occupation zones under American, British, French and Soviet control. However, it increasingly became clear to the western Allies that the East-West divide was becoming permanent in Europe. The East was under Soviet control and appeared to remain so, as many eastern European States were falling under Red Army sponsored communist rule. Yet, the Allies were not clear about a common policy for the German territories under their control. Americans were in the south and in Bremen, the British occupied the north of Germany and the French were along the western stretch around the Rhine. The Allies clearly did not want to lose Germany to the communists, but at the same time there was little

consensus amongst the Allies concerning the fate of Western Germany. Ideas ranged from separate German States to protectorates and even annexation of its territory by its neighbours. But largely under American leadership, an overall political structure to bind the western zones of occupation came to be accepted as the way forward.

First the American and British zones of occupation were merged into the so-called 'Bizonia', later the French joined in. The Allies had already set up administrative institutions in their zones of occupation. This had been followed by the demarcation of the occupation zones into *Länder*, most of them artificial creations for administrative expediency. Public administration had been purged of Nazi elements and a new political class began to take control of these local attempts at reconstituting German politics. Their ranks were largely composed of Socialists, Communists, Liberals and Christian Democrats. Both the Catholic Church and the Protestant Church were very active in this local political regeneration. The Allies, however, were adamantly predisposed towards restructuring German politics through denazification and reeducation. To this end, they favoured a federal system designed to disperse power and prevent centralisation that could lead to resurgent German nationalism.

The six Allied powers, United States, Great Britain, France, Belgium, the Netherlands and Luxembourg met in London on 1 July 1948 and gave the *Länder* Minister-Presidents of the Western zones of occupation three documents which came to be called the Frankfurt documents. The first document called for a national meeting between *Länder* Minister-Presidents in order to draft a Constitution for Germany. The second document asked the *Länder* Minister-Presidents to study inter-German border changes between West German *Länder*. And the last document asked them to lay down

the basic points for the future. The Minister-Presidents met in Koblenz over 8-10 July 1948 but failed to come up with a plan acceptable to the Allies. They were ready to put together a working arrangement, i.e. a so-called Basic Law (*Grundgesetz*) for the western zones of occupation, but were reluctant to draft a Constitution for all of Germany. And even on this Basic Law there were many disagreements. In general, it can be said that the Social Democrats were in favour of a federal system with strong unitary characteristics while the Christian Democrats wanted a system which gave the Länder considerable degree of self-rule. These two parties had emerged as the main political forces in West Germany. In addition to the two main parties, the smaller Free Democrats also favoured a strong centre. Nevertheless, against the Nazi background and Allied occupation, no political group could afford to openly advocate the creation of a strong and reunited Germany. The fate of the federal system eventually depended more on the wishes of the occupation authorities than the discussions between German politicians.

The Länder Minister-Presidents Conference decided to set up a committee to study the documents and a meeting was scheduled to take place in Herrenchiemsee between 10 and 23 August 1948. Here, the Länder representatives established a Parliamentary Council (*Parlamentarische Rat*) composed of 65 members. The Parliamentary Council met in three subcommittees to discuss the issues; i.e. the head committee (*Hauptausschuss*), the committee for competences (*Zuständigkeitsausschuss*), and the committee for basic principles (*Grundsatzausschuss*). The Parliamentary Council carried its deliberations from September 1948 to May 1949 with aim of drafting a Constitution for West Germany. The Allies often intervened to make their points known. The draft Constitution called the Basic Law (*Grundgesetz*) was accepted on 8 May 1948

by a vote of 53 for and 12 against. The draft was closer to the Christian Democrat's federal model with strong Länder powers, which was also favoured by the Allied authorities, especially the Americans. But it also created a directly elected federal Parliament advocated by the Social Democrats and the Free Democrats.

After the Allies' approval the Basic Law was sent to Land Parliaments for ratification. The Allies had determined that approval by two thirds of the Länder was enough for its adoption. The Basic Law was subsequently ratified by ten West German Länder but it was rejected by the Land Parliament of Bavaria (*Bayerische Landtag*) where 101 deputies voted against, 63 for and 9 abstained. Following the rejection, however, the Bavarian Landtag voted to join the Federal Republic created by the Basic Law. 97 deputies voted for membership, 6 were against and a 70 abstained in this controversial second vote. So in a strange way, Bavaria decided to join a federation whose Constitution it had voted against. On 23 May 1949, the Basic Law was published and the following day it came into force. The preamble, as revised after the reunification, states that:

The German people in the Länder Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-West Pommerania, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony Anhalt, Schleswig-Holstein and Thuringia have concluded in free self-determination the unity and freedom of Germany. Thereby, the Basic Law is in force for the whole of the German nation.¹

Between the time period between 23 May 1949 and 5 May 1955 when the occupation status of West Germany was repealed and the Allied High Commission was dissolved,

¹ "Die Deutschen in den Ländern Baden-Württemberg, Bayern, Berlin, Brandenburg, Bremen, Hamburg, Hessen, Mecklenburg-Vorpommern, Niedersachsen, Nordrhein-Westfalen, Rheinland-Pfalz, Saarland, Sachsen, Sachsen-Anhalt, Schleswig-Holstein und Thüringen haben in freier

the Federal Republic of Germany had only partial sovereignty (*Teilsouveränität*). Only in 1955 did West Germany join the ranks of sovereign European states, albeit still with special clauses for Allied military presence.

The Basic Law establishing the new state instituted a very decentralised federal structure. Against Nazi background, Allies saw political decentralisation as a way to prevent an expansionist strong Germany and also as a way to denazify and reeducate the German people by preventing centralisation and bringing politics closer to the citizen. The Allied design to disperse political power in Germany was somewhat grudgingly accepted by the new German political class who realised that this was the only chance they had to establish a common political structure for West Germany. For a long while, German politicians remained apprehensive about drafting an 'all-German' Constitution. It was felt that this would permanently seal the East from the West. This explains the choice of the title of the Constitution, i.e. Basic Law (*Grundgesetz*), as it implied a transitional working arrangement for the Western zones. Despite their cooperation with the occupation authorities, German politicians resented many decisions of the Allies which they saw as arbitrary and heavy-handed, but at the same time the Berlin blockade had demonstrated the proximity of the Soviet threat. In this context, an Allied imposed system was deemed better than communist rule.

The federal structure installed by the Basic Law was based on a strict separation of powers. The levels of government were to have exclusive competence over the policy areas entrusted to them. That is to say, they were to perform their functions autonomously through their own financial means. For a small number of policy areas the

Selbstbestimmung die Einheit und Freiheit Deutschlands vollendet. Damit gilt dieses

Basic Law also introduced a system of joint Bund-Länder responsibility. Despite these few areas with concurrent powers, the system was one of two separate levels of government where the Länder enjoyed residual powers (Art.30). However, the federal structure of 1949 was not to remain as it was intended by the Allies:

The Federal Republic gradually assumed unitary characteristics in the last fifty years as the two separate levels of government merged in many areas. Some of this change is attributable to constitutional amendments². But according to Article 79(3), the federal character of the German state cannot be changed by constitutional amendments, therefore, centralising tendencies have manifested themselves by numerous minor skirmishes than a major battle for state reform. Most of the constitutional amendments had direct effect on the Bund-Land relations³, but there has also been a change in the way existing institutions have been used. The strict separation of competences gradually gave way to a mixed system of governance. The first example of this is the financial structure. Article 109 of the Basic Law which created separate and independent financial administrations between the Bund and the Länder was ignored as a unified financial system emerged. As result of consensual cooperative relations between levels of government in many other areas, German federalism acquired an interlocking character⁴.

Grundgesetz für das gesamte Deutsche Volk.”

² Donald Kommers states that in its first two and a half decades, thirty two new Articles, twenty three new paragraphs were added to the Basic Law while sixty amendments were made and five articles were repealed, in Donald Kommers (1989), “The Basic Law of the Federal Republic of Germany: An Assessment After Forty Years”, in Peter Merkl (ed.), *The Federal Republic of Germany at Forty*, New York and London: New York University Press, p.142.

³ Hartmut Klatt (1991), “Centralising Trends in the Federal Republic: The Record of the Kohl Chancellorship”, in Charlie Jeffery and Peter Savigear (eds.), *German Federalism Today*, Leicester and London: Leicester University Press, 125-6.

⁴ Fritz W.Scharpf, Bernd Reissert, and Fritz Schnabel (1976), *Politikverflechtung: Theorie und Empirie des kooperativen Föderalismus in der Bundesrepublik*, Kronberg: Scriptor Verlag.

The federal system based on exclusive competences was slowly replaced by a functional federalism of cooperation and ad hoc committees. The trend towards centralisation has led some observers to suggest the label of a 'unitary federal state'⁵.

In sum, contrary to the intentions of the framers of the Basic Law, Germany moved towards a more centralised and uniform federal system. Along with the process of centralisation, the role of the Federal Council (*Bundesrat*) greatly increased⁶. Although this can be interpreted as a safeguard for regional interests; the very nature of the Bundesrat as an institution representing the collective interests of the Länder at the center renders this development contrary to the spirit of a federal division of responsibilities between levels of government. In other words, the political institutions of the Federal Republic of Germany came closer to reflect the underlying unitary German social structure.

2. The Non-Federal German Society

In general, the borders of German Länder do not correspond to any traditional or historical demarcation. They owe their existence to Allied imposition of administrative decentralisation on the territories under their control in Western Germany. Some of them are amalgamations of past principalities and states, some of them are just arbitrary regional demarcations. The only one with a claim for distinctiveness, Bavaria, traces its

⁵ Konrad Hesse (1962) *Der unitarische Bundesstaat*, Karlsruhe: C.F.Müller.

⁶ Bulmer notes that the the percentage that requires Bundesrat consent (*Zustimmungbedürftigkeit*) has increased from 10% to 50%; in Simon Bulmer (1991), "Efficiency, Democracy and West German Federalism: A Critical Anlaysis", in Charlie Jeffery and Peter Savigear (eds.), *German*

history back to the Bavarian Kingdom under the House of Wittelsbach. Historically, the Bavarian State included the regions of Franconia, Swabia and the Palatinate. The Palatinate is now a part of the Land Rhineland-Palatinate, parts of Swabia are in the Land Baden-Württemberg, and there was massive influx of refugees from Sudetenland, Silesia and Bohemia into Bavaria after the war. Therefore, even Bavaria's claims for historical continuity are not particularly strong. The two city Länder of Hamburg and Bremen are old Hanseatic cities, but their creation had little to do with historical continuity than the expediency of establishing port administrations for the Allies. Particularly, Bremen was solely created for the purpose of providing the Americans, whose zone of occupation was in the south, with a port in the British zone of occupation in northern Germany.

In addition to their rather arbitrary demarcation by the Allies after the Second World War, the Länder were created at a time of massive population mobility. Loss of the eastern territories and Soviet occupation in East Germany had led to an influx of refugees which amounted to one fifth of the population in Western Germany⁷. In addition to the 12 million refugees from the East which poured into West Germany in the aftermath of the Second World War, an additional 3.5 million arrived until the German unification. This continuous influx and mobility helped dilute any cultural distinctiveness that might have existed at the Land level. Consequently, the Länder acquired a character of purely administrative units rather than being representations of any socio-cultural

Federalism Today, Leicester and London: Leicester University Press, p.105 and footnote 5, p.117.

⁷ Urwin states that even by the late 1960's national average of the refugee population was 21 percent. In some Länder the problem was more acute; in Schleswig-Holstein this number was 32.1 percent, in Niedersachsen it was 29.6 percent. Derek Urwin (1982), "Germany: From Geographical Expression to Regional Accommodation", in Stein Rokkan and Derek Urwin

distinctiveness. In 1951 three Länder in the southwest corner of the country were merged into one Land under the name of Baden-Württemberg, and in 1957 the Land of Saarland was repatriated. In sum, it can be said that, notwithstanding the ubiquitous local identities, a sense of separate Länder identity is largely absent in Germany; with the probable exception of Bavaria.

Often there have been arguments for further boundary changes; in the late sixties a Federal Commission even recommended decreasing the number of the Länder to five or six⁸. In fact, the redrawing of boundaries and consolidation of the smaller into larger Länder (*Neugliederung*) has regularly been a part of proposals to reform German federalism⁹. At the time of unification there were ten West German Länder (Schleswig-Holstein, Hamburg, Bremen, Lower Saxony, North Rhine-Westphalia, Hesse, Rhineland-Palatinate, Saarland, Baden-Württemberg and Bavaria) and West Berlin had a special status. The five East German Länder, on the other hand, are new additions as they were created in 1990. To be more precise, these five (Thuringia, Saxony-Anhalt, Mecklenburg-West Pommern, Brandenburg and Saxony) are the recreations of the East German Länder installed under the Soviet rule from 1945-1952. In 1952 they had been replaced with fourteen administrative regions. At the time of the recreation of these

(eds.), *The Politics of Territorial Identity; Studies in European Regionalism*, London: Sage, p.220.

⁸ Arthur Gunlicks (1994), "German Federalism After Unification: The Legal Constitutional Response", *Publius* 24.

⁹ One of the early examples of such proposals includes detailed arguments for the 'rationalisation' of the sub-national units based on economy, population and size. Hermann Brill, Erwin Scheu and C.W. Aubin (eds.) (1950), *Die Bundesländer: Beiträge zur Neugliederung der Bundesrepublik*, Frankfurt am Main: Institut zur Förderung öffentlicher Angelegenheiten.

five new East German Länder in 1990, East Berlin was merged with West Berlin to create the Land of Berlin¹⁰.

At present, the Federal Republic of Germany is composed of sixteen Länder, but the notion of Neugliederung makes frequent reappearances in the public agenda. The most recent case of Neugliederung was the proposal to merge Brandenburg and Berlin. The proposed merger was rejected in a referendum in 1998, but the debate continues. At the end of the day, the artificiality of their origins make the Länder somewhat strange federal entities. The Länder did not establish the federation through a compact between them; in other words, the German federation was not a union set up by already existing political entities. On the other hand, none of the Länder represent ethno-linguistic diversity. The Länder were, therefore, not a product of devolutionary federalism either. These factors all indicate the redundancy of using the term 'constituent units' with a bottom-up connotation to denote the Länder, while they are, in fact, top-down creations set up by the Allies.

The German Länder are not distinguished from one another by ethnicity or language, but this does not mean that other significant social cleavages do not exist in German society. Historically, religion has been the most important cleavage amongst Germans. But the Länder do not neatly correspond to the religious fault lines. In any case, religion has gradually lost its centrality in the German society. In addition to the declining importance of denominational divisions, the twelve million refugees from the

¹⁰ The creation of the East German Länder and the merging of Berlin was carried out through a special law, *Ländereinführungsgesetz*, before the unification. This enabled their accession to the Federal Republic through Article 23 of the Basic Law which is about the accession of the 'other parts of Germany', instead of Article 146 which calls for new Constitution created by 'the German people/nation'.

Protestant East that poured into West Germany after the Second World War changed the denominational division of Germany. Before the arrival of the refugees the country was roughly divided into the Protestant north and east and the Catholic south and west. The loss of Eastern Germany and the influx of refugees led to a new denominational mixture in West Germany. The German Unification and the arrival of the new predominantly Protestant East German Länder has not changed this mixture, since the secularisation process of the Communist rule has diminished the importance of religion in the East. And besides, they have been incorporated into the West German system where denominational divisions have come to mean little.

Historically, religion played a very important role in German politics. As we saw in the previous chapter, especially Catholicism had a central part in the politics of the Kaiserreich and the Weimar Republic. The Centre Party represented the interests of German Catholics during this time period. Consequently, Catholicism came to be closely associated with the Christian Democratic movement. Socialism and liberalism failed to make inroads into the Catholic population and remained political ideologies confined to the Protestant majority. It also has to be noted that National Socialism also enjoyed disproportionate support among Protestants. These voting patterns have somewhat subsided in the Bonn Republic. For the first time German Catholics attained numerical parity with Protestants in the new Federal Republic. This helped them shed some of the earlier ghetto mentality they had assumed in German politics. The Christian Democrats extended their appeal across the confessional divide, and the Catholic working class parted with confessional defensiveness and became open to its class interests.

Despite the new developments in the Bonn Republic, traces of old voting patterns can still be discerned in certain areas. For example, Free Democrats can be still seen as a continuation of the Protestant liberal tradition. Social Democrats, on the other hand, continue to enjoy stronger support among the Protestants, but they have deliberately avoided confessional appeals. Similarly Christian Democrats have made a conscious attempt to shed their confessional image and have appealed to the conservative Protestant middle classes.

Currently, there is a continuing but much weaker correlation between denominational background and voting patterns. Among the Protestants there seems to be more support for third parties; the early parties of the Federal Republic, FDP and more recently Bündnis 90/Greens. In percentage terms there is relatively more support for the Social Democrats than Christian Union parties. Among the Catholic voters there is strong support for Christian union parties, very little third party voting, and the rest of the support going to the Social Democrats. For example in 1969, 34% of the Protestant vote went to CDU/CSU, 52% went to SPD, 7% to FDP and 7% to other. The same year 62% of the Catholic vote went to CDU/CSU, 31% to SPD, and 7% went to FDP and other.¹¹ For the purposes of this research, the important point is that religion divisions do not correspond to the federal divisions of the country. In other words, whatever significance religion might have in political terms, this remains as a nation-wide phenomenon and does not bring a Land-based distinctiveness.

¹¹ "Protestanten und Katholiken bei den Bundestagswahlen", Elisabeth Noelle and Erich Peter Neumann (eds.) (1974), *Jahrbuch der öffentlichen Meinung 1968-1973*, Alensbach and Bonn: Institut für Demoskopie, p. 339.

In the Belgian case study we will see that the Walloon identity is a combination of linguistic distinctiveness and a strong working class heritage. In the Germany case, social class does not have a similar regional character. Of course, class is a politically salient cleavage in German politics, but it is a nation-wide phenomenon and not a base for regional distinctiveness. Social class, therefore, does not have the territorial base to form a federal society that would give the Länder distinctive identities.

In sum, in the Federal Republic of Germany the Länder are not the representatives of substate societal distinctiveness. Even when the Länder have opposed the intervention of the Bund, they have acted together in voicing their demands. When they have resisted Bund intervention, the Länder have been a unified force. Therefore, the issue here is one of the collective action of *subnational units* rather than *substate nations* seeking self-rule. What seems to be substate political mobilisation, is often the collective action of the Länder in the 'nationalisation' of public policies. The centralising tendencies become meaningful if the discrepancy between the societal structure and the political structure is taken as the basic factor that explains change. This pattern becomes understandable within Katzenstein's description of Germany as "a decentralized state and centralized society"¹², in other words, a non-federal society. The following observation made by Hermann Brill right after the acceptance of the Basic Law epitomises the core of the federal question in Germany:

The essence of the question is the issue of power deconcentration, that is to say, the demarcation of the territory...against the unitary tendencies of the societal life in Germany.¹³

¹² Peter Katzenstein (1987), *Policy and Politics in Western Germany: The Growth of a Semi-Sovereign State*, Philadelphia: Temple University Press, p.15.

¹³ "[D]es Wesen der Frage ist die Aufgabe der Dekonzentration der Macht, d.h. der Abgrenzung der Gebiete...gegen die unitarische Tendenzen des gesellschaftlichen Lebens in Deutschland.", Hermann Brill (1950), "Der Typ des künftigen deutschen Bundeslands", in H.L.Brill, E.Scheu

3. Societal Unity vs. Institutional Decentralisation

The incongruence between political institutions of the Federal Republic of Germany and the structure of the German society resulted in pressures towards a closer match. It was not the federal structure which moulded the society into one which better fitted the system set up by the Basic Law; instead the federal structure gradually changed. Details of this process of congruence are presented in the coming chapters. But in general terms, suffice it to say that the societal pressures towards congruence were present from the very early days.

In a public opinion poll conducted in 1952, 29% of the respondents declared that it was a 'very good' idea to dissolve Länder and have one government in Bonn, 23% thought that this was a 'good' proposal, 29% of the respondents were indifferent or without an opinion, and 29% were against the proposal to dissolve the Länder.¹⁴ In the following year the percentage of those who strongly supported the dissolution had increased to 36%, while 24% thought that this was a good idea. The percentage of those who opposed such a centralist scheme had decreased to 17%.¹⁵

As the following chapters demonstrate, demands for a more centralised political system were shared across the political spectrum. Even the Länder approached almost all aspects of public policy as nation-wide issues. Christian Democrats, Social Democrats, Free Democrats, Länder bureaucracies, trade unions, employers associations, interest

and C.W. Aubin (eds.), *Die Bundesländer: Beiträge zur Neugliederung der Bundesrepublik*, Frankfurt am Main: Institut zur Förderung öffentlicher Angelegenheiten, p.14.

¹⁴ "Die Regierungen", Elisabeth Noelle and Erich Peter Neumann (eds.) (1956), *Jahrbuch der öffentlichen Meinung 1947-1955*, Allensbach: Institut für Demoskopie, p.280.

¹⁵ *Ibid.* p. 280.

groups, public opinion and even Courts were tacit partners in changing the political structure imposed upon West Germany.

Right after the ratification of the new Constitution, efforts to modify the institutional structure designed by the Allies got under way. But since federalism was the foundational structure of the new political system it could not be changed by constitutional amendment, yet modification was possible through implementation and legal interpretation. In a decision in 1952, the Federal Constitutional Court (*Bundesverfassungsgericht*) ruled that, despite Art. 20 (1) of the Basic Law which establishes the federal foundations of West Germany, Art. 79 which divides the country into jurisdictions, and Art. 109 which upholds the principle of budgetary independence of the Länder, the Länder have a duty to pool their resources for financial equalisation.¹⁶ Later in the same year the Court spelled out the way it interprets German federalism and also its aims to bring in the principle of federal friendly behaviour (*bundesfreundliches Verhalten*):

The federal principle rather corresponds to the constitutional duty of allegiance and understanding that the members of the federation give to one another as well as the greater whole, and which the federation gives to the members.¹⁷

In a number of subsequent decisions, the Court continued to develop the principles of federal loyalty (*Bundestreue*) and federal friendly behaviour, although having to concede

¹⁶ Bundesverfassungsgericht (1952), "Urteil vom 20. Februar 1952 'Finanzausgleich'", *Entscheidungen des Bundesverfassungsgerichts*, Tübingen: J.C.B. Mohr, p.131.

¹⁷ "Dem bundesstaatlichen Prinzip entspricht vielmehr die verfassungsrechtliche Pflicht, daß die Glieder des Bundes sowohl einander als auch dem größeren Ganzen und der Bund den Gliedern die Treue halten und sich verständigen", in Bundesverfassungsgericht (1952), "Urteil vom 21. Mai 1952, Verteilung von Bundeswohnungsbäummitteln an die Länder", *Entscheidungen des Bundesverfassungsgerichts*, Tübingen: J.C.B. Mohr, p.315.

that these were unwritten extra-constitutional principles¹⁸. Gradually the effect was to produce principles that would constrain autonomous substate activity:

In the federal state the federal government and the Länder have the common duty to establish and safeguard the basic legal order in all levels and sections of the overall state (*Gesamtstaat*). To the extent that the federal government cannot provide direct care for this end but cooperation between the Länder is assigned, every Land is responsible for this cooperation. This follows from the unwritten principle of the duty of federal friendly relations.¹⁹

The Constitutional Court's efforts to modify the federal structure led other federal courts to develop somewhat strange legal interpretations that had to correspond to the Constitutional Court's rulings. For example, in order to condone the creation of a nationwide public broadcasting corporation by the Länder, which according to the Basic Law lies within exclusive Länder jurisdiction, the Federal Administrative Court had to create an unusual legal grounding for the nationalisation of broadcasting:

There is no rule in the Basic Law which states that a Land can only exert its state authority only in its own territory, and by extension, [there is no rule which states] that only the federal government has competence for the whole of federal territory.²⁰

¹⁸ Bundesverfassungsgericht (1956), "Urteil vom 1. December 1954, Schranken der Befugnis des Bundes zur Rahmengesetzgebung gemäß Art. 75 GG, Besoldungsgesetz für das Land Nordrhein-Westfalen 9. Juni 1954", *Entscheidungen des Bundesverfassungsgerichts*, Tübingen: J.C.B. Mohr, p. 140; also Bundesverfassungsgericht (1957), "Urteil vom 26. März 1957. Reichskonkordat vom 20. Juli 1933. Niedersächsisches Gesetz über das öffentliche Schulwesen von 14. September 1954", *Entscheidungen des Bundesverfassungsgerichts*, Tübingen: J.C.B. Mohr, p. 361.

¹⁹ "Im Bundesstaat haben Bund und Länder die gemeinsame Pflicht zur Wahrung und Herstellung der grundgesetzlichen Ordnung in allen Teilen und Ebenen des Gesamtstaats. Soweit der Bund dafür nicht unmittelbar Sorge tragen kann, sondern auf die Mitwirkung des Landes angewiesen ist, ist das Land zu dieser Mitwirkung verpflichtet. Das folgt aus dem ungeschriebenen Satz über die Pflicht zu bundesfreundlichen Verhalten", Bundesverfassungsgericht (1959), "Urteil vom 30. Juli 1958", *Entscheidungen des Bundesverfassungsgerichts*, Tübingen: J.C.B. Mohr, p. 138.

²⁰ "Es gibt aber keine Vorschrift im Grundgesetz, nach der Staatsgewalt eines Landes nur in seinem Gebiet ausgeübt werden könnte und bei einer Ausdehnung der Zuständigkeit auf das ganze Bundesgebiet nur der Bund zuständig wäre". Bundesverwaltungsgericht (1966), "Gültigkeit des Staatsvertrag über die Errichtung des Zweiten Deutschen Fernsehens", *Entscheidungen des Bundesverwaltungsgerichts*, Band 22, Berlin: Carl Heymanns, p. 306-7.

The empirical chapters to follow specifically deal with two policy areas within the broad process towards centralisation, namely education and mass media. These chapters display the nation-wide disposition towards public policy shared by all political actors. Their attitude corresponds closely with that of the Courts summarised above. In any case, the federal political structure of the country was never fully internalised in the public opinion. In public opinion survey in 1951, only 8% of the respondents knew what the Bundesrat was, 28% gave wrong answers, while 64% did not know. In 1969 there seems to be only a slight increase in awareness; 14% knew why the Bundesrat existed, 35% gave wrong answers, and 51% did not know.²¹

Of course, by themselves public opinion polls do not signify a lot. Their impact on political choices is indirect at best. But combined with the unitarist behaviour of German politicians, bureaucrats, interest groups and courts, they reflect the societal unity which propelled the process of congruence. The coming chapters explore the means by which this social structure was translated into concrete changes in the federal system.

²¹ "Bundesrat", Elisabeth Noelle and Erich Peter Neumann (eds.) (1974), *Jahrbuch der öffentlichen Meinung 1968-1973*, Allensbach and Bonn: Institut für Demoskopie, p.253.

Chapter V

Studying Nationalisation and Institutional Change

What we are experiencing here is the birth hour of the free and united Germany: before the eyes of the world, the representatives of the freely elected governments in both parts of Germany are stating their will to form their common future, as *one* people, as *one* nation, in *one* free and democratic state.

*Helmut Kohl, 1990*¹

We are tied by language, the holy bond
We are tied by a God, a Fatherland
A true German blood.

*Fichte*²

1. Introduction

Kohl's above quote is from his address as the West German Chancellor to the crowd gathered at the Schaumburg Palace on 18 May 1990 for the signing of the State Treaty

¹ "Was wir hier erleben, ist die Geburtstunde des freien und einigen Deutschland: vor den Augen der Welt bekunden die Vertreter der frei gewählten Regierungen beider Teile Deutschlands ihren Willen, als *ein* Volk, als *eine* Nation gemeinsam ihre Zukunft in *einem* freiheitlichen und demokratischen Staat zu gestalten", quoted in Klaus Stein and Bruno Schmidt-Bleibtreu (1990), *Staatsvertrag zur Währungs-, Wirtschafts-, und Sozialunion*, C.H.Beck: Munich, p.321.

² Uns knüpft der Sprache heilig Bund
Uns knüpft ein Gott, ein Vaterland
Ein treues deutsches Blut.

between Federal Germany and East Germany. The following two chapters will demonstrate how the underlying ethno-linguistic homogeneity of the German nation, as expressed by Fichte and less eloquently by Kohl, exerted centralist pressures on the decentralised federal structure imposed by the Allies on occupied Germany. Decision makers across the political spectrum all viewed education and mass media as issues which should be dealt with at the national level. There were, of course, disagreements over the preferred contents of these policies, but all shared a nation-wide disposition to tackle the issues at play. Societal homogeneity facilitated concern over the contents of public policies and efficiency in delivering them.

The 'nationalisation' of public policies in the Federal Republic of Germany sharply contrasts with the 'communitarisation' process in Belgium. As political actors sought nation-wide channels to tackle their problems in Germany, in Belgium the existing nation-wide channels were being dismantled and replaced with community based ones. As the Belgian case study demonstrates, in divided societies the pressing questions are about the order of government which has control over public policies. In German case, however, the contents of public policies are of greater importance. Questions of efficiency in public policies have been at the forefront in the Bonn Republic, consequently pushing the federal division of responsibilities to the background in order to allow for carrying out the policies deemed necessary.

The preceding two chapters provided a broad picture concerning the centralist tendencies in the Bonn Republic. This chapter will establish the parameters of inquiry for the following two empirical chapters. In particular, different explanations regarding the

centralist tendencies in the federal system, the two Länder chosen for close examination, and the distinctive features of German public administration are covered.

2. Explanations for Centralist Tendencies

The theory of congruence which this research project uses to explain the changes in the German federal system is not a widely accepted explanation in the literature on German federalism. In fact, it has never been formulated in a systematic and comprehensive way, but only makes occasional appearances in the literature as German scholars appeal to the common sense of the readers and point out how natural it is for nations to have nationwide public policies. This ad hoc recourse to common sense is not without merits. Intuitively it could be said that a decentralised federal structure did not suit the German society, and therefore, political institutions changed in order to better fit with the society. But this common sensical observation is too raw to be reliably operationalised and employed for research purposes.

What this research project does is take this intuitively plausible assertion and operationalise it into a falsifiable theory of institutional change. Through a comparison with the Belgian case, a theoretically tighter model is developed which can explain institutional changes in both directions, centralising and decentralising, in federal systems. But the findings of this comparative model very frequently clash with the explanations provided by the single case literatures on Germany and Belgium. As a natural outcome of single case explanations, authors often present the idiosyncratic qualities of their case studies as independent variables. Unfortunately, the explanations

put forward are not only theoretically weak descriptive single case accounts, but they can sometimes be inexact with the facts as well:

A common error in the literature is to present the centralist tendencies in German federalism as an integral part of the institutional structure of the Basic Law. The working of the system is attributed to a particular strand of federalism, i.e. the German tradition of cooperative federalism. Accordingly, quite a number of observers associate the centralising undercurrent in German federalism with the federal structure of 1949. It is interesting to note that two principles often associated with post-war German federalism, i.e. cooperative federalism and federal comity (*Bundestreue*), do not exist in the original federal structure set up by the Basic Law. These two principles made their appearance only later on in the sixties. Federal comity is an unwritten extra-constitutional moral principle that limits Land autonomy. Cooperative federalism is similarly without a clear constitutional base. It is an extension of the principle of federal friendly behavior (*Bundesfreundliches Verhalten*), which is an informal political principle that restricts Länder autonomy since it calls for concerted action. Cooperative federalism does not include a constitutional reallocation of competences but instead is based on a network of coordination, cooperation, joint responsibilities and federal financing that has brought in the Bund. Blair informs that the notion of cooperative federalism was first introduced by the reforms to the financial structure in the 1960s.³ Nowadays, however, it has come to be seen as the characteristic of German federalism. Blair describes the functions of federal comity and cooperative federalism as follows:

³ 'Co-operative federalism' was first introduced by the Report of the Troeger Commission set up by the Federal and Länder governments to propose reforms to the financial structure, Philip Blair (1981), *Federalism and Judicial Review in West Germany*, Oxford: Clarendon Press, p.208.

For federal comity, as a purely legal doctrine, is largely restricted to mitigating the effects of the 'competence mentality' by requiring the exercise of powers to be tempered by some consideration for the legitimate interests of the other parties in the federal system...The doctrine of co-operative federalism, on the other hand, is above all a political doctrine answering to the changes in the tasks of government to which the federal system has to be adapted.⁴

In other words, the principles of cooperative federalism and federal comity can be seen as extra-constitutional paths to circumvent the federal division of responsibilities since they do not include an official transfer of competences. They are not an integral part of the 1949 federal structure as some observers seem to believe. In fact, cooperative federalism and federal comity have been employed as means to translate the centralising tendencies into outcomes. In other words, they do not explain the centralist changes in German federalism, they are merely reflections of these broader tendencies.

Another common misreading of German federalism occurs on the topic of Länder financial dependency on the Bund. This explanation credits the notion of financial dependency with the centralist tendencies. But just as it is the case in using cooperative federalism as an explanation, this view similarly ignores the original structural set-up. The Basic Law of 1949 provided the levels of government with their own finances. The Länder became dependent through their own volition as they sought Bund cooperation, not through a federal system which made them constitutionally dependent on the federal government for financial resources.

There is a broad group of explanations which use various reflections of the centralist tendency for congruence as the explanation itself. In general, these explanations use the unifying impact of nation-wide interests in one way or another. More specifically these explanations are based on peak associations of corporatism, nation-wide

⁴ Blair (1981), *Ibid.*, p.209.

organisation of political parties, and the interlocking system of governance between the orders of government. The explanations using peak associations and nation-wide political party structures seem to use the consequences of the centripetal pressure as the explanation. The interlocking federal relationship as an explanatory factor is based on a similarly flawed circular logic in the sense that it uses an outcome of the pressure for societal congruence as the explanation.

Another explanation for the centralising tendencies in the Federal Republic is what Gordon Smith calls the “politics of centrality”⁵; that is to say, the post-war German political culture which, following the Weimar and Nazi memories, discredited divisive ideological politics and encouraged consensus. But this argument conveniently overlooks many controversial issues that have deeply divided the German public in last fifty years.

Of course, showing the shortcomings of alternative explanations is no way to validate the explanation based on the notion of a ‘non-federal’ German society and the process of congruence. The validity can only be explored by an in-depth empirical research. This chapter will outline the parameters of inquiry employed during the empirical research. To test the plausibility of the congruence theory field research was carried out on two policy areas in two west German Länder covering the last fifty years of the Federal Republic of Germany. The scope of a doctoral research, or any single authored research for that matter, cannot credibly cover all policy areas and all levels of government. In order to narrow down the empirical focus and increase reliability, the research focuses on two Länder, North Rhine-Westphalia and Baden-Württemberg, and two policy areas, education and mass media.

⁵ Gordon Smith (1976), “Politics of Centrality”, *Government and Opposition*, Vol.11, no.4.

3. North Rhine-Westphalia and Baden-Württemberg

There are a number of reasons for singling out two Länder. The main reason is, of course, practical. It would have been impossible to deal with sixteen Länder at once. At the same time, narrowing the focus down to two allows for the control of many factors and makes a comparison with the Belgian sub-state entities more manageable. But the choice of the two is of major importance:

The chosen pair should be relatively strong Länder, so that there should be objective grounds to expect independent action. In other words, in an inquiry into the centralising tendencies in the Federal Republic of Germany, the focus should be on those who are least likely to be dependent on the centre. By eliminating weakness or smallness as an explanation, it would be possible to highlight ethno-linguistic factors and the accompanying concerns of efficiency as variables that have led to centralising tendencies in the Federal Republic. It is also imperative that the left-right political division in brought into the analysis. This would call for selecting one of the 'A' Länder, i.e. those with SPD voting patterns, and one of the 'B', i.e. those who have steadily voted for Christian union parties. If the hypothesis holds true for two strong Länder, one traditionally on the left and one on the right, this would help narrow the focus on the causal explanations for centralisation.

The five Eastern Länder (i.e. Mecklenburg-West Pomerania, Brandenburg, Saxony-Anhalt, Thuringia and Saxony) are automatically disqualified from an inquiry since they have only recently joined the German federal structure. The two northern city

states, Hamburg and Bremen, and the tiny Land of Saarland, are too small to commend independent action. Berlin had a special status, and is therefore, not suitable for comparison. Hesse and Rhineland-Palatinate have relatively small populations; while the two northern Länder with large territories, i.e. Lower Saxony and Schleswig-Holstein, have traditionally been seen as economically weak and dependent Länder. Since Bavaria has its own Christian Democratic party (CSU) different from the rest of the country, it is not suitable for a focused comparison with an equally strong left-wing Land. This leaves Baden-Württemberg and North Rhine-Westphalia as the two Länder for a paired comparison.

In fact, Baden-Württemberg did not exist in the original federal system set up by the Basic Law in 1949. The three Länder in the south-east, i.e. Süd-Württemberg, Süd-Baden, and Württemberg-Baden, were merged into one in 1951. Its capital became Stuttgart. Baden-Württemberg has the third highest population in Germany. In 1997 it had a population of 10.4 million. Baden-Württemberg's population is divided almost evenly between the two denominational groups, with a slight majority for the Protestants. North Rhine-Westphalia, on the other hand, is the most populous Land in Germany with a population of 17.9 million in 1997. It is situated in the mid-west of the country along the river Rhine and the Ruhr valley, across from Belgium and the Netherlands. The capital of North Rhine-Westphalia is Düsseldorf. In terms of denominational divisions, there is a slight Catholic majority over Protestants. Both Baden-Württemberg and North Rhine-Westphalia are economically strong Länder with large territories and populations. That is to say, they have the economic and political resources for independent action. Notwithstanding their economic strength, the two Länder have economies based on

different industries. The economy of North-Rhine Westphalia is based on the traditional large scale industries, especially coal and steel; while Baden-Württemberg has a flexible economic structure dependent on small-scale enterprises specialising in the production of consumer goods. These differences have played out in the political scene in terms of voter preferences.

For the time period under analysis North Rhine-Westphalia was considered to be a so-called 'A' Land, with steady Social Democratic voting patterns. Baden-Württemberg, on the other hand, was a 'B' Land, with Christian Democrat voting. Recently, the old 'A' and 'B' patterns have changed for some other Länder, but the pattern has remained relatively constant for Baden-Württemberg and North Rhine-Westphalia.

The Land of North Rhine-Westphalia is a post-war creation by the Allies. It includes the old Länder of Oldenburg, Schaumburg-Lippe, Braunschweig, Lippe-Detmold with areas that were within the boundaries of the Länder Westfalen, Hannover and Schleswig-Holstein. This area was under the British zone of occupation after the Second World War. On 23 August 1946 this amalgamation was officialised and North Rhine-Westphalia got its legal status. However, until 10 July 1950, North Rhine-Westphalia was to remain without its Land Constitution. Dästner believes that the artificiality of the new Land accounted for this delay:

Decisive for the noticeable delay was the uncertainty over the continued existence of the newly set up Länder, whose artificial creation did not allow for a real state consciousness [*Staatsbewußtsein*] on a broad basis, and thereby, to begin with, also in no political will of the German political authorities to be endowed with Constitution-giving powers.⁶

⁶ "Ausschlaggebend für diese auffallende Zurückhaltung war die Ungewißheit über den bleibenden Bestand der neugeschaffenen Länder, deren künstliche Schöpfung kein echtes Staatsbewußtsein auf breiter Basis und damit einhergehend zunächst auch keinen Willen der deutschen politischen Instanzen zur Verfassungsgebung entstehen ließ" Dästner, Christian

The Land Parliament appointed by the British occupation authorities had elected a 14 member Constitutional Committee (*Verfassungsausschuß*) on 20 May 1947, but the committee failed to come up with a Land Constitution until 11 July 1950. So the North Rhine-Westphalian Constitution was accepted after the Basic Law came into force on 23 May 1949.

A point that makes the choice of pair interesting is the background for the Land Baden-Württemberg. A smaller version of the centralisation and institutional change patterns that the research analyses at the federal level has happened in Land Baden-Württemberg. Even during the Allied occupation, efforts to unite the three administrative units traditionally seen as one territory had already begun. In a poll conducted as early as 1948, an overwhelming 72.5% of the residents of this area stated support for a change in the borders of the three Länder in the south-east corner of the country; Süd-Württemberg, Süd-Baden, and Württemberg-Baden. Only 4% of the respondents wanted them to stay the same way.⁷ In a survey carried out in 1951, the residents were asked to interpret the creation of the new Land in the south-west. A majority of the explanations chosen by the respondents display strong rationalising inclinations. Most of the respondents have stated that a merger would lead to saving money as there would now be one government instead

(1996), *Die Verfassung des Landes Nordrhein-Westfalen, Kommentar*, Cologne: Kohlhammer, p.3.

⁷ "Baden-Württemberg", Elisabeth Noelle and Erich Peter Neumann (eds.) (1956), *Jahrbuch der öffentlichen Meinung 1947-1955*, Allensbach: Institut für Demoskopie, p. 291.

of three, others have mentioned the economic benefits of size, some have said that the small stateness (*Kleinstaaterei*) was leading to disagreements and divisions in the past.⁸

In sum, Baden-Württemberg and North Rhine-Westphalia are tailor-made case studies for this research. A focus on them will eliminate alternative explanations for nationalisation based on smallness and dependency, and will also highlight the impact of the left-right divide Länder politics.

4. German Bureaucracy and the 'Nationalisation' of Public Policies

Since the focus of this research is on the centralising tendencies within two areas of German public policy, it is necessary to briefly look at the way German public administration works.

The German system allows for a number of party-affiliated bureaucratic positions which accompany the new Ministers as they are elected to office. These include the secretaries of state and administrative cabinets who aid the Minister in the governance. These positions are often party-based and there is a great deal of mobility between different levels of governments and between Länder. The same thing goes for politicians as they move from Land-level to federal and back quite often.

The technocrats, on the other hand, are distinguished by their expertise and non-partisan backgrounds. This professionalism is reflected in some of the concepts frequently invoked within the context of public policies. Terms like factual objectivity (*Sachlichkeit*), force of circumstances (*Sachzwang*), efficiency (*Leistungsfähigkeit*)

⁸ "Ansichten", *Ibid.*, p. 295.

rationalisation (*Rationalisierung*) frequently appear in public policy documents. In addition, there are many independent expert committees which carry out policy research and make recommendations. An observer of German public policy draws attention to the prevalence of parapublic institutions in German public administration.⁹ As it will become clearer in the two chapters that will follow, this pattern of technocratic policy making has frequently prevailed over the federal structure set up by the Basic Law.

The explanation that this study employs for the unitarisation pattern in German public policy is based on congruence theory: with relative societal homogeneity, the content of public policies and efficiency in their delivery became concerns in the Federal Republic of Germany. There are many differences amongst political actors concerning the contents of public policies, but they all share a nation-wide disposition to public policy regardless of the constitutional division of responsibilities between layers of government. Christian Democrats, Social Democrats, Free Democrats differ over their political priorities; trade unions, employer's associations, interest groups have different visions of what public policies should be like; bureaucrats, both Länder and federal as well as courts have their institutional interests to protect; but at the end of the day all of these political actors converge around the national arena for battling their causes. Empirical research confirms the core theoretical assumption of congruence theory, i.e. the unitary German society is forcing deliberations at the national level for all Germans without regard to the federal structure. In this process, the constitutional division of

⁹Simon Bulmer (1989), "Unity, Diversity and Stability: The 'Efficient Secrets' Behind West German Public Policy", in S.Bulmer (ed.), *The Changing Agenda of West German Public Policy*, Dartmouth: Aldershot, p.27.

responsibilities can be easily set aside in order to give way to nation-wide standardised policies. As Blair puts it:

...[I]n a comparatively small and homogenous country the forces pushing for ever greater uniformity in the provision of government services, co-ordinated planning for the efficient use of resources, and centralised oversight of public expenditure in accordance with the needs of economic management were particularly strong¹⁰

In the absence of territorially based societal distinctiveness, diversity in the provision in public policies is seen as unnecessary and inefficient. Consequently, there is an overall pressure to standardise, harmonise, or better put, to 'nationalise' public policies. But to reiterate an important point, this nation-wide disposition does not necessarily mean that all political actors are in consensus over the proper content of these public policies. What is important is that Germany and all German citizens are their frame of reference rather than their respective Land.

The Belgian case study demonstrates opposite tendencies at play. For the political actors of this once unitary state, the frame of reference has always remained their respective linguistic communities. Consequently, the tendency in this divided country has been towards the 'communitarianisation' of public policies. In this process, in clear contrast with the German case, political spotlight has been on issues of control rather than contents of public policies.

The concern for content rather than control often appears in some strange fashion in Germany. The German concept of 'efficiency society' (*Leistungsgesellschaft*) is an example of the public priorities in a homogeneous federation. According to this notion, efficiency should be the societal priority and every group should use their work and

¹⁰ Philip Blair (1981),), *Federalism and Judicial Review in West Germany*, Oxford: Clarendon Press, p.207.

capabilities for common prosperity. In the 1972 public opinion survey of the German Demography Institute, 67% of the respondents have declared that they are in favour of such an efficiency society.¹¹

Within the overall process towards the nationalisation of public policies, what is under investigation in this research is the individual behaviour of the two Länder, Baden-Württemberg and North Rhine-Westphalia. In addition to Länder governments, including political parties in power and bureaucrats, the other relevant actors under examination are the opposition parties and Land-based interest groups and associations. The collective action towards nation-wide activism has been a move supported by all actors involved, and therefore, it was not a controversial issue which divided the public opinion. Consequently, available empirical evidence includes no attempt to justify the unanimous choice of the national level for tackling the problems of Germany. Most of the debates and documents display references to the perceived benefits of collective action for the whole of the country but almost no reference to the individual benefits that would accrue to the Länder participating. In stark contrast with the Belgian case, the frame of reference used by the representatives of Baden-Württemberg and North Rhine-Westphalia is the German nation and not their respective Länder. Whereas in Belgium, even national issues are discussed in terms of their implications for the constituent communities. As the following two chapters will establish in detail, the term of reference in Baden-Württemberg and North Rhine-Westphalia is always to a broader all-German good that is expected to result from the nationalisation of education and mass media.

¹¹ "Leistungsgesellschaft", Elisabeth Noelle and Erich Peter Neumann (eds.) (1974), *Jahrbuch*

Baden-Württemberg and North Rhine-Westphalia are part of a broader process towards congruence which includes all German Länder. Therefore, the mechanisms of change which lead to nationalisation apply to all involved. While the focus is on the two Länder, it is imperative to briefly look at the broad pattern of federal change in the Bonn Republic to situate the two Länder within the bigger picture of the process towards congruence.

The centralisation or 'nationalisation' of educational policy and mass media policy has come through three different channels; cooperation between the Länder, coordination between the Bund and the Länder, and preemption by the Bund.

Cooperation between the Länder has been a characteristic of German federalism as the Länder have often come together in order to harmonise their policies. Such cooperation is a significant way to bypass the federal division of responsibilities. Since the Länder have constitutional jurisdiction over cultural affairs, their cooperation does not appear to violate the letter of the law. But by transforming the issues into national ones, such national harmonisation surely violates the spirit of the law.

Another channel for centralisation has been coordination between the Bund and Länder. Coordination between the Bund and Länder, either to harmonise the existing cultural policies or to establish new ones, has followed two different paths. The coordination has either been an informal one with advisory committees and recommendations, or it has been a formal coordination through constitutional amendments and new institutions. The role of the Constitutional Court has been pivotal in determining the parameters of such coordination. In the field of mass media the Court

has been important in bringing about Bund-Länder coordination, in the field of education on the other hand, coordination has been more spontaneous. In fact, the constitutional change that placed education under joint responsibility was one of the first examples of cooperative federalism in the Federal Republic. Before we move to the third channel of centralisation, it necessary to briefly mention the way joint Bund-Länder responsibility (*Gemeinschaftsaufgaben*) works. The decision making for the joint tasks are made by planning committees where decisions require 75 percent majority vote¹². The Bund has 50 percent of the vote, so bearing in mind the strong party discipline in Germany, with only a few of Länder governments on its side the Bund can get whatever it wants through.

The third channel has been preemption by the Bund. This has rarely been a successful channel for centralisation, and such Bund activism has repeatedly been struck down by the Constitutional Court. However, recently the European integration process has provided the Bund with an excuse for activism. According to the German Constitution, foreign policy is under Bund responsibility. By being the representative of Germany at the Council of Ministers of the European Union, the Bund has thus made inroads into policy areas that have constitutionally remained under exclusive Länder responsibility.

Within the big picture of federal change, the behaviour of Baden-Württemberg and North Rhine-Westphalia do not deviate from other smaller and weaker Länder. Even the left-right divide between the two does not correlate with different political choices concerning the federal division of responsibilities. The differences in the contents of the

¹² Philip Blair (1991), "Federalism, Legalism and Political Reality: The Record of the Federal Constitutional Court", in Charlie Jeffery and Peter Savigear (eds.), *German Federalism Today*, Leicester and London: Leicester University Presss, p. 78.

policies they have preferred can be explained by Christian Democrat or Social Democrat incumbency, but in terms of approaching education and mass media as nation-wide issues they have displayed identical behaviour. It is interesting to note that these two large and powerful Länder, who had the resources and the interests to go it alone, have remained staunch supporters of common action in order to reach nation-wide policies.

Chapter VI

Educational Policy in Germany

Education and knowledge have today become the decisive determinant factors for our country.

*Roman Herzog, 1996
President of the FRG*¹

The discrepancy between factual necessity and constitutional possibility in the reorganisation of education is simply unbearable.

*Helga Schuchardt (FDP)*²

1. Introduction

The federal division of responsibilities in Germany has never really been a controversial issue in educational policy. Bund and Länder have not competed for *control* over education, they have cooperated. In fact, the most controversial issue -whatever the level of government- has been the *content* of educational policies.

¹ "Bildung und Wissen sind heute zu entscheidenden Standortfaktoren unseres Landes geworden" from Herzog's address to the 15th congress of the German Society for Educational Science (*Deutsche Gesellschaft für Erziehungswissenschaft*), Halle an der Saale, March 1996, in Führ, Christoph (1996), *Deutsches Bildungswesen seit 1945; Grundzüge und Probleme*, Bonn: Inter Nationes, p.v.

² "Die Diskrepanz zwischen sachlich Notwendigem und verfassungrechtlich Möglichem bei der Neuordnung der beruflichen Bildung ist einfach unerträglich", Helga Schuchardt (1975) "Auf mehr Bundeskompetenz in der Beruflichen Bildung kann auf die Dauer nicht verzichtet werden", *Frei demokratische Korrespondenz*, 26 September 1975, reproduced in Der

The entire school system is under state supervision in Germany. Most schools are public and the small number of private schools are also under the legal supervision of the state. The contents of educational policy have often been the object of intense political disagreements. The main divisive political issue in German education has been at the secondary level. The Social Democratic Party (SPD) advocates a uniform comprehensive school versus the three-tiered traditional school system favoured by Christian union parties (CDU/CSU). The comprehensive schools (*Gesamtschule*) were initially introduced in SPD governed Länder with the aim to promote equality of opportunity. The traditional three-tiered secondary school system was criticised for perpetuating the closed social class system. In the three-tiered system students are assigned to a school type after they complete primary school. The first of such school type is the main school (*Hauptschule*) which prepares students for work but students can decide to seek further vocational qualifications. The intermediate school (*Realschule*) gives students a broader general education than the main school but still within a vocation-oriented system. The grammar school (*Gymnasium*) is designed to prepare students for higher academic education. SPD criticises the three-tiered system for fostering class divisions since most Gymnasium students come from middle to upper class families while the Hauptschule and the Realschule educate the children of the working-class. Nowadays, the two educational ideas (i.e. comprehensive vs. three-tiered) coexist in all of the Länder. For purposes of this inquiry, the content of educational policy is peripheral. Instead, focus is on the changes in the Bund-Länder division of responsibilities.

Bundesminister für Bildung und Wissenschaft (1978), *Bericht der Bundesregierung über die strukturellen Probleme des föderativen Bildungssystem*, Bonn, p.124.

VI. Educational Policy in Germany

The analysis of changes in the Bund-Länder balance will be carried out by focusing on the important turning points in German educational policy. The aim is to test the hypothesis developed in the previous chapters which seeks to explain the centralising tendencies by using the theory of congruence. Focus is on the process of the nationalisation of education despite the constitutional clause of Länder cultural sovereignty as established by Article 30 of the Basic Law which places education under exclusive Länder jurisdiction.

Against the historical background of the Reich Ministry of Science, Education and Public Education (*Reichsministerium für Wissenschaft, Erziehung und Volksbildung*), Western Allies had decided to place education under Länder control to prevent the reappearance of totalitarian nationalism, and in due course, to reeducate and denazify the Germans through educational decentralisation. But as this chapter will demonstrate, this decentralised system was replaced with a nation-wide educational system, which has gradually come about through either collective Länder action, Bund-Länder cooperation, or Bund activism. Findings of the empirical research demonstrate the pressures towards congruence in the context of two Länder under examination, North Rhine-Westphalia and Baden-Württemberg. Or more precisely, the findings prove that for political actors in both Länder the frame of reference remained Germany and all German citizens and not their respective Länder. But before we trace this process of nationalisation over the last fifty years of the Federal Republic of Germany, it is necessary to point out to an important difference between Belgium and Germany.

2. Education and Religion

The case of education in Belgium displays deep divisions in terms of language and religious education. In Germany, the linguistic cleavage is absent, yet religion is a force that has historically been a very important fault line. In Belgium, the division is between practising Catholics and secular free-thinking anticlericals. In Germany, on the other hand, the division is between two religions, i.e. Catholicism and Protestantism, and Germany has its share of secular free-thinkers on both sides as well. However, despite the historical importance of religion in German society, the post-war developments in German educational policy show little controversy over religion.

Historically, Germany was divided into Protestant and Catholic regions and education, especially primary education, was organised through denominational schools. The end of the WWII and the refugees from the East altered this picture of territorially divided religious affiliation, and consequently, education had to be organised either mixed or nondenominationally. Gradually, the post-war German educational system replaced the Church-affiliated schools with official ones. At the same time, religious education was provided at official schools through cooperation with religious authorities. What is interesting to note here is that this transformation was carried out with the blessing of the two Churches, who had indeed emerged as powerful social institutions in the post-war climate of denazification and social reorganisation. Their distance from the Nazi regime allowed them to become dominant actors in the formative moments of the Federal Republic. Therefore, their endorsement of a public education is somewhat perplexing. One could argue that the two Churches no longer saw the need for religious school boards when they had direct impact on politics through the Christian

union parties. In addition, they probably feared the impact socialism would have on public schools had a dual religious-public educational system emerged. Nevertheless, the question of Church support for official schools remains an interesting puzzle worth exploring. But for the purposes of this research, it is necessary to note that religion has played a minuscule role in the educational policy of the Federal Republic of Germany in the last fifty years.

3. Turning Points in the Nationalisation of Education

The time frame under focus is from 1945 up to present. Within this period, the emphasis is on watershed events that were important turning-points in the educational policy. At these critical junctures, the broad processes congealed into political outcomes. Therefore, examination of the subsequent steps towards the nationalisation of education will help highlight the various issues at play and the interests of the involved political actors. In particular, the behaviour of decision makers from the two Länder North Rhine-Westphalia and Baden-Württemberg is matter central to the inquiry. This includes the three Länder which preceded Baden-Württemberg, i.e. Süd-Württemberg, Süd-Baden, and Württemberg-Baden. However, it has to be noted that often the support for the nationalisation of education is reflected by a conspicuous absence of dissenting voices. In other words, their collective effort with the other Länder itself is a sign of the process of congruence at work.

3.1. Standing Conference of Ministers of Culture (KMK)

The informal meetings between the Länder Ministers of Education predate the Basic Law. These informal meetings which started in 1946 were initially called the Conference of German Education Ministers (*Konferenz der deutschen Erziehungsminister*) and included Culture Ministers from the East German Länder of Brandenburg, Mecklenburg, Saxony, Saxony-Anhalt and Thuringia. But from 1948 onwards the East German Ministers did not attend these meetings. The meetings among West German Ministers were formalised with the Stuttgart-Hohenheim Memorandum of April 1948. The chairman of this meeting, the Minister of Culture for Württemberg-Baden, Theodor Bäuerle had opened the Stuttgart-Hohenheim meeting with the following remarks:

After all, in spite of all the far-reaching distinctions and differences, our responsibility towards our nation and youth asks us to seek a common path for the future.³

At this meeting Bäuerle continued by stating that:

I believe that we can offer the best contribution to German unity, if we as education ministers of German Länder, with earnestness and an awareness of our responsibility, examine how far we can accomplish common foundations for a new construction of our school and education systems, or at least, examine how far we can coordinate our measures with one another.⁴

During the opening discussions of the meeting, other Länder Ministers made similar statements, but the subsequent minutes of the meeting display important disagreements between Länder Ministers over many issues pertaining to the educational system. However, these disagreements are about the contents of educational policy and

³ "Doch die Verantwortung gegenüber unserem Volk und unserer Jugend gebietet uns, trotz aller tiefgreifender Unterschiede und Gegensätze einen gemeinsamen Weg in die Zukunft zu suchen", *Konferenz der deutschen Erziehungsminister (1948), Protokoll der Tagung am 19. und 20. Februar in Stuttgart-Hohenheim*, p. 3.

⁴ "Ich glaube, wir leisten den besten Beitrag zur deutschen Einheit, wenn wir als Erziehungsminister der deutschen Länder mit Ernst und Verantwortungsbewußtsein prüfen, wieweit wir gemeinsame Grundlagen für den Neuaufbau unseres Schul- und Bildungswesens schaffen, oder wenigstens unsere Maßnahmen aufeinander abstimmen können", *Ibid.* p.5.

not the level of decision-making. In other words, there appears to be a strong desire to reach common positions for the whole of Germany. As a result of the Stuttgart-Hohenheim meeting, the Standing Conference of Ministers of Culture (*Ständige Konferenz der Kultusminister* or *Kultusministerkonferenz-KMK*) was officially established in 1949 with a permanent secretariat in Bonn. Its resolutions and recommendations are not legally binding on the Länder and require Land legislation to be put into practice; however, since decisions are based on the principle of unanimity, the decisions of the Standing Conference have *de facto* direct applicability. The KMK charter, as revised in 1955, states the purpose of the institution as follows:

The Standing Conference of the Ministers of Culture of the Federal Republic of Germany (Culture Ministers Conference) deals with issues of cultural policy with supra-regional significance with the aim of building common opinion and will, and the representation of common concerns.⁵

The aims stated in the revised charter are almost identical with the original 1949 charter, save for a section that has been entirely dropped in the 1955 version. Interestingly, this section pertains to the constitutional division of responsibilities between the Bund and the Länder. The 1949 statute states that: "The constitutional and legal-administrative jurisdictions of the Bund and Länder will be kept unaffected by all decisions"⁶. It appears that in 1955, jurisdictional divisions were no longer a major concern for decision makers.

⁵ "Die Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland (Kultusministerkonferenz) behandelt Angelegenheiten der Kulturpolitik von über-regionaler Bedeutung mit dem Ziel einer gemeinsamen Meinungs- und Willensbildung und der Vertretung gemeinsamer Anliegen", *Geschäftsordnung der Ständigen Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland*, according to the resolution dated 19.11.1955., p.1.

⁶ "Bei allen Beschlüssen bleibt die verfassungs- und verwaltungsrechtliche Zuständigkeit des Bundes und der Länder unberührt", *Geschäftsordnung für die Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland*, 1949, p.1.

From the outset the aim was to offset the 'inconvenience' of the federal division of responsibilities. It is interesting to note that in 1950 the Standing Conference was merged with the existing Cultural Committee of the Upper House of the Federal Parliament (*Kulturausschuss des Bundesrates*). This seems to point towards a general belief in the nation-wide character of education. In 1949, the Hesse Minister for Education, Dr. Edwin Stein, evaluated the KMK's performance in the following terms:

By their cooperation, the culture ministers have contributed to the purpose of protecting and promoting the unity of the German spiritual life, together with the acknowledgment of the limited distinctiveness of the Länder.⁷

Many years later in 1988, at a special meeting of the KMK to commemorate its fortieth anniversary, Stein's views on the KMK had hardly changed:

The KMK had understood the need to coordinate the minimum of uniformity of educational systems with the federal constitutional structure, and to maintain Germany's intellectual unity.⁸

The current Minister-President of Thuringia, who was also the Minister of Culture for Rhineland-Palatinate between 1967 and 1976 and later the Minister-President of the same Land, Bernard Vogel, states that during the creation of the Standing Conference, there was indeed widespread support across the political spectrum not only for the

⁷ Hessische Minister für Erziehung, Volksbildung und Justiz, Dr. Edwin Stein: "Die Kultusminister werden durch ihre Zusammenarbeit dazu beitragen, daß bei aller Anerkennung der Länder bedingten Eigenartigen die Einheit des deutschen Geisteslebens gewahrt bleibt und gefördert wird", Bernard Vogel (1998), "Auf dem Weg zur Inneren Einheit: KMK Reflex und Impuls kultureller Identität", Sekretariat der Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland (ed.), *Einheit in der Vielfalt: 50 Jahre Kultusministerkonferenz 1948-1998*, Neuwied, Kniffel and Berlin: Luchterhand, 92.

⁸ "Die KMK hat es verstanden..das erforderliche Mindestmaß an Einheitlichkeit des Bildungswesens in der bundesstaatlichen Verfassungsordnung zu koordinieren und die geistige Einheit Deutschlands zu erhalten.", From KMK's fortieth anniversary meeting on 19 February 1988, quoted in Führ, Christoph (1996), *Deutsches Bildungswesen seit 1945; Grundzüge und Probleme*, Bonn: Inter Nationes, p.38.

Standing Conference but also for the establishment of a Federal Ministry for Culture⁹.

And he continues by stating that:

[The Standing Conference] has brought a comparability of education systems in Germany to an extent that no other federal state can attain.¹⁰

The cooperation and coordination carried out through the KMK has allowed for a standardisation in educational policy often associated with unitary political systems. An insider to the KMK process, Hans Maier, who was the Bavarian Minister for Instruction and Culture between 1970 and 1986, interprets the cooperation between the culture ministers in the following terms:

[This] is connected to a minimum standard of unity enforced by the high level of inner-German mobility on the one hand, and the specific expectations from the traditional 'German Culture' which has acted as a means for the solidarity for long periods in our history when Germany was not united as a nation-state. Above all, in the fragmentation and division of the state after the Second World War, if one did not yet live in a common state and a common constitution for the all Germans could not be found, one kept a firm hold on what appeared to guarantee national unity, on the uniting power of history, language, literature, music.¹¹

Maier continues by stating that:

⁹Bernard Vogel (1998), "Auf dem Weg zur Inneren Einheit: KMK Reflex und Impuls kultureller Identität", in Sekretariat der Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland (ed.), *Einheit in der Vielfalt: 50 Jahre Kultusministerkonferenz 1948-1998*, Neuwied, Kniffel and Berlin: Luchterhand, p.93.

¹⁰ "[Die KMK] hat in Deutschland zu einer Vergleichbarkeit im Bildungswesen geführt, wie kein anderer föderalistischer Staat aufweisen kann.", Bernard Vogel (1998), "Auf dem Weg zur Inneren Einheit: KMK Reflex und Impuls kultureller Identität", in Sekretariat der Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland (ed.), *Einheit in der Vielfalt: 50 Jahre Kultusministerkonferenz 1948-1998*, Neuwied, Kniffel and Berlin: Luchterhand, p.93.

¹¹ "Das hängt einerseits mit dem hohen Grad innerdeutscher Mobilität zusammen, die einen Mindeststandard von Einheitlich erzwingt, andererseits mit spezifischen Erwartungen an die überlieferte "deutsche Kultur", die in langen Perioden unserer Geschichte...ein Mittel des Zusammenhalts der nationalstaatlich nicht geeinten Deutschen war. Vor allem in der staatlichen Zersplitterung und Teilung nachdem Zweiten Weltkrieg hielt man an dem fest, was nationale Einheit zu verbürgen schien, an der verbinden Macht von Geschichte, Sprache, Literatur, Musik..wenn man sich schon in einem gemeinsamen Staat, einer gemeinsamen Verfassung aller Deutschen nicht mehr treffen konnte." Hans Maier (1998), "Die Kultusministerkonferenz im Föderalen System", in Sekretariat der Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland (ed.), *Einheit in der Vielfalt: 50 Jahre Kultusministerkonferenz 1948-1998*, Neuwied, Kniffel and Berlin: Luchterhand, p.22.

In Germany one expected from cultural federalism, paradoxically, not only the preservation of the federal distinctiveness of the Länder as in other federations, but especially also, almost in the same breadth, the establishment of cultural unity and political homogeneity in the entirety of the state.¹²

The KMK was seen as a nation-wide entity representing all-German interests. This perception was underpinned by its nonpartisan character and consistency in its long-term policy recommendations. Often its chairmen came from technocratic rather than political backgrounds, and have remained in power for long periods in order to bring continuity to this inter-Länder but all-German institution. From 1955 to 1975 the KMK worked under the chairmanship of Kurt Frey. He was succeeded by Joachim Schulz-Hardt. But it was largely in the early days when the impact of the KMK has been decisive in building a nation-wide educational system in West Germany.

3. 2. Düsseldorf Agreement

The first formal agreement of the Standing Conference of KMK was reached in 1955 in Düsseldorf. The Düsseldorf Agreement aimed the standardisation of the educational assessment, the timing and the duration of the study year, the curricula, and the recognition of qualifications. Hearnden informs us that the foremost aim of the

¹² "In Deutschland nämlich erwartet man vom Kulturföderalismus paradoxerweise nicht nur, wie anderswo, die Bewahrung föderaler Eigenheiten der Länder, sondern auch, und fast im selben Atemzug, die Stiftung kultureller Einheit und politischer Homogenität im Gesamtstaat.", Hans Maier (1998), "Die Kultusministerkonferenz im Föderalen System", in Sekretariat der Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland (ed.), *Einheit in der Vielfalt: 50 Jahre Kultusministerkonferenz 1948-1998*, Neuwied, Kniffel and Berlin: Luchterhand, p. 23.

agreement was to ease the problems of migration from Land to Land.¹³ A public opinion poll from 1953 shows that 60% of the respondents saw the 'school question' as the most important political issue under discussion.¹⁴ A poll from the following year shows 69% support for a uniform teaching scheme for the whole of West Germany as opposed 15% who want a differentiated system to remain.¹⁵

The public demand for educational uniformity is a theme prevalent in the literature on German educational policy¹⁶, and the issue appears to have dominated public life especially in the early years of the Federal Republic. A saying from those days summarises the relationship which is seen to exist between educational federalism and geographic mobility as follows: 'Father moves, son flunks'¹⁷. According to Heckel *et. al.*:

Together with the stabilisation of the cultural sovereignty of the Länder, at least since 1949, public and press, political parties, cultural organisations and professional associations have expressed their views about the promotion of efforts in order to overcome the divisions [in the school system].¹⁸

The same source dubs these divisions in the school system as the 'school mess' (*Schulwirrwarr*) and credits public displeasure at the educational divisions as the core pressure that forced the Minister-Presidents to seek the standardisation of the school

¹³ Arthur Hearnden (1976), *Education in the Two Germanies*, Boulder: Westview Press. First published in 1974, Oxford: Basil Blackwell, p.69.

¹⁴ "Unterricht", Elisabeth Noelle and Erich Peter Neumann (eds.) (1956), *Jahrbuch der öffentlichen Meinung 1947-1955*, Allensbach: Institut für Demoskopie, p. 223.

¹⁵ 16% of the respondents were undecided. *Ibid.* p. 225.

¹⁶ For example see, Joachim Tiburtius (1959), "Kulturpolitik: Sache der Länder oder des Bundes", in Ossip K. Flechtheim (ed.), *Bund und Länder*, Berlin: Colloquium Verlag, p.73.

¹⁷ "Vater versetzt, Sohn sitzenbleiben", quoted in Ludwig von Friedeburg (1989), *Bildungsreform in Deutschland: Geschichte und gesellschaftlicher Widerspruch*, Frankfurt am Main: Suhrkamp Verlag, p.319.

¹⁸ "Parallel mit der Stabilisierung der Kulturhoheit der Länder äußert sich mindestens seit 1949 ein von Öffentlichkeit und Presse, politische Parteien, kulturelle Organisationen und Berufsverbänden gefördertes Bemühen um Überwindung der Zersplitterung", Hans Heckel and fully revised 6th edition by Herman Avenarius, with Helmut Fetzer (1986), *Schulrechtskunde*:

system through the Düsseldorf agreement.¹⁹ The Düsseldorf agreement introduced important measures that brought a basic level of uniformity to the German education system. It is the first comprehensive attempt at educational standardisation in West Germany. In a KMK report released in 1955 right after the ratification of the agreement, the president of the KMK, Willy Dehnkamp, reflecting on the agreement, made the following statement with regard to the measures introduced by the Düsseldorf agreement:

A reverse step could hardly to be expected, and so at least a change in the allocation of responsibilities in this field should be discussed, and this is something more than necessary: A better cooperation between the Bund and Länder is in the interest of the German youth, German science and research, the German culture and the German nation.²⁰

3.3. Hamburg Agreement and the Educational Committees

(Deutscher Ausschuss, Deutscher Bildungsrat and Wissenschaftsrat)

3.3.1. Hamburg Agreement

The Düsseldorf Agreement was in effect for ten years, and in 1964 it was replaced with the Hamburg Agreement which continued the process of standardisation. The so-called long term aims of the Standing Conference of Ministers of Education of the Länder were adopted in March 1964. In addition to increasing the general level of education for

Ein Handbuch für Praxis, Rechtsprechung und Wissenschaft, Neuwied and Dramstadt: Luchterhand, p.16.

¹⁹ Hans Heckel and fully revised 6th edition by Herman Avenarius, with Helmut Fetzner (1986), *Schulrechtskunde: Ein Handbuch für Praxis, Rechtsprechung und Wissenschaft*, Neuwied and Dramstadt: Luchterhand, p.16.

²⁰ Eine Rückwärtsentwicklung ist kaum zu erwarten, und da am wenigsten in diesem Bericht einer Änderung der Zuständigkeitsverteilung das Wort geredet werden soll, ist eines mehr als je notwendig; eine bessere Zusammenarbeit von Bund und Ländern im Interesse der deutschen Jugend, der deutschen Wissenschaft und Forschung, der deutschen Kultur und des deutschen Volkes.", Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland

Germans, the resolution aimed to make it easier to move between different types of schools.

In addition to the general agreements of Düsseldorf and Hamburg, the Standing Conference also passed a number of minor legislation dealing with specific issues of educational standardisation. One of the most important examples of such legislation is the 1960 framework agreement for elite secondary schools, the *Gymnasien*.²¹ The agreement aims to standardise the upper grades of these schools and the matriculation certificate which entitles university education. Through these successive agreements, the KMK managed to establish national standardisation in the education system. According to Heckel *et.al.*:

The self-coordination amongst the Länder prevented cultural federalism from leading to a complete dispersion of school legislation. Moreover, the developments in technology, economy and communications led to a standardisation in living conditions, with subsequent unitary tendencies in the school system.²²

The early decades of the Federal Republic witnessed many other initiatives aimed at bringing the educational systems of the Länder closer. Specifically, a number of advisory committees were set up in order to help the standardisation of education across the Federal Republic.

(1955), "Die Kultusministerkonferenz und ihre Arbeit von 1952 bis 1955", from *Niederschriften über die Sitzungen des Plenums vom 28-29.4.1955/18.19.1955*, 46-49 Sitz., Bonn: KMK, p.12.

²¹ The exact title of the agreement is Framework Agreement for the Organisation of Instructions in the Upper Grades of Academic Secondary Schools (*Rahmenvereinbarung zur Ordnung des Unterrichts auf der Oberstufe der Gymnasien*). The *Gymnasien* are academic secondary schools in the multi-tiered German educational system. Their graduates are entitled to follow university education and therefore, they represent the top strata of secondary education.

²² "Die Selbstkoordination der Länder...hat verhindert, daß der Kulturföderalismus zu einer völliger Zersplitterung des Schulrechts führte. Zudem löste die Entwicklung von Technik, Wirtschaft und Verkehr eine Vereintlichung der Lebensverhältnisse aus, die auch im Schulwesen unitarisierende Tendenzen zur Folge hatte.", in Hans Heckel and Herman Avenarius, with Helmut Fetzer (1986), *Schulrechtskunde: Ein Handbuch für Praxis, Rechtsprechung und Wissenschaft*, 6th edition, Neuwied and Dramstadt: Luchterhand, p.17.

3.3.2. Special Committee on Education (Deutscher Ausschuß)

In 1953 Länder Ministers of Culture and Federal Ministry of Interior (*Bundesinnenministerium*) established a Special Committee on Education (*Deutscher Ausschuß für das Erziehungs und Bildungswesen*) to come up with recommendations for the reform of German education. The Committee published its advisory report (*Rahmenplan*) which suggested an overhaul of the entire system.²³ According to this report:

The educational structure must do its share to contribute to the intellectual unity of the nation in the basic experience, exercise and insights; and must strongly support the establishment of a broad and common ground for the consciousness of this unity.²⁴

The members of this body were independent experts and interest groups rather than Länder governments and bureaucrats. Until its dissolution in 1965 the Special Committee on Education published a number of nonpartisan reports and recommendations which facilitated the standardisation of German education. Most important of these is the aforementioned *Rahmenplan*, or to give its full official name the Framework Plan for the Reorganisation and Standardisation of General Education and Public School Systems (*Rahmenplan zur Umgestaltung und Vereinheitlichung des*

²³ 'The Frameworkplan for the Remodelling and Standardisation of the General Education School System of the German Committee for the Upbringing and Education System', Deutscher Ausschuss für das Erziehungs- und Bildungswesen (1959), *Empfehlungen und Gutachten des Deutschen Ausschuss für das Erziehungs- und Bildungswesen; Rahmenplan zur Umgestaltung und Vereinheitlichung des allgemeinbildenden öffentlichen Schulwesens*, Ernst Klett Verlag: Stuttgart.

²⁴ "Der Schulaufbau muß das Seinige dazu beitragen, die geistige Einheit des Volkes in den elementaren Grunderfahrungen, Übungen und Einsichten kräftig zu erhalten und für das Besußsein dieser Einheit einen breiten gemeinsamen Grund zu legen.", in *Ibid.*, p.16.

allgemeinbildenden und öffentlichen Schulwesens) in 1959. The introduction of this report spells out the reasons which call for a 'national' education system:

[The Committee] is convinced that the intellectual unity of our nation, which should be strengthened and held above all ideological and social differences, demands an education that is common for all school types and united with one another. This could not be achieved only by a binding outer structure through the organisation of one educational establishment and one aptitude standard. Many other justified educational needs of our times have to be carried out to lead towards the consciousness of this internal connection...Only by efforts on these common aims can the cultural diversity of the German Länder prove to be highly useful.²⁵

Right before its dissolution, the Special Committee on Education published its Recommendation for Setting up the Hauptschule (*Empfehlung zum Aufbau der Hauptschule*) in 1964. The following year, the Special Committee was replaced by the Educational Council.

3.3.3. German Educational Council (Deutscher Bildungsrat)

In 1965 the German Educational Council (*Deutscher Bildungsrat*) was set up with similar advisory responsibilities as the earlier *Deutscher Ausschuss*. From 1965 to 1975, the Educational Council published fifty opinion reports and eighteen recommendations, as

²⁵ "[Der Ausschuß] ist davon überzeugt, daß die geistige Einheit unseres Volkes, die über alle weltanschaulichen und sozialen Unterschiede hinaus besteht und gestärkt werden muß, eine Erziehung fordert, die von allen Schularten gemeinsam zu leisten ist und sie mit einander verbindet. Das kann aber nicht allein durch die Organisation eines für alle Bildungseinrichtungen und Begabungen verbindlichen äußeren Aufbaus erreicht werden. Vielmehr muß eine Besinnung auf den inneren Zusammenhang aller berechtigten Bildungsbedürfnisse unserer Zeit führen...Bei dem Bemühen um diese gemeinsamed Ziele kann die kulturelle Mannigfaltigkeit der deutschen Länder von hohem Nutzen sein.", in *Deutscher Ausschuss für das Erziehungs- und Bildungswesen* (1959), *Empfehlungen und Gutachten des Deutschen Ausschuss für das Erziehungs- und Bildungswesen; Rahmenplan zur Umgestaltung und Vereinheitlichung des allgemeinbildenden öffentlichen Schulwesens*, Ernst Klett Verlag: Stuttgart, p.2.

well as the 1970 Structural Plan for the Educational System (*Strukturplan für das Bildungswesen*).²⁶

The Educational Council was set up by an agreement between the Länder and the Federal Government, and had a somewhat more political composition than its predecessor, the Special Committee on Education. The administrative board of the Educational Council included representatives of the Länder and the Federal Government, while its staff was composed of bureaucrats and scientists. In the polarised political situation between the majority SPD/FDP coalition and the minority Christian union parties during the early seventies, the Educational Council failed to unite both sides behind a uniform reform plan and its mandate was not renewed. Besides, there was already a great deal of uniformity across the educational systems in the Länder, the disagreement between the left and the right was over the comprehensive reform of the system.

3.3.4. Council for the Sciences (Wissenschaftsrat)

On 5 September 1957 the Council for the Sciences (*Wissenschaftsrat*) was created by a state administrative treaty between the Federal Government and the Länder. Its aims were mainly advisory in the field of the expansion of education. But its suggestions have been very influential. In its first ten year report, the Wissenschaftsrat mentions the need to see education and upbringing from primary school to university as one complex whole and

²⁶Max Planck Institute for Human Development and Education (1983), *Between Elite and Mass Education: Education in the Federal Republic of Germany*, Albany: State University of New York Press, p.92.

the pressing need for uniformity²⁷. The report then outlines the work Wissenschaftsrat has carried out to this end. A public opinion survey from that time period (1965-67) displays widespread acceptance of the necessity for reforms in education. 64% of the respondents of a questionnaire on the role of the Wissenschaftsrat have declared unqualified support for the educational reforms proposed by the Council.²⁸

Members of the administrative board of the Council for Sciences were appointed by the Federal and Länder Governments, but it has managed to remain as an technical advisory body and has thus avoided the divisive politics that plagued the Educational Council. The Wissenschaftsrat stayed clear of the SPD supported comprehensive schools vs. Christian union supported three-tiered schools debate and managed to claim a position as an expert body dealing with technical aspects of higher education. A report by the Max Planck Institute for Education Research seems to lend support to this interpretation:

Until the end of the seventies, the Wissenschaftsrat did not submit any broad comprehensive proposal for the science system, but presented a large number of pragmatic, and as rule, efficiency concerned recommendations for the important sections of higher education system.²⁹

²⁷ "Bericht über die Arbeit des Wissenschaftsrates von 1957 bis 1967", in Wissenschaftsrat (1968), *Wissenschaftsrat 1957-1967*.

²⁸ "Wissenschaftsrat", Elisabeth Noelle and Erich Peter Neumann (eds.) (1967), *Jahrbuch der öffentlichen Meinung 1965-67*, Allensbach and Bonn: Institut für Demoskopie, p.358.

²⁹ "Der Wissenschaftsrat hat bis zum Ende der siebziger Jahre keinen perspektivischen Gesamtentwurf für das Wissenschaftssystem, sondern eine Vielzahl pragmatischer und in der Regel auf Effizienz bedachter Empfehlungen zu wichtigen Teilbereichen des Hochschulwesens vorgelegt.", Max-Planck-Institute für Bildungsforschung, Arbeitsgruppe Bildungsbericht (Jürgen Baumert, Rainer Benkmann, Jochen Fuchs, Diether Hopf, Helmut Köhler, Beate Kraus, Lothar Krappman, Achim Leschinsky, Jens Naumann, Peter Martin Roeder, Luitgard Trommer) (1994), *Das Bildungswesen in der Bundesrepublik Deutschland: Strukturen und Entwicklungen im Überblick*, Rowolt: Hamburg, p.91.

3.3.5. Further Demands for Reforms

An important event within the context of educational policy was Georg Picht's 1964 article 'the German Educational Catastrophe', which brought the issue into the core of public debate. This article became of the most influential arguments of the time and was widely quoted around policy circles. In this article Picht pointed to the problem of the so-called 'school chaos' and the need for central planning. Picht was very direct about the solution:

We need a federal Ministry of Culture and a central administration of culture. Therefore, we need an amendment of the Basic Law.³⁰

However, Picht also argued that, since the problem was immediate, the Länder should make all efforts to seek solutions until a constitutional amendment. It is interesting to note that, instead of defending their exclusive constitutional prerogatives over education, the Länder responded to Picht's article by trying to show that they were cooperating with one another and the Bund in establishing a national education policy. The Picht article and the so-called school chaos was debated in many public hearings. For example, in a debate on the issue in the Baden-Württemberg Land Parliament, the Baden-Württemberg Minister of Culture, Gerhard Stolz, responded to criticisms by stating that the Länder were working together effectively within the context of the KMK and Wissenschaftsrat. He argued that these efforts would help overcome the problem.³¹

³⁰ "Wir brauchen...ein Bundeskultusministerium und eine zentrale Kulturverwaltung. Wir brauchen deshalb ein Änderung des Grundgesetz". The article "Die deutsche Bildungskatastrophe" first appeared in *Christ und Welt*. It also appears in Georg Picht (1964), *Die deutsche Bildungskatastrophe, Analyse und Dokumentation*, Walter Verlag: Olten and Freiburg im Breisgau, p.45.

³¹ From "Antwort des baden-württembergische Kultusminister Dr. Gerhard Storz auf die Große Anfrage der SPD am 16 März 1964 im Landtag von Baden-Württemberg", quoted in *Ibid.* p.205-6.

Typically, the response to the debate ignited by Georg Picht came from the ranks of the Länder as they introduced numerous initiatives for further standardisation. For example, a member of the Baden-Württemberg Ministry of Culture made the following comments concerning the 21 April 1964 Baden-Württemberg Law for the Standardisation and Ordering of the School System (*Gesetz zur Vereinheitlichung und Ordnung des Schulwesens in Baden-Württemberg, Schulverwaltungsgesetz*):

[The Law] should not only give a firm and durable foundation to the school system of the Land, but also a contribution to achieve the unity of school systems in the Länder of the Federal Republic.³²

So once again, instead of jealously protecting their exclusive jurisdictions from outside encroachment, the Länder -in the above case the powerful Land of Baden-Württemberg with necessary resources to take independent action- have willingly abdicated their powers in the field of education.

3.4. Constitutional Amendment for Joint Responsibility in Education

In 1959 the Länder and the Bund signed the State agreement on scientific research³³ that effectively brought the Bund into an exclusive Länder area. Ministry for Scientific Research was created in 1962; this was followed by agreements in 1964 and 1968

³² "...es soll nicht nur dem Schulwesen des Landes eine feste dauerhafte Grundlage geben, sondern auch einen Beitrag zur Einheit des Schulwesens in den Ländern der Bundesrepublik leisten", in Hochstetter, Herbert (ed.), *Gesetz zur Vereinheitlichung und Ordnung des Schulwesens in Baden-Württemberg (Schulverwaltungsgesetz)*, 4th Edition, Kohlhammer: Stuttgart, p.13.

³³ The 1959 State agreement (*Staatsabkommen*) of Königstein divides the cost of subsidising the German Research Commission (*Deutsche Forschungsgemeinschaft*) equally between the Bund and the Länder, in Alfred Grosser (1971), *Germany in our Time, A Political History of the Postwar Years*, London: Pall Mall Press, p.101.

expanding the role of the Bund in higher education leading to a constitutional amendment in 1969 that made higher education and research policy areas of joint responsibility.

The SPD-CDU/CSU grand coalition had proposed to bring educational planning under joint Bund-Länder responsibility. However, this proposal was opposed by the FDP, not because the constitutionally entrenched competences of the Länder were violated, but because the reforms were not going far enough. It is interesting to note that the FDP opposition attacked the joint responsibility proposal as a *kleine Lösung* ('small solution') to the issue of education:

Our criticism is directed against the fact that the Bund is not given sufficient competences that are required for an urgently necessary reform in the educational system which would allow our youth to have a secure future in the international competition, and thereby, to remove a discomfort on our state.³⁴

A public opinion poll from 1972 shows 50% support for a constitutional amendment that would give the federal government full authority over the school system and education; while 34% of the respondents declared that they were in favour of Bund-Länder cooperation in order to agree on a solution to the questions of educational policy.³⁵ The constitutional amendment of joint responsibility and the positive public reaction to cooperation in the field of education eventually opened up the gates for direct Bund involvement.

³⁴ "Unsere Kritik richtet sich dagegen, daß dem Bund keine ausreichenden Kompetenzen gegeben werden, die für eine dringend notwendige Reform im Bildungswesen erforderlich sind, um unserer Jugend im internationalen Wettbewerb eine gesicherte Zukunft zu ermöglichen und dadurch das Unbehagen an unserem Staat zu nehmen", quoted from the speech of FDP representative Mishnik at the Bundesrat, Karin S. Poeppelt (1978), *Zum Bildungsgesamtplan der Bund-Länder-Kommission: Die Einfügung des Artikels 91b in das Grundgesetz und der Prozeß der Bildungsplanung für den Elementar-, Primer- und Sekunderbereich in der Bund-Länder-Kommission für Bildungsplanung*, Weinheim and Basel: Beltz Verlag, p.76.

3.5. Federal Ministry of Education

As it is clear from the previous section, there has been an overall consensus between the Bund and the Länder over the necessity to standardise educational policy. The Länder have often invited the Bund into their exclusive jurisdictions and have been instrumental in transforming substate educational policy into a national one. In 1969 the CDU/CSU-SPD grand coalition of Kiesinger and Brandt established the Federal Ministry of Education. To be precise, the existing Federal Ministry of Scientific Research was expanded into the Federal Ministry of Education and Science. Thus the Federal Government created a ministry in a policy area where it originally did not have constitutional jurisdiction, but this was not an offensive preemption since the constitutional amendments had brought the Federal Government into the field of education and the Länder welcomed a national body to coordinate educational policy. The first Federal Minister of Education and Science, Hans Leussink, believed this federal involvement in education to be the 'flexibility' of federalism:

The Federal Government is of the opinion that through the possibility of joint educational planning the debate on the question of constitutional competencies in the educational system will lose considerable significance if the Federal Government and the Länder can agree on an educational reform that guarantees the individual his right to learning and teaching and that ensures society a productive and efficient educational system, the flexibility of federalism will reveal itself in the end as a force for the good.³⁵

The above quotation is from the introduction to the 1970 Education Report of the Ministry of Education and Science. Notably, the introduction is subtitled 'Educational

³⁵ "Entscheidungsbefugnis", Elisabeth Noelle and Erich Peter Neumann (eds.) (1974), *Jahrbuch der öffentlichen Meinung 1968-1973*, Allensbach and Bonn: Institut für Demoskopie, p. 171.

Policy as an All-State Task'. It is interesting to note that the first Federal Minister of Education and Research, Hans Leussink, had no party affiliation and was the former chairman of the Wissenschaftsrat. This extra-partisan choice demonstrates the importance given to a national system of education. As a consequence of these developments, education effectively became a federal policy. In the following passage from the 1970 Report on Education, the Federal Ministry of Education and Science appears to be either unaware or unperturbed by the contradiction in their statement:

The Federal Government has no desire, with its extended financial participation, to reduce the competencies of the Länder in the shaping and influencing of education. Instead, the aim is to improve co-ordination and agreement on the establishment of priorities, irrespective of Länder boundaries.³⁷

3.6. Bund-Länder Commission on Educational Reform (BLK)

In 1970 the Bund-Länder Commission on Educational Reform and Advancement of Research (*Bund-Länder-Kommission für Bildungsplanung und Forschungsförderung*) was set up. In many ways the aims of this new body were similar to the KMK, but there was an important difference. The BLK was not set up by the Länder to coordinate educational policies only, but it included the Federal Government as a partner as well. Gunlicks describes the position of the Commission as follows:

³⁶Der Bundesminister für Bildung und Wissenschaft (1970), *Bildungsbericht'70, Report of the Federal Government on Education, The Federal Governments Concept for Educational Policy*, English version, Bonn: 1970, p.5.

³⁷Der Bundesminister für Bildung und Wissenschaft (1970), *Bildungsbericht'70, Report of the Federal Government on Education, The Federal Governments Concept for Educational Policy*, English version, Bonn: 1970, p.224.

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Generally, there seemed to be a consensus...[A]ll parties seemed to agree on a need to coordinate *Land* policies. In addition, the federal government seemed to believe that it had a responsibility to create a greater uniformity of opportunities and living conditions across the nation.³⁸

In her speech at the Bundestag in June 1970 concerning the BLK, the State Secretary for the Federal Ministry of Education and Research of the new SPD-FDP coalition government, Hildegard Hamm-Brücher (FDP) was hardly able to contain her excitement at the prospect of a federal educational policy:

If there is really a short-term escape from the dilemma of cultural federalism, here is the way! The creation of the Bund-Länder Commission is an event of great political significance and hopefully the beginning of a new era in the development of the educational policy of our country.³⁹

The BLK was composed of eleven representatives of the Länder who had a vote each. This was balanced by the seven representatives of the Federal Government who collectively had eleven votes. The decision-making was based on qualified majority voting and the responsibilities of the BLK were largely directed towards the educational system as a whole.

The process towards drafting a nation-wide approach to university education through the BLK was aided by the 1972 decision of the Federal Constitutional Court. The Court ruled that a nation-wide approach to student placement was necessary:

³⁸ Arthur Gunlicks (1989), Introduction to the special issue "Federalism and Intergovernmental Relations in West Germany: A Fortieth Year Appraisal", *Publius: The Journal of Federalism*, 19:4, p.9.

³⁹ "Wenn es überhaupt einen kurzfristigen Ausweg aus dem Dilemma des Kulturföderalismus gibt, hier bahnt er sich an! Die Schaffung der Bund-Länder-Kommission ist ein Ereignis von großer politischer Tragweite- und der hoffnungsvolle Beginn einer neuen Ära in der bildungspolitischen Entwicklung unseres Lands.", quoted in, Karin S. Poepelt (1978), *Zum Bildungsgesamtplan der Bund-Länder-Kommission: Die Einfügung des Artikels 91b in das Grundgesetz und der Prozeß der Bildungsplanung für den Elementar-, Primer- und Sekundarbereich in der Bund-Länder-Kommission für Bildungsplanung*, Weinheim and Basel: Beltz Verlag, p.3-4.

It is the joint responsibility of the Bund and Länder to ensure the allocation of all available seats for university study through a supra-regional placement under the application of a uniform selection criteria.⁴⁰

But a nation-wide comprehensive system proved to be a difficult case to resolve. The 1973 Comprehensive Education Plan (*Bildungsgesamtplan*) which aimed to structure education until 1985 emerged as a deeply divisive proposal which polarised public opinion. The attempts to agree on a *Bildungsgesamtplan* was finally given up in face of differences between political parties at the Bund and at the Land level. The qualified majority based decision making principle of the BLK was in strong contrast with the consensual KMK style of unanimity. While KMK's unanimity induced negotiations to reach compromises, the BLK's majority voting brought in polarisation between the ruling SPD and the opposition Christian union parties. However, at the end of the day the BLK was far from being a failure.

The BLK introduced many innovations at the bilateral Bund-Land relations. In the past twenty years, it has published almost two thousand proposals and has carried out countless pilot schemes in various areas of educational system. Regardless of the divisions over the 1973 *Bildungsgesamtplan*, these measures have aided the process of the nationalisation of education.

The statute of BLK was revised in 1990 to incorporate the East German Länder. The Bund-Länder Commission is now composed of representatives of the sixteen Länder and the Federal Government. The voting arrangement, however, gives the Federal

⁴⁰ "Zur gemeinsamen Verantwortung von Bund und Ländern für die Verteilung aller freien Studienplätze durch eine überregionale Stelle unter Anwendung einheitlicher Auswahlkriterien.", Bundesverfassungsgericht (1972), "Absoluter Numerus Clausus für Medizinstudium", *Entscheidungen des Bundesverfassungsgericht*, Band 33, Tübingen: J.C.B. Mohr, p.304.

Government an upper hand. There are eight representatives from the Federal Government who have two votes each but who are obliged to cast their votes together. The Länder representatives have one vote each which seems to provide a 16:16 balance. 25 votes represents the qualified majority necessary for the approval of a resolution. But considering the strong party discipline in Germany, it is relatively easy for the Federal Government to pass a decision that it wants with the support of Land governments from the same party.

3.7. Hochschulrahmengesetz and the 'Deficiencies' Report

In 1970 a working group was set up by Chancellor Willy Brandt and Länder Minister-Presidents to draft a uniform policy on education and training (*Einheitliche Bildungspolitik*). The recommendations of the working group led to the universities and higher education law (*Hochschulrahmengesetz*) of 1976. Higher education was seen to be directly related to Germany's industrial and economic performance. There appeared to be widespread support for this initiative. For example, Denninger argues that as a highly industrialised country within international competition for productivity, Germany had to increase the number of its students at higher education.⁴¹ The question, however, was the constitutional clause which placed education under the exclusive jurisdiction of the Länder.

⁴¹Erhard Denninger with Peter Becker, Ulrich Hammer, Andreas Kehler, Jürgen Lüthje, Peter Hauck, Hans-Albert Lennartz, Henning Schrimpf, Bernard Nagel MCL (1984), *Hochschulrahmengesetz: Kommentar*, Munich: C.H.Beck, p.v.

An article titled 'Planning of Higher Education and the Basic Law' from that time period provides an example of how explicit the discussion on bypassing the Constitution had become. The author talks about the need to change the institutional structure in order to bring nation-wide educational policies, but he is also aware of the constitutional limits on such reforms; especially, the constitutional clause on the federal character of the German State, which cannot be amended:

How far could, namely centralisation, unitarisation and coordination still really be pursued without violating Article 79 iii of the Basic law which fixes an absolute guarantee for the federal state? ⁴²

Within the context of this debate, the Federal Government released its controversial report on the structural problems of federal education systems in December of 1978. In this so-called 'deficiencies report' (*Mängelbericht*), the Federal Government called for constitutional revisions in the interest of maintaining uniform living conditions across the whole of the country. The report asked for a constitutional revision in the field of educational policy. After laying out the effects of educational federalism, the report claimed that the absence of a uniform nation-wide educational system left the Germans at a disadvantage:

Those who are first in line to be affected from [educational policy] decisions -pupils, trainees and students, parents and teachers- rightfully expect that also in a federal state, as a prerequisite for the freedom of movement, mobility and equality of opportunity in educational and occupational system, a minimum degree of necessary uniformity in the educational system should be guaranteed.⁴³

⁴² "Wie weit nämlich Zentralisierung, Unitarisierung und Koordinierung überhaupt noch getrieben werden können, ohne die in Artikel 79 iii GG verankerte absolute Garantie für den Bundesstaat zu verletzen.", Ulrich Karpen (1976), "Planung des Hochschulwesens und Grundgesetz", in Ulrich Karpen and Franz-Ludwig Knemeyer (1976), *Verfassungsprobleme des Hochschulwesens*, Ferdinand Schöningh: Paderborn, p.25.

⁴³ "Die von diesen Entscheidungen in erster Linie Betroffenen - die Schüler, Auszubildenden und Studenten, die Eltern und Lehrer - erwarten zu Recht, daß auch in einem Bundesstaat ein Mindestmaß an notwendiger Einheitlichkeit im Bildungswesen als Voraussetzung für Freizügigkeit, Mobilität und Chancengleichheit im Bildungswesen und Beschäftigungssystem

The report argued that a constitutional amendment to introduce federal competence would lead to a better balance between the occupational and educational systems. According to the report, because of the close relationship between the school system and the industry in Germany, nation-wide comprehensive educational policies were necessary. The report continued by arguing that the current differences between the educational systems of the Länder and the ensuing difficulties were hindrances to an efficient educational system in Germany. In light of the inability of the Länder to act collectively to offset the disadvantages of cultural federalism, the report demanded a change in the division of responsibilities that would enable the 'necessary uniformity of the educational system' (*notwendigen Einheitlichkeit des Bildungswesens*).

3.8. German Unification and Recent Developments

A year before reunification, the KMK had carried out another round of reforms, but the German public was still not satisfied. And most demands for educational unity still came from the ranks of the Länder Governments. In a 1991 article in the journal of Baden-Württemberg Administrative Practice, the author calls for more collective action in the field of education. To support his point, the author refers to a survey carried out in the fall of 1989, where three fifths of the respondents thought that the Bund should assume more responsibilities in the field of education.⁴⁴ Right at this time, unanticipated changes

gesichert wird", Der Bundesminister für Bildung und Wissenschaft (1978), *Bericht der Bundesregierung über die strukturellen Probleme des föderativen Bildungssystem*, Bonn, p. 5.

⁴⁴ From the survey, 'Bildung 1989, Die bildungspolitischen Vorstellungen der Bundesbürger'. Ergebnisse einer repräsentativen Studie der FORSA-Gesellschaft für Sozialforschung und

within the Communist Bloc suddenly made German reunification a possibility. The most recent turning point in the nationalisation of education was thus, the subsequent swift reunification of 1990. The process of reunification, in particular in the area of education, is just another indication that the federal division of responsibilities can easily be bypassed when deemed necessary.

Even though the Basic Law establishes the principle of cultural sovereignty for the Länder, the five new East German Länder were required to accept all the agreements made by the West German Länder concerning education before reunification. Yet another violation of the spirit of the Constitution, but everyone chose to conveniently ignore a constitutional clause which seemed to create unnecessary and inefficient diversity. Such a view that associates educational diversity with inefficiency is implicit in the following quotation from two German scholars:

The persistent issue is to what extent differences in educational systems and resulting hindrances to mobility should be accepted for the sake of the advantage of federal pluralism.⁴⁵

The process of standardising East German education with that of the West in fact preceded the official reunification. The Kultusministerkonferenz had its 251st plenary meeting on 6 and 7 December 1990 with all Länder present, including the new five East German Länder. The following year, on 21 and 22 February the KMK had its 252nd plenary meeting at Stuttgart-Hohenheim where the first KMK was held in 1948. Symbolically, this meeting also produced a so-called Stuttgart-Hohenheim Memorandum

Statistische Analysen mbH Dortmund, durchgeführt im Auftrag des Bundesministers für Bildung und Wissenschaft, Bonn, Dez.1990, Jobst, Eberhard (1991), "Erwartungen der Bundesbürger an die Bildungspolitik", *Baden-Württembergische Verwaltungspraxis*, Vol.18:1991, p.250-51.

on Education, Science, and Cultural Issues in Reunified Germany (*Hohenheimer Memorandum zur Bildungs-, Wissenschafts- und Kulturpolitik im geeinten Deutschland*). The KMK followed its Hohenheim Memorandum with an extensive process towards the reorganisation of East German education. In the meantime, the new Länder also became members of the Bund-Länder Commission for Educational Planning and Advancement of Research (BLK). During July of 1990 the Wissenschaftsrat began to evaluate the higher education and research organisations of East Germany and made suggestions as the new Länder became members of this entity as well. As a result, the educational structures of the East German Länder were changed to correspond to the standardised national educational system in the West, in spite of Article 30 of the Basic Law which brought the constitutional clause of cultural sovereignty to the new Länder at the same time.

Since reunification, educational federalism and Länder cultural sovereignty have hardly become an issue. All actors involved seem to share the belief in the necessity of nation-wide educational system. Especially, the importance attributed to universities and other higher education institutions have reduced the constitutional competence questions to the background:

For every industrial state, efficient higher education is an indispensable prerequisite for economic and social development. Furthermore, it is necessary for the uniformity of living conditions across Germany, for providing a framework for the desired Länder specific higher education developments, for a minimum measure of uniformity within systems, for allowing mobility of people over the borders of individual Länder, and for ensuring an overall high quality in the field of higher education. Structure and further development of the higher education are therefore of considerable importance for the overall State [*Gesamtstaat*].⁴⁵

⁴⁵ Jürgen Baumert and Dietrich Goldschmidt (1980), "Centralization and Decentralization as Determinants of Educational Policy in the Federal Republic of Germany", *Social Science Information*, Vol.19, pp.1046.

⁴⁶ "Leistungsfähige Hochschulen sind in jedem Industriestaat eine unerlässliche Voraussetzung für die wirtschaftliche und gesellschaftliche Entwicklung. Außerdem ist es für die Einheitlichkeit der Lebensverhältnisse in Deutschland notwendig, den erwünschten länderspezifischen Hochschulentwicklungen einen Rahmen zu geben, um ein Mindestmaß an Einheitlichkeit

In the meantime, Länder pressures for further reform and standardisation continue. Earlier we had seen Baden-Württemberg's activism in bringing about nation-wide uniformity to German education. A similar initiative was recently taken by another powerful German Land, North Rhine-Westphalia. A recent report commissioned by the Minister-President of North Rhine-Westphalia at the time and the current President of the Federal Republic, Johannes Rau, renews the calls for the reform of German education. This 1995 report 'Future of Education - Schools of the Future' (*Zukunft der Bildung - Schule der Zukunft*) deals with the common themes of harmonisation and efficiency in education.

4. 'Education as an All-State Task'

In the preceding section a reference was made to a report by the Federal Ministry of Education and Science titled 'Education as an All-State Task'. Such a title would have been seen as a federal provocation in ethno-linguistically heterogeneous federations. In Germany, however, it sums up the general public view concerning German educational policy. In the entire German literature which deals with educational policy and in the various official documents (proposals, reports and legislation) there does not appear to be any attempt to justify or defend nation-wide action. In fact, everyone seems to believe in

innerhalb des Systems, an Mobilität der Menschen über die Grenzen des einzelnen Landes hinaus und um einen insgesamt hohen Qualitätsstand im Hochschulbereich zu gewährleisten. Struktur und weitere Entwicklung des Hochschulsystems sind deshalb von erheblicher gesamtstaatlicher Bedeutung", in Wolfgang Mönikes, , Klaus Faber und Ludwig Gieseke (1997), *Gemeinschaftsaufgaben von Bund und Ländern im Hochschulbereich*, 3. neubearbeitete Auflage, Verlag Karl Heinrich Bock: Bad Honnef, p.9.

the necessity of nation-wide educational policies, but differ over the content. It is very rare that German decision-makers, educators and academics feel obliged to justify the need for nation-wide educational policies. Writing for a foreign audience, Hellmut Becker provides a rare attempt to justify the 'nationalisation' of education:

Today, educational affairs must be seen as the responsibility of the nation as a whole. Vocational training, the school system and the universities must be considered in relation to each other within the framework of an integrated education policy. If it is to be effective, the responsibility for all educational planning must be organised on a supra-regional basis.⁴⁷

The process that led to the nationalisation of education is often interpreted as a natural tendency by German observers. A report by the Max Planck Institute for Education Research in 1994 interprets the pattern of constitutional changes in the field of education along these lines:

These constitutional amendments symbolise in certain way the provisional conclusion which as early as the 1950s has set in the further development of the principle of cultural sovereignty of the Länder to our present system of a *cooperative cultural federalism*.⁴⁸

Such approach is shared by German political parties as well. A well-known scholar of German education, Christoph Führ, sums up the prevailing attitudes towards the nationalisation of education in the following terms :

The leading political powers of all of the big parties were convinced that the uniformity and comprehensibility of educational systems should be secured as stronger than before, and that the Bund should be given participation rights in educational policy.⁴⁹

⁴⁷ Helmut Becker (1978), "Retrospective View from the German Side", in Arthur Hearnden (ed.), *The British in Germany, Educational Reconstruction after 1945*, London: Hamish Hamilton, p.276.

⁴⁸ "Diese Grundgesetzänderungen symbolisieren in gewisser Hinsicht den vorläufigen Abschluß einer schon in den fünfziger Jahren einsetzenden Weiterentwicklung des Prinzips der Kulturhoheit der Länder zu unserem heutigen System eines kooperativen Kulturföderalismus", in Max-Planck-Institute für Bildungsforschung, Arbeitsgruppe Bildungsbericht (Jürgen Baumert, Rainer Benkmann, Jochen Fuchs, Diether Hopf, Helmut Köhler, Beate Kraus, Lothar Krappman, Achim Leschinsky, Jens Naumann, Peter Martin Roeder, Luitgard Trommer) (1994), *Das Bildungswesen in der Bundesrepublik Deutschland: Strukturen und Entwicklungen im Überblick*, Rowolt: Hamburg, p.81.

An overview of the party positions demonstrates that there are indeed important differences between them concerning the content of educational policy, yet all parties share a 'nation-wide' approach to tackle the educational issues they deem necessary. For example, in its 1993 report on education, the CDU summarises its views on educational policy in the following terms:

Federalism and the cultural sovereignty of the Länder is the indispensable premise for the variety and competition of different approaches and ways. But the Länder also have the special responsibility, not only for the principled evenness of the operation of education, but especially to ensure even levels in the results of different operations of education...School results are the steps and marking stones on the path towards singularity. Therefore, all views on the results and all demands lodged for the whole of Germany should be in harmony.⁵⁰

The SPD differs with the Christian union parties on the contents of educational policy, and specifically objects to the three-tiered traditional educational system, but at the same time, it believes in a nation-wide approach to use education as a tool for social emancipation.⁵¹ The political party most committed to a nation-wide uniform educational

⁴⁹ "Die führenden politischen Kräfte aller großen Parteien waren überzeugt, daß die Einheitlichkeit und Überschaubarkeit im Bildungswesen stärker als zuvor gesichert und dem Bund bildungspolitische Mitwirkungsrechte zuerkannt werden sollten.", in Führ, Christoph (1996), *Deutsches Bildungswesen seit 1945; Grundzüge und Probleme*, Bonn: Inter Nationes, p.38.

⁵⁰ "Der Föderalismus und die Kulturhoheit der Länder sind eine unaufgebbare Voraussetzung für Vielfalt und Wettbewerb unterschiedlicher Ansätze und Wege. Die Länder stehen aber auch in der besonderen Verantwortung, nicht nur die grundsätzliche Gleichwertigkeit der Bildungsgänge, sondern vor allem ein gleichwertiges Niveau in den Abschlüssen unterschiedlicher Bildungsgänge zu gewährleisten...Schulabschlüsse sind Schritte, Marksteine auf dem Weg jedes einzelnen. Deshalb müssen die mit Blick auf die Abschlüsse gestellten Anforderungen innerhalb Deutschlands alles n allem gleichwertig sein.", Christlich-Demokratische Union (CDU) (1993), *Erziehung, Ausbildung und Bildung in unserer freiheitlichen Demokratie: Für die humane Leistungsschule und ein leistungsfähiges Hochschulsystem*, in Berthold Michael and Heinz-Herman Schepp (eds.) (1993), *Die Schule in Staat und Gesellschaft; Dokumente zur deutschen Schulgeschichte im 19. und 20. Jahrhundert*, Göttingen and Zürich: Muster-Schmidt Verlag, p.484.

⁵¹ Sozialdemokratische Partei Deutschlands (SPD) (1989), *Grundsatzprogramm der SPD*, in Berthold Michael and Heinz-Herman Schepp (eds.) (1993), *Die Schule in Staat und Gesellschaft; Dokumente zur deutschen Schulgeschichte im 19. und 20. Jahrhundert*, Göttingen and Zürich: Muster-Schmidt Verlag.

system, on the other hand, is the FDP. As early as 1950, FDP had declared its views on educational federalism:

To prepare the unity of the educational system for the future state territory, the individual Länder should adjust their available organisational structures with one another for a uniform federal regulation.⁵²

Forty years later the views of the FDP have hardly changed:

The FDP will conserve the principle of Länder competence to the extent that this does not endanger the inter-German compatibility of education operations. To this end, the federal government must be provided with the necessary framework competences. The mobility of the teachers and students within the European integration process should not be allowed to run aground at the borders of the Länder.⁵³

The support for nation-wide policies is not confined to the political parties, but spans across the whole of Germany. For observers familiar with federal systems elsewhere, the absence of opposition within Germany to educational centralisation is striking. No one seems to challenge the perceived need for a nation-wide educational policy, including the Länder themselves, political parties, teachers' union, parents' associations, industry and trade unions. The current director of the Bundesrat, Georg-Berndt Oschatz, who was also the Culture Minister of Lower Saxony from 1982 to 1987, summarises the prevalent German view towards educational federalism:

⁵² "Um die Einheit des Bildungswesens im zukünftigen Reichsgebiet vorzubereiten, sind die in den einzelnen Ländern vorhandenen Organisationsformen durch eine bundeseinheitliche Regelung einander anzugleichen.", from the FDP 1950 Basic Points on Cultural Policy, quoted in, Karin S. Poeppelt (1978), *Zum Bildungsgesamtplan der Bund-Länder-Kommission: Die Einfügung des Artikels 91b in das Grundgesetz und der Prozeß der Bildungsplanung für den Elementar-, Primer- und Sekundarbereich in der Bund-Länder-Kommission für Bildungsplanung*, Weinheim and Basel: Beltz Verlag, p.41.

⁵³ "Die FDP will den Grundsatz der Länderkompetenz insoweit erhalten, als sie der Kompatibilität von Ausbildungsgängen innerhalb Deutschlands nicht entgegensteht. Dazu muß der Bund mit dem notwendigen Rahmenkompetenzen ausgestattet werden. Mobilität von Lehrenden und Lernenden darf im europäische Integrationsprozeß nicht an den Grenzen von Bundesländern scheitern", *Frei Demokratische Partei (FDP) (1991), Soziale Chancen durch liberale Marktwirtschaft*, in Berthold Michael and Heinz-Herman Schepp (eds.) (1993), *Die*

A modern industrial large state like Germany can hardly afford a dozen different educational and cultural policies.⁵⁴

5. Conclusions

The Basic Law of 1949 placed education under the exclusive jurisdiction of the Länder. The Allies had planned that the decentralisation of education would create eleven separate educational systems which would then be safeguards against the reemergence of a strong national identity. This institutionalist perspective has not prevailed. The Länder have actively cooperated to harmonise and standardise their educational policies, they have invited the Federal Government into an areas where they have enjoyed exclusive competence, they have even supported the establishment of a national Ministry of Education. The empirical examination above particularly focuses on two strong Länder, Baden-Württemberg and North-Rhine Westphalia, who had the resources and reasons to go it alone; yet they have been at the forefront of the nationalisation of education. There have been deep disagreements over the contents of an all-German educational policy, but the choice of venue to fight the battles over educational policy has been a national one. In this respect, with its emphasis on an ethno-linguistically homogeneous German social structure, congruence has proved to be a better theoretical perspective to interpret the developments within the policy area of education.

Schule in Staat und Gesellschaft; Dokumente zur deutschen Schulgeschichte im 19. und 20. Jahrhundert, Göttingen and Zürich: Muster-Schmidt Verlag, p.501.

⁵⁴ "Ein moderner industrieller Massenstaat wie die Bundesrepublik Deutschland kann schwerlich ein Dutzend unterschiedliche Bildungs- und Kulturpolitiken verkraften", Georg-Berndt Oszatz (1998), "Zusammenarbeit der KMK mit anderen Institutionen", in Sekretariat der Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland (ed.), *Einheit in der Vielfalt: 50 Jahre Kultusministerkonferenz 1948-1998*, Neuwied, Kniffel and Berlin: Luchterhand, p.144.

Chapter VII

Mass Media Policy in Germany

Based on the existing unity [between the Bund and the Länder], the necessary regulations will not be allowed to run aground on differing interpretations of competence questions.

*From the 1997 Bund-Länder Media Treaty*¹

1. Introduction

Along with educational policy, media policy is a part of the cultural sovereignty of the Länder as set up by Article 30 of the Basic Law. Press and broadcasting are the two component categories of media policy. As it was the case with educational policy, media policy was seen as an important tool by the Allies to reform and reshape Germany. Following the end of the war, the Western Allies installed a decentralised system of press in their zones of occupation. Against the background of the Nazi propaganda machine, the dispersion of the media was seen as a way to guarantee the freedom of press. In addition to the decentralisation, Article 5 of the Basic Law was designed to uphold the freedom of press, broadcasting and reporting.

¹ "Es bestand Einigkeit darüber, die notwendigen Regelungen nicht an unterschiedlichen Auffassungen in Kompetenzfragen scheitern zu lassen.", from the Bund-Länder *Staatsvertrag*

The Allied plans for media decentralisation went against the wishes of the post-war German politicians, but they were in no position to resist the occupation authorities. During the meetings of the Parliamentary Council discussing the new Constitution for West Germany in 1949, the representative of the Land Württemberg-Baden Dr. Theodor Heuss, who was later to become the first President of the Federal Republic, was very explicit about what was wanted and what was possible under Allies supervision:

I would rather not take in these affairs of broadcasting planning and public corporations here, because that would bring the anticipation of a legislation which is currently varied with confusion, and one which we obviously want to receive within the hand of the Bund. We do not want three or four different kinds of radio law. This is surely no reason for the American military government to reject everything, but they are hoping for it because they are exactly striving here to push the State issues as to the background as possible.²

The remarks of Heuss is an indication of the process of congruence at play. As the earlier chapters laid out, the theory of congruence lies at the core of this research project. In particular, the focus is on the centralist pressures exerted by the unitary German society on the decentralised federal system. As the findings of the empirical research show, both Land-based and federal based political actors have acted with Germany as their frame of reference and not their respective Länder. For the purposes of this research, the two Länder North Rhine-Westphalia and Baden-Württemberg are under close examination. The three Länder which preceded and merged into Baden-Württemberg in 1951, i.e. Süd-

über Mediendienste (Mediendienste-Staatsvertrag) vom 20. Januar-12. Februar 1997, published in Media Perspektiven Dokumentation 1996:1, p.25.

² "...ich würde diese Geschichte mit den Sendeanlagen und den Anstalten des öffentlichen Rechts doch nicht hier hineinnehmen denn das ist die Vorwegnahme einer Gesetzgebung, die heute sehr bunt durcheinander geht und die wir selbstverständlich in die Hand des Bundes bekommen wollen. Wir wollen nicht drei -oder vierlei Radiorecht. Das wird zwar für die amerikanische Militärregierung kein Grund für die Ablehnung des ganzen sein, aber sie wird darauf hoffen, weil sie gerade hier bestrebt ist, die staatlichen Dinge möglichst in den Hintergrund zu schieben." from the 32. meeting of the Grundsatzausschuss of the Parlamentarische Rat, 11 December 1949, quoted in Lüders, Carl-Heinz (1953), *Die Zuständigkeit zur Rundfunkgesetzgebung*, Bonn: Köllen Verlag, p.40.

Württemberg, Süd-Baden, and Württemberg-Baden, are naturally also a part of the inquiry. North Rhine-Westphalia and Baden-Württemberg are two large and strong Länder, one traditionally on the right the other on the left, which have the capacity for independent action, and thus, not dependent on the federal government for resources. Therefore, their participation in the 'nationalisation' of media eliminates the alternative explanation of Länder dependency.

The results of the empirical inquiry prove that political actors in these two Länder approached the issue of mass media as a nation-wide concept and not an exclusive Länder competence. Länder governments -including the party in power and the Länder bureaucracy, opposition parties, interest groups and professional associations, and courts have all been active in translating the societal homogeneity into institutional change. This process of congruence does not necessarily mean that the involved political actors always agreed with the particular contents of a national media policy. What the theory of congruence suggests is that, regardless of their differences, they decided to tackle the issue at the national level.

The process of congruence is slightly different between the two component categories of mass media, i.e. print press and broadcasting. The nationalisation of print press has been a relatively smooth process, partly because all print press is privately owned. The policy area of broadcasting, on the other hand, has pitted the left against the right over the public-private ownership dimension. But as it will become clear, even this major disagreement found its battlefield at the national level.

2. Print Press

The history of the 'nationalisation' of the post-war German press is a legally non-controversial one: newspapers with nation-wide circulations, but subject to the press licensing laws of the Land they are based in. Thus, there are no important turning points in the centralisation of the German press, but only a legally decentralised structure which has been unable to create a Land-based press culture. As a consequence of a nation-wide public opinion, despite its Land-based legal grounding, the German press is very much a nation-wide phenomenon. This natural tendency has been aided by a harmonisation of the Länder press laws and occasional Bund initiatives aiming at standardisation. There are, of course, many local newspapers with limited circulation, but in broad terms, the German press has managed to bypass the legal decentralisation designed by the Allies and has come to be the representative of national public opinion. There are a number of quality daily newspapers with nation-wide circulation and a few tabloids in Germany. The center-left *Süddeutsche Zeitung*, the centre-right *Frankfurter Allgemeine*, *Die Welt* on the right, the left liberal *Frankfurter Rundschau* and the left-wing *Berliner Tageszeitung* are the main quality newspapers with national circulation. The populist right-wing tabloid *Bild* also has a wide national circulation. The independent *der Spiegel*, liberal *Focus* and influential left-wing *Die Zeit* are also national newspapers published weekly.

The origins of German press law predate the Basic Law. In their zones of occupation the Allies had installed a system of press licensing. The press licensing system ended with the Basic Law in 1949 as the Länder acquired responsibility for the

regulation of mass media. Each Land passed their own press laws but established joint commissions to harmonise their policies.

During this early time period, there were three important pressure groups who sought some sort of a federal press law, but differed with regard to the contents of this law. The old publishers (*Altverleger*) represented the traditional German publishing houses who were initially denied licences by the Allies due to their perceived collusion with the Nazis. There was also a desire to prevent the reappearance of these influential press magnates who had dominated the public opinion during the Weimar Republic and Nazi rule. The Allied authorities believed the decentralisation of press to be an important building block in a pluralist democracy. In response to the Allied recalcitrance, the old publishers formed the national Association for Press Questions (*Arbeitsgemeinschaft für Pressefragen*) which published the Manifesto for Press Freedom (*Manifest der Pressefreiheit*) in the fall of 1948. Here the old publishers demanded the removal of press licensing and asked for a uniform federal law to regulate the press³. The new publishers licensed by the Allies sought to keep the old out of the press industry during the first years of the new German state. But these licensed publishers also lobbied for a federal press law. On 22 February 1950 the Association of Newspaper Publishers (*Verein Deutscher Zeitungsverleger*) and the Association of German Journal Publishers (*Verband Deutscher Zeitschriftenverleger*) tabled a draft federal press law.

The old publishers gradually reacquired their licences under the new Federal Republic however; and despite the early tensions between the old and new publishers,

³Walter J. Schütz (ed.) with Marianne Wulff-Nienhüser, Daniela Grobe, Erika Stratz, Dieter Stürzebecher, and an introduction by Gerhard W. Wittkämper (1999), *Medienpolitik*;

their interests converged and they came together on 15 July 1954 to form the Federal Union of German Newspaper Publishers (*Bundesverband Deutscher Zeitungsverleger*). The Newspaper Publishers Union sought a federal system which would give them considerable autonomy. The journalists, on the other hand, also had their organisation, German Journalists Association (*Deutscher Journalisten Verband*) which lobbied for federal laws, but in contrast, they favoured strict public control over the press. Eventually the Journalists Association published its Draft Federal Press Law (*Entwurf für ein Bundespressegesetz*) on 10 April 1954 along these lines.

In the meantime, Federal and Länder Governments continuously tried to reach an agreement on a common national press law. As early as 1950 the Standing Conference of Cultural Ministers (*Ständige Konferenz der Kultusministers*) proposed a federal press law. This draft law of 15 July 1950 aimed to bring legal uniformity (*Rechtseinheitlichkeit*) to existing Land-based press laws. Segments of this draft law were incorporated into a proposal by the CDU and CSU. In 1952 the Christian union parties proposed a federal law to bring legal standardisation to the existing press laws of the Länder. This draft law titled *Referentenentwurf des Gesetzes über das Pressewesen (Bundespressegesetz)* was tabled on 12 March 1952. In addition to the legal unification of press laws, the proposal included the establishment of public press committees (*Presseausschüsse*) at the national level with considerable regulatory powers. For partisan reasons, the draft bill was not accepted at the Bundestag, but this failure was by no means the end of the nationalisation process as there would be many other federal proposals for press regulation. Meanwhile, the Federal Government and Länder

governments actively encouraged and supported the creation of nation-wide press associations. For example, the German Press Council (*Deutscher Presserat*) was created as an institution for self-control of the press with the support of the Federal Government and the Länder. The Press Council has no enforcement authority and depends on the cooperation of the newspapers, publishers and journalists. Its structure is based on the 1952 press law proposal of the Federal Government. The Press Council was founded on 20 November 1956 in the Bergischer Hof, Bonn. The 1960 field of activity report of the Council reflects the consensus of the publishers and journalists over the need for uniform national press laws:

The fact, that in the Federal Republic of Germany the press law is today not uniform, is more and more strongly been felt as an unsatisfactory situation.⁴

The field of activity report also mentions the role of the Press Council in putting together a draft law for the unification of Land press legislation. The Länder Governments actively participated in this process towards the standardisation of press laws.

In 1960 the Standing Conference of Länder Interior Ministers established a joint Länder Commission to produced a model draft Land press law which was to be the model for all the Länder. The outcome was the 1963 draft press law (*Modell-Entwurf 1963*). This model law allowed for the establishment and maintenance of a harmonised legal system for the press in the Federal republic of Germany. Writing before the re-unification, Sandford points out to this de facto standardisation:

1990, Konstanz: UVK Medien, p.43.

⁴ "Die Tatsache, daß in der Bundesrepublik Deutschland das Presserecht heute nicht einheitlich ist, wird immer stärker als ein unbefriedigender Zustand empfunden", Deutscher Presserat (1960), *Tätigkeitsbericht 1956-1959*, Zeitungsverlag und Zeitschriften-Verlag GmbH: Bad Godersberg, p.17.

On the whole...the press laws of the ten Länder and West Berlin are very similar, and in some cases virtually identical, and this elevenfold duplication rarely causes any serious problems.⁵

The standardisation process along the 1963 draft press law was smoothly carried out. In a volume written by members of the Baden-Württemberg Ministry of Justice, the authors proudly announce Baden-Württemberg's rapid adoption of this model draft law:

Baden-Württemberg is thereby the first federal Land, which has discharged the Land press law in favour of an approved draft model based on the foundation established by the Interior Ministers Conference of 10 January 1963.⁶

Baden-Württemberg's bureaucrats seem to have welcomed such a centralising measure bringing uniformity with enthusiasm. The significance of this bill is described by the authors in the following terms:

With the Land press law, Baden-Württemberg could therefore also provide an essential contribution to the legal uniformity in the federal territory.⁷

Standardisation was still not enough as the Federal Government continued the efforts to bring the press under full Bund competence. In 1967 the CDU/SPD formed a commission to come up with recommendations for a national regulation of the press, but the reports of the so-called Günther Commission did not lead to any major reform. The SPD/FDP coalition government, which was in office from 1962 to 1982 under Chancellors Brandt and Schmidt, also tried to introduce a framework legislation for the

⁵ John Sanford (1976), *The Mass-Media of the German-Speaking Countries*, London: Oswald Wolff, p. 53.

⁶ "Baden-Württemberg ist damit das erste Bundesland, das auf der Grundlage des von der Innenministerkonferenz am 10 Januar 1963 gebilligten Modellenentwurfs ein Landespressegesetz verabschiedet hat", in Kurt Rebmann, Martin Ott, Werner Storz (1964), *Das baden-württembergische Gesetz über die Presse (Landespressegesetz) vom 14. Januar 1964 nebst dem Modellenentwurf eines Landespressegesetzes*, Kohlhammer: Stuttgart, p.5.

⁷ "Mit dem LPrG [sic] für Baden-Württemberg konnte deshalb auch ein wesentliche Beitrag zur Rechtseinheit im Bundesgebiet geleistet werden", in Kurt Rebmann, Martin Ott, Werner Storz (1964), *Das baden-württembergische Gesetz über die Press (Landespressegesetz) vom 14. Januar 1964 nebst dem Modellenentwurf eines Landespressegesetzes*, Kohlhammer: Stuttgart, p.25.

regulation of press (*Presserechtrahmengesetz*) but failed. At the end of the day, the harmonisation of Länder press laws have obviated a need for a national press law, because the legal system governing the press had in effect become unified.

3. Broadcasting

Similar to press, broadcasting also falls under the Land cultural sovereignty clause established by Article 30 of the Basic Law. Accordingly, the Länder have the right of lawful supervision (*Rechtsaufsicht*) in the field of broadcasting. That is to say, the Länder legislate and oversee media law. But the Länder governments have consistently tried to standardise their broadcasting regulations, and when possible, they have sought to delegate broadcasting policy to nation-wide entities, either created through the collective action of the Länder or created by the Bund.

It should be noted, however, that the process of centralisation has not been without controversies. Following the establishment of the Federal Republic of Germany in 1949, there has been a constant process towards nationalisation, but the question of private broadcasting in the mid-1980s brought in an important division. The public-private ownership dimension introduced a strong left-right axis thereby rendering a clear national consensus on the reform and governance of the media problematic. But even with the left-right axis, the centralising tendencies remained prevalent as both sides chose the federal level for furthering their causes.

Currently, there are ten public broadcasting corporations in Germany at the Land level. Bayerischer Rundfunk, Hessischer Rundfunk, Norddeutscher Rundfunk, Radio Bremen, Saarländischer Rundfunk, Sender Freies Berlin, Südwestdeutscher Rundfunk⁸, Westdeutscher Rundfunk are the broadcasting corporations in West Germany. Following reunification, two new broadcasting corporations, Mitteldeutscher Rundfunk and Ostdeutscher Rundfunk Brandenburg, were set up in the east.

At the national level there are three public broadcasting corporations, ARD, ZDF and Deutsche Welle, and three private corporations, SAT1, RTL and Pro7. There are a number of smaller private broadcasting corporations with limited reach through cable and satellite, mostly owned by the two main private broadcasting groups. The Bertelsman group owns RTL, RTL2, Super RTL and Vox, while the Kirsch group owns SAT1, Pro7, Kabel1 and DSF.⁹ But the history of private broadcasting in Germany is relatively new. Until recently there were only public broadcasting corporations. The first private television channel, RTL, started its broadcasts in 1984. It was followed by SAT1 in the following year. Since then, the so-called dual system of broadcasting, i.e. public and private, has been in effect. The following sections deal with the consistent process of centralisation in the Federal Republic of Germany which has led to this uniform nationwide system of broadcasting.

⁸ Recently the Süddeutscher Rundfunk and Südwestfunk have merged into the Südwestdeutscher Rundfunk in 1998.

⁹ Peter Humpreys and Matthias Lang (1998), "Regulating for Media Pluralism and the Pitfalls of Standortpolitik: The Re-Regulation of German Broadcasting Ownership Rules", in *German Politics*, 7:2, p. 177.

3.1. The Early Days of Bund-Länder Cooperation

Right after the acceptance of the Basic Law, attempts to overcome the decentralised media structure imposed by the Allies got underway. But the federal structure set up by Article 79 of the Basic Law was not subject to amendment and Article 30 gave the Länder exclusive competence over media. Therefore, changes had to operate around these constitutional clauses. As it will be clearer in the coming sections, there were many collective efforts to bypass the institutional barrier to national broadcasting despite disagreements concerning various aspects of a potential nation-wide policy.

The first example of collective Länder activism is the Preliminary Draft for a Federal Broadcasting Law (*Vorläufiger Entwurf zu einem Bundesrundfunkgesetz*) tabled by the Broadcasting Subcommittee of the Standing Conference of Ministers of Culture of the Länder (*Der Unterausschuß Rundfunk der Ständigen Kultusministerkonferenz der Länder*) on 15 July 1950. On December 7 of the same year a second draft was adopted which proposed the creation of a Broadcasting Advisory Board (*Rundfunkbeirat*) at the Federal Government. The draft law also called for changes in the regional demarcations between Länder broadcasting corporations. The proposed system would be administered by this advisory board composed of six representatives from the Länder broadcasting agencies and three representatives each from the Bundestag and the Bundesrat.

The early days of the Federal Republic was bustling with several initiatives from various political actors discussing the possibilities for change. On 9 May 1951, there was the first major debate at the Bundestag concerning the broadcasting policy. The now defunct *Deutsche Partei* (DP) had initiated the debate calling for a federal broadcasting policy. The Federal Government ensured the Bundestag that it was putting the

unification of German broadcasting as its first priority.¹⁰ The process started by this debate would lead to the Federal Government's attempts to set up a national broadcasting corporation which will be discussed in detail later. Meanwhile the Länder continued with their efforts to unify German broadcasting.

On 19 May 1953 the Länder Governments signed an agreement establishing a Standing Commission for Broadcasting Questions (*Ständige Kommission für Rundfunkfragen*) in Bonn. This body is designed to coordinate the relations of the Länder with the Federal Government concerning broadcasting policy and relieve the *Länder Kultusminister Konferenz* of this task.

The process for a comprehensive broadcasting treaty started on 13 January 1955 as a Bund-Länder Commission published the Draft General Broadcasting Treaty (*Referentenentwurf für einen Allgemeinrundfunkvertrag*) it had been working on and the draft was subsequently sent to the Federal and Land Governments for discussion. The Draft Treaty aimed to establish a harmonised nation-wide broadcasting system for the Federal Republic of Germany. But the discussions ended fruitless and the draft was finally discarded in 1959. Meanwhile, the collaboration among Länder broadcasting corporations proved to be a success.

¹⁰Walter J. Schütz (ed.) with Marianne Wulff-Nienhüser, Daniela Grobe, Erika Stratz, Dieter Stürzebecher, and an introduction by Gerhard W. Wittkämper (1999), *Medienpolitik*;

3.2. ARD

Following the Basic Law, the Länder acquired control over the non-profit public broadcasting corporations (*Landesrundfunkanstalten*) established by the Western Allies. The Länder did not broadcast themselves but the broadcasting corporations were subject to the lawful supervision (*Rechtsaufsicht*) of the Länder governments. In cases where a number of Länder shared a broadcasting corporation, interstate treaties (*Staatsverträge*) were signed.

In 1950, the six Länder-based broadcasting corporations came together in the form of the Association of Public Broadcasting Corporations in West Germany (*Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkstellen in der Bundesrepublik Deutschland*), referred to as ARD. The ARD statute signed on 9 June 1950 did not give ARD its own legal personality, but the association would act as the base for future standardisation. As stated in Article 2 of its statute, the aim of the ARD is:

The protection of the collective interests of the public broadcasting corporations in carrying out their sovereign rights in the field of broadcasting.¹¹

Following its creation, the ARD undertook an activist policy right away. On 29 September 1950 the ARD Directors adopted a draft federal broadcasting law, which proposed the establishment of a broadcasting advisory board at the federal level composed of representatives of Länder broadcasting corporations, the Bundestag and the Bundesrat. The draft law was almost identical to that proposed by the Broadcasting

Dokumentation der Kommunikationspolitik in der Bundesrepublik Deutschland von 1945 bis 1990, Konstanz: UVK Medien, p.61.

¹¹ "Wahrnehmung der gemeinsamen Interessen der Rundfunkanstalten bei der Ausübung von Hoheitsrechten auf dem Gebiet des Rundfunks", in *Satzung der Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (9/10. 6. 1950),

Subcommittee of the Standing Conference of Ministers of Culture of the Länder (*Der Unterausschuß Rundfunk der Ständigen Kultusministerkonferenz der Länder*) earlier.

On 12 June 1953 the so-called 'television treaty' was signed which aimed the production of common broadcasting. As a consequence, in 1953 ARD established the first German television channel. The broadcasts started on 1 November 1954. In the meantime, the Nordwestdeutscher Rundfunk, which was originally the public broadcasting corporation of the British zone of occupation, was divided into Westdeutscher Rundfunk and Norddeutscher Rundfunk, and the repatriated Saarland established its public broadcasting corporation. In 1956 these three new broadcasting corporations, together with Sender Freies Berlin, became ARD members. As a result, ARD included all eleven broadcasting corporations of the Länder (Bayerischer Rundfunk, Hessische Rundfunk, Norddeutscher Rundfunk, Radio Bremen, Saarländischer Rundfunk, Sender Freies Berlin, Süddeutscher Rundfunk, Südwestfunk, Westdeutscher Rundfunk). The two Federal broadcasting corporations (Deutsche Welle, Deutschlandfunk) and RIAS Berlin (Broadcasting corporation of the American Zone in Berlin) were also to participate in advisory capacity.

Following decades witnessed closer cooperation between the Länder broadcasting corporations, and also measures to rationalise the ARD in terms of programming, production and technical issues. According to Günther Hermann, the integration is justified by the public benefits that ensue from ARD's ability to carry out tasks more efficiently than individual Land-based broadcasting corporations:

Günther Hermann (ed.), *Rundfunkgesetze: Fernsehen und Hörfunk Textsammlung*, 2nd Edition, Köln, Berlin, Bonn and Munich: Carl Heymanns, p.300.

Also for the broadcasting sphere united behaviour is available at hand so that no further justification is needed, when for example, the joint behaviour of all broadcasting corporations in and through the ARD (especially central institutions) is more efficient than individual activities of the individual broadcasting corporations.¹²

Land broadcasting corporations also installed a system of financial equalisation (*Finanzausgleich*) between themselves which aimed to channel resources from the rich broadcasting corporations to poorer ones. An informal system of financial equalisation had been in effect since the 8 April 1954 meeting of the ARD Directors. In 1959, the Länder broadcasting corporations signed a financial equalisation treaty which institutionalised the pooling of resources. The scheme of financial equalisation is interpreted by Albrecht Hesse in the following terms:

The differences in efficiency which resulted from the size differences between individual Länder obliged the corporations to seek balancing in the course of the planned restructuring of the federal territories. However, the non-appearance of restructuring made the search for other forms of equalisation and cooperation between the Länder broadcasting corporations necessary.¹³

Since it was dependent on the financial performance of individual corporations, the system required constant revision. During the August 1973 revision, an additional administrative agreement was signed between the Länder broadcasting corporations on 11 August 1973. This formal financial integration between the Länder broadcasting corporations and the ARD consequently led to the establishment of a national centre for the collection of broadcasting fees (*Gebühreneinzugzentrale*, GEZ) in 1973. Underpinned

¹² "Auch für den Rundfunkbereich liegt der Nutzen vereinten Auftretens auf der Hand, so daß es keiner weiteren Begründung bedarf, daß z.B. das gemeinsame Auftreten aller Rundfunkanstalten in der und durch die ARD gegenüber (insbesondere zentrale Institutionen) effizienter ist als verschiedene Einzelaktivitäten einzelner Rundfunkanstalten", in Günther Hermann (1994), *Rundfunkrecht; Fernsehen und Hörfunk mit neuen Medien*, Munich: C.H.Beck, p.384.

¹³ "Die sich aus der unterschiedlichen Größe der einzelnen Länder ergebende unterschiedliche Leistungsfähigkeit der Anstalten sollte im Zuge der geplanten Neugliederung des Bundesgebiets ausgeglichen werden. Das Ausbleiben der Neugliederung machte jedoch die Suche nach andren Formen des Ausgleichs und der Zusammenarbeit zwischen den Landesrundfunkanstalten

by a common budget and administration, ARD has since become a truly national institution of German broadcasting.

3.3. *Deutsche Welle, Deutschlandfunk, Deutschland Fernsehens GmbH*

While the Länder were successfully pooling their resources within the context of ARD and setting up a nation-wide broadcasting entity, the Federal Government was also taking initiatives in the field of broadcasting. On 14 August 1952, the Interior Ministry of the CDU/CSU government of Adenauer published a Federal Draft Law for Broadcasting (*Referentwurf eines Bundesrundfunkgesetz*). The law aimed to rationalise German broadcasting by reducing the number of Länder broadcasting corporations to six. There would be one northern one covering Lower-Saxony, Schleswig-Holstein, Bremen and Hamburg. The north-western one would correspond to North Rhine-Westphalia; the western broadcasting corporation would cover the Rhineland Palatinate and Hesse; the south-western one would correspond to Baden-Württemberg and the southern one to Bavaria. But this section of the draft law faced strong objections from the Länder and was dropped in the subsequent version. The new version titled Draft Law for Carrying Out Common Tasks in the Field of Broadcasting (*Entwurf eines Gesetzes zur Wahrnehmung gemeinsamer Aufgaben auf dem Gebiet des Rundfunks*) was published a year later on 20 February 1953. It was argued that the Länder based broadcasting system was creating unnecessary diversity and there was a great deal of discrepancy due to this unbalanced institutional structure. The negative consequences of the Länder based

erforderlich", in Albrecht Hesse (1990), *Rundfunkrecht: Die Organisation des Rundfunks in der*

broadcasting system was not only in terms of the quality of broadcasts, the proposal claimed. There were financial disparities between the Länder broadcasting corporations which created many difficulties, many essential services were unnecessarily duplicated, the 'voice of Germany' at the international level was weakened and the multiplicity of government involvement was seen to be bringing in undue partisan politics to what should be a national policy.

The draft law was tabled at the Bundestag 18 March 1953. It aimed to set up a Deutscher Rundfunk in Düsseldorf, as well as the establishment of Deutsche Welle. But facing strong opposition from the SPD and the Länder, it was dropped. In the following years, new attempts to come up with a comprehensive broadcasting treaty between the Bund and the Länder did not prove to be successful.

Based on the same proposals, in 1957 the CDU/CSU government made a second attempt to establish a national broadcasting corporation. The federal government presented a draft law to set up a second television channel (*Deutschland Fernsehen GmbH*) on 30 September 1959. As a part of the same bill, two other national broadcasting corporations, Deutsche Welle and Deutschlandfunk, were created on 5 December 1960.¹⁴ These two stations were created to represent the interests of the nation. They were more internationally oriented, and in particular, they directed their broadcast into East Germany. Deutsche Welle's mandate was for 'broadcast transmission over the short wave for abroad' (*Rundfunksendungen über Kurzwelle für das Ausland*), and Deutschlandfunk's was for 'broadcast transmission for Germany and European countries'

Bundesrepublik Deutschland, Munich: Franz Vahlen, p.149.

(*Rundfunksendungen für Deutschland und das europäische Ausland*).¹⁵ Their creation did not cause a similar controversy that the second television channel was to create.

In response to the establishment of a second television channel, the Länder Minister-Presidents Conference convened to prepare a collective response. The Länder challenged the constitutionality of the Federal Government's behavior at the High Administrative Court. In response, the Court delivered one of the most important rulings in the field of mass media. In its ruling delivered on 28 February 1961 the Court upheld the Länder competence in broadcasting:

It is the Länder, and not the Bund, who has competence in the field of the organisation and programming of broadcasting.¹⁶

The Court also affirmed broadcasting as a 'cultural' phenomena within Land competence¹⁷. It is interesting to note that the ruling of the High Administrative Court also included a section which criticised the federal government for not cooperating with the Länder. The issue here seems to be the independent action of the federal government not the level of governance. The Court ruled that the federal government had offended the principle of federal friendly behavior (*Grundsatz bundesfreundliches Verhaltens*).¹⁸ As a consequence, Deutschland Fernsehen GmbH was abolished but due to their

¹⁴ *Gesetz über die Errichtung von Rundfunkanstalten des Bundesrechts vom 29.11.1960*, in Günther Hermann(ed.), *Rundfunkgesetze: Fernsehen und Hörfunk Textsammlung*, 2nd Edition, Köln, Berlin, Bonn and Munich: Carl Heymanns.

¹⁵ Deutsche Welle continues to exist as an internationally oriented broadcasting corporation for the Federal Government. Deutschlandfunk, on the other hand, ceased to exist with the broadcasting reorganisation law of 20 December 1993 (*Gesetz über die Neuordnung der Rundfunkanstalten des Bundesrechts und des RIAS Berlin, Rundfunkneuordnungsgesetz*)

¹⁶ "...die Länder und nicht der Bund für die Regelung von Organisations- und Programmfragen auf dem Gebiet des Rundfunks zuständig seien.", Bundesverwaltungsgericht (1966), "Gültigkeit des Staatsvertrag über die Errichtung des Zweiten Deutschen Fernsehens", *Entscheidungen des Bundesverwaltungsgerichts*, Band 22, Berlin: Carl Heymanns, p.205.

¹⁷ *Ibid.* p.229.

¹⁸ John Sanford (1976), *op.cit.*, p. 105.

international role Deutschlandfunk and Deutsche Welle remained. This time period was characterised by an intense national debate on the question of broadcasting federalism and the need for a nation-wide broadcasting policy. Many interpreted the decentralised structure in media as an onerous impediment to a national cultural policy. Writing in 1960, Furchner epitomises the sentiment felt at the time concerning the multiplicity of broadcasting corporations:

Many difficulties which have thereby resulted in the German broadcasting system, that nation-wide [overregional] tasks could not always be solved with the corresponding importance, can certainly be traced back to this organisational chaos.¹⁹

In an article in the *Deutsche Tagespost* titled 'Federalism and the Reorganisation of Broadcasting', after acknowledging the constitutional impossibility to amend the federal foundations of the West German State, Friedrich von der Heydte called for efforts to seek common solutions to the questions of broadcasting:

It is one of the largest mistakes of the federal structure of our Basic Law that it only recognises a separation of competences and a division of tasks between the Bund and the Länder, and that it does not acknowledge the common tasks that should be jointly carried out by the Bund and the Länder....Above all these common tasks are found in the field of cultural policy, and nowhere is the mistake in the federal structure of the Basic Law, which I am exactly talking about, demonstrated as clearly as it here.²⁰

In order to solve this problem, Heydte suggested a rather odd interpretation of federalism:

¹⁹ "Viele Schwierigkeiten, die sich im deutschen Rundfunkwesen dadurch ergeben haben, daß überregionale Aufgaben nicht immer entsprechend ihrer Bedeutung gelöst wurden, sind sicher auf diesen organisatorischen Wirrwar zurückzuführen", in Klaus Furchner (1960), *Von der Notwendigkeit der Rundfunkneuordnung in der Bundesrepublik Deutschland*, Johan Wilhelm Nauman: Würzburg, p.29.

²⁰ "Es ist einer der großen Fehler der föderativen Struktur unseres Grundgesetzes, daß es nur eine Trennung der Zuständigkeiten und eine Aufteilung der Aufgaben auf Bund und Länder kennt, daß es aber nichts von gemeinsamen Aufgaben weiß, die gemeinsam -von Bund und von den Ländern- ausgeführt werden müssen...Diese gemeinsamen Aufgaben finden sich vor allem auf dem Gebiet der Kulturpolitik. Und nirgends zeigt sich daher der Fehler in der föderativen Struktur des Grundgesetzes, von dem ich eben sprach, deutlicher als hier", in Friedrich von der Heydte (1960), "Föderalismus und Rundfunkordnung", from *Deutsche Tagespost*, 27 January

Federalism can also mean the renunciation of competences for the sake of common tasks, it can mean the transfer of sovereign rights -supposed and real sovereign rights- to the *Foedus*, to the Bund.²¹

The two new broadcasting corporations which survived this storm, i.e. Deutsche Welle and Deutschlandfunk, were purely national bodies with no Länder representation. The composition of the broadcasting boards of these new corporations were similar to many nation-wide institutions. For example, the broadcasting board of Deutsche Welle is composed of eleven members. Two represent the Bundestag, two the Bundesrat, four the Federal Government, one the Catholic Church, one the Protestant Church and one the German Jewish Congress. Similarly, Deutschlandfunk had no Länder representation. Its twenty-two member broadcasting board consisted of six representatives from the Bundestag, six from the Bundesrat, one representative of Berlin (Deutschlandfunk aimed most of its broadcasts into Eastern Germany), five representatives of the Federal Government, one from the Protestant Church, one from the Catholic Church, one from the German Jewish Congress, and one representative for the federal union of employers associations and trade unions (*Bundesvereinigung der Deutschen Arbeitsgeberverbände und den Gewerkschaften*). On the Länder front, collective action for a truly national broadcasting continued despite -or due to- the federal blunder of Deutschland Fernsehen GmbH.

1969, reproduced in Klaus Furchner (1960), *Von der Notwendigkeit der Rundfunkneuordnung in der Bundesrepublik Deutschland*, Johan Wilhelm Nauman: Würzburg.p.50.

²¹ "Föderalismus kann auch Verzicht auf Zuständigkeiten um der gemeinsamen Sache willen, er kann Abtrennung von Hoheitsrechten -vermeintlichen und echten Hoheitsrechten - an den Foedus, an den Bund bedeuten", inFriedrich von der Heydte (1960), "Föderalismus und Rundfunkordnung", from Deutsche Tagespost, 27 January 1969, reproduced in Klaus Furchner

3.4. ZDF

Following the Constitutional Court decision on 28 February 1961 which upheld the rights of the Länder against the Bund in the field of broadcasting, the Länder pooled their resources again. Two weeks later on 17 March 1961 the Länder Minister-Presidents came together to establish a television committee to draw up a state treaty for a new nation-wide public broadcasting corporation. Following the suggestions of this committee, ARD and the Länder wasted no time and immediately established a public broadcasting corporation for the second national television channel ZDF (*Zweites Deutsches Fernsehen*) on 6 June 1961. Two years later on 1 April 1963, ZDF started its television broadcasts to Germany. Art 2 of the ZDF treaty clearly outlines the nation-wide aims:

In its broadcasts, the corporation is obliged to convey an objective perspective about world events and especially, an extensive picture of the German reality to the television viewers in the whole of Germany.²²

The creation of the ZDF was the outcome of a competition between the Länder and the Federal Government. But the administrative composition of this corporation displays a willingness to bring in the federal level. The Administrative Board of the ZDF is composed of nine members of which three are appointed by the Länder Minister-Presidents' Council and one by the Federal Government. The remaining five are members of the Television Board of the ZDF selected by the board itself. An important

(1960), *Von der Notwendigkeit der Rundfunkneuordnung in der Bundesrepublik Deutschland*, Johan Wilhelm Nauman: Würzburg, p.52.

²² Art 2 (2): "In den Sendungen der Anstalt soll den Fernsehteilnehmern in ganz Deutschland ein objectiver Überblick über das Weltgeschehen, insbesondere ein umfassendes Bild der deutschen Wirklichkeit vermittelt werden", Ernst W. Fuhr (ed.) (1972), *ZDF-Staatsvertrag: Staatsvertrag über die Errichtung der gemeinnützigen Anstalt des öffentlichen Rechts 'Zweites Deutsches Fernsehen'*, Mainz: Hase and Koehler.

point here is that these five members can only be members of a government or law giving body represented at the ZDF Television Board. The Television Board includes one representative from each Land, three from the Federal Government, and twelve members from the Bundesrat proportioned according to the represented political parties. Consequently, Administrative Board's composition is bound to tilt towards the federal level. The remaining members of the ZDF Television Board are representatives of Churches, unions, professional associations and community groups. The interesting point here to note is the Länder's abdication of their exclusive competence by bringing in the Federal Government and the political parties into the administration of the ZDF. In due course, the Federal Constitutional Court upheld the right of the Länder to form a common broadcasting corporation through an inter-state Treaty. In line with the Constitutional Court's decisions, in 1966 the Federal Administrative Court ruled on the legality of central authority set up by the Länder. A reading of the decision shows that the Court did not only believe in the legality, but also in the necessity, to establish such a nation-wide corporation.

...[W]ith regard to Art.30 of the Basic Law, new and not foreseen state tasks, which could only be uniformly regulated or could only be carried out by a central authority for the whole of the federal territory, but for which the federal government is not legally competent -and at any rate, in the requisite short time- also could not be made competent, could not be excluded. This calls for an interpretation and implementation of the Basic Law which would enable the Länder both corresponding uniform regulations and the establishment of a central authority for the fulfillment of such tasks.²³

²³ "Es kommt hinzu, daß im Hinblick auf Art 30 GG neue, nicht vorhergesehene staatliche Aufgaben nicht ausgeschlossen werden können, die nur einheitlich geregelt oder von einer zentralen Stelle für das Bundesgebiet erfüllt werden können, für die aber der Bund nicht zuständig ist und -jedenfalls in der gebotenen Zeitkürze- auch nicht zuständig gemacht werden kann. Dies nötigt zu einer Auslegung und Handhabung des Grundgesetz, die den Ländern sowohl übereinstimmende einheitliche Regelungen wie die Einrichtung zentraler Stellen für die Erfüllung einer solchen Aufgabe ermöglicht.", in Bundesverwaltungsgericht (1966), "Gültigkeit des Staatsvertrag über die Errichtung des Zweiten Deutschen Fernsehens", *Entscheidungen des Bundesverwaltungsgerichts*, Band 22, Berlin: Carl Heymanns, p.308.

Scholars of media law were of course aware of the constitutional complications of setting up such a nation-wide broadcasting corporation. However, they found an escape clause by arguing that since ZDF did not monopolise all broadcasting in Germany and since the Länder broadcasting corporations would continue regional programming, the establishment of national broadcasting was not a violation of the Basic Law:

Precaution should be added that a joint Länder institution would then appear *inadmissible* under States law if it is to fulfill *comprehensively or in wide range* the own competences of the Länder: One -for instance out of so-called economic or political considerations- common broadcasting corporation created by all of the Länder for carrying out *all* public law organised broadcasting transmissions would be such a violation of the federal structure of the Federal Republic of Germany.[italics in original]²⁴

3.5. Emergence of the Dual Public-Private System

Private broadcasting has been a very controversial issue in German politics pitting the left against the right during the 1980s. But it is one other step in the centralisation of German broadcasting system. Despite the deep divisions between the SPD and Christian union parties, the emergence of private broadcasting corporations can also be analysed under the perspective of the nationalisation of media. The interesting point concerning this conflict between the left and the right is that the choice of venue was once again the federal level.

²⁴ "Vorsorglich ist hinzuzufügen, daß eine gemeinsame Länderinstitution dann staatsrechtlich unzulässig erscheine, wenn sie ureigene Zuständigkeiten der Länder *umfassend oder in großem Umfang* zu erfüllen hätte: Eine -etwa sog. wirtschaftlich-politischen Erwägungen- von allen Ländern gegründete Gemeinschafts-Rundfunkanstalt für die Veranstaltung *aller* öffentlich-rechtlich organisierten Rundfunksendungen wäre ein solcher Verstoß gegen die Föderalstruktur der Bundesrepublik Deutschland.", in Hermann, Günther (1994), *Rudfunkrecht; Fernsehen und Hörfunk mit neuen Medien*, Munich: C.H.Beck, p.233.

In response to the RTL broadcasts which started in 1984, SPD members at the Bundestag brought the issue of broadcasting deregulation in the Land of Lower Saxony before the Federal Constitutional Court in Karlsruhe. The CDU government of Lower Saxony had allowed satellite based private broadcasts. SPD politicians claimed that satellite broadcasting was a national issue and should not be decided by Land governments. Furthermore, SPD complained that deregulation ran the risk of bringing in media concentration, and the consequently, diminished diversity of opinion (*Meinungsvielfalt*). While SPD was seeking legal means to annul private broadcasting, business was lobbying for a federal policy regulating private satellite broadcasts. The Private Broadcast and Telecommunication Union (*Verbund Privater Rundfunk und Telekommunikation*, VPRT) had acquired the support of the Federal CDU/CSU/FDP coalition government for a common national regulatory framework.

In the meantime, the Länder Minister-Presidents Conference met in 1984 with the aim of reaching a common position on the issue. But they were unable to reach a compromise. The Federal CDU/CSU/FDP coalition government seized the opportunity and forced the Länder governments into accepting a common policy on satellite broadcasting. The subsequent ruling of the Federal Constitutional Court was an endorsement of the dual system. In its decision on Lower Saxony Media Law delivered on 4 November 1986, the Court ruled that a dual system through public and private broadcasting was possible under the Basic Law. The Court thus opened up the legal path for private broadcasting citing the new cable and satellite technologies and the changing nature of broadcasting. In its past decisions, the Court had stressed the scarcity of frequencies and thus the need to maintain the public service monopoly of broadcasting.

At first glance, Court's decision seems to be influenced by the new technologies and the availability of frequencies. But interestingly, the Court also suggested a recourse to the principle of federal friendly behaviour (*bundesfreundliches Verhalten*) in order to come up with a coherent nation-wide policy. In its decision, the Federal Constitutional Court called for common action in the field of broadcasting and asked the Länder to harmonise their regulations. The Court ruled that satellite broadcasting was a national policy area and therefore, individual Land regulation had to be replaced by a new inter-Land Treaty.

It is clear that every political actor involved, from the SPD to the Federal Constitutional Court, agreed on the nation-wide character of broadcasting policy but differed on the contents of such a policy, notwithstanding the unequivocal constitutional clause of Länder cultural sovereignty. At the end of the day, the decision of the Federal Constitutional Court opened up the possibility for an inter-State treaty (*Staatsvertrag zur Neuordnung des Rundfunkwesens*) brokered by the Federal Government in April 1987. The new system effectively standardises the mass media policies in the German Länder.

In order to license and regulate these private broadcasting corporations, the Länder began to establish Land-based institutions for media regulation (*Landesmedienanstalten*) separate from the existing public broadcasting corporations. The establishment of these regulatory agencies was carried out with a high degree of standardisation and federal involvement. The Länder regulatory agencies for private broadcasting also formed a nation-wide association (*Direktorkonferenz der Landesmedienanstalten*) to harmonise their regulations. The legal provisions governing the mass media structure of the Land North Rhine-Westphalia is a typical example of the new dual system:

In North Rhine-Westphalia, public broadcasting is subject to the WDR law (*Westdeutscher Rundfunkgesetz*) which establishes the North Rhine-Westphalian public broadcasting corporation WDR in Cologne, and sets up the relevant regulations. The WDR law was recently updated on 31 March 1993. The WDR law sets up a broadcasting board (*Rundfunkrat*), administration board (*Verwaltungsrat*), director (*Intendant*) and an educational broadcasting committee (*Schulrundfunkausschuß*). The Land government retains the right of legal supervision (*Rechtsaufsicht*) over the composition and activities of the WDR however.

Private broadcasting, on the other hand, is subject to the North Rhine-Westphalian broadcasting law (*Rundfunkgesetz für das Land Nordrhein-Westfalen*) passed on the same date as the WDR law in 1993. According to this law, all private broadcasters have to be licensed by the Land institution for broadcasting (*Landesanstalt für Rundfunk Nordrhein-Westfalen*) also set up by this law. This Land broadcasting institution is only responsible for private broadcasting. It is composed of a broadcasting commission and a director. The 1993 Land broadcasting law also includes provisions to ensure uniformity of regulations with other Länder. Article 52 (4) states that the North Rhine-Westphalian Land broadcasting institution should work with other Land media institutions to set up a national commission to ensure opinion variety (*Meinungsvielfalt*). Article 52 (3) states that the Land broadcasting institution also has the duty to:

...work together with the Land media institutions of the other Länder and observe the tasks set up by Article 30 of the broadcasting State treaty [*Rundfunkstaatsvertrag*].²⁵

²⁵ "... mit den Landesmediaanstalten der anderen Länder zusammenzuarbeiten und die Aufgaben nach Art.30 Rundfunkstaatsvertrag wahrzunehmen", quoted in, Martin Stock (1993), *Nordrhein-*

3.6. German Unification

Two years before the unexpected turn of events opened up the path towards reunification, the West German Länder had reached a comprehensive agreement on broadcasting. On 3 April 1987, the Länder Minister-Presidents had signed the State Treaty on the Reorganisation of Broadcasting Systems (*Staatsvertrag über die Neuordnung des Rundfunkwesens*) which institutionalised the dual private-public broadcasting system. This treaty became the norm for reunited Germany.

German unification brought the federal system to East Germany and introduced the constitutional clause of Länder cultural sovereignty, but the broadcasting system introduced was very much a standard model. Article 26 of the Unification Treaty of 31 August 1990, called for the establishment of new public broadcasting corporations in the five new East German Länder. The new Länder were also asked to establish the necessary private broadcasting regulations based on the dual West German system.

Following the reunification, the 1987 State Treaty was expanded as to include the new Länder. Despite Article 30 of the Basic Law on Länder cultural sovereignty, the East German Länder were asked to conform to the West German media policy established by this agreement. Accordingly, a new treaty titled the United Germany Broadcasting Treaty (*Staatsvertrag über den Rundfunk im vereinten Deutschland*) was signed on 31 August 1991 to establish a common framework of broadcasting for the united Federal Republic.

The contradiction in granting cultural sovereignty to the new Länder and imposing a uniform media policy at the same time did not appear to violate the Basic

Law. This was followed by the 1997 inter-state Treaty. Article 1 of this treaty states that:

The purpose of the Interstate Treaty is to bring uniform framework conditions in the following regulated electronic information and communication services in all of the Länder.²⁶

The readiness to surpass the constitutional division of responsibilities in media policy is perhaps best exemplified by the following selection from the minutes attached to the 1997 Interstate Treaty on media:

The Federal Government and the Länder have come to an understanding on July 1 1996, in the framework of their jurisdictional allotments laid by the Constitution, in the cause of establishing a uniform legal framework in the form of a Federal Law and an inter-Land State Treaty. *Based on the existing unity above, the necessary regulations will not be allowed to run aground on differing interpretations of competence questions.* [italics added].²⁷

3.7. North Rhine-Westphalia, Baden-Württemberg and the Bund

The collective action of the Länder makes it hard to find explicit evidence for individual Länder attitudes to the nationalisation of broadcasting. At the end of the day, they are the political actors who brought about a nation-wide broadcasting system through their collaboration. An interesting insight, however, into Länder responses to centralisation is

Verlagsgesellschaft: Baden-Baden and Hamburg.

²⁶ "Zweck des Staatsvertrag ist, in allen Ländern einheitliche Rahmenbedingungen für die verschiedenen Nutzungsmöglichkeiten der im folgenden geregelten elektronischen Informations- und Kommunikationsdienste zu schaffen", from the *Staatsvertrag über Mediendienste (Mediendienste-Staatsvertrag) vom 20. Januar-12. Februar 1997*, published in *Media Perspektiven Dokumentation* 1996:1, p.18.

²⁷ "Bund und Länder haben sich am 1.Juli 1996 darauf verständigt, im Rahmen der Zuständigkeitsverteilung des Grundgesetzes einen in der Sache einheitlichen Rechtsrahmen in Form eines Bundesgesetzes und eines Länderstaatsvertrags zu schaffen. Es bestand Einigkeit darüber, die notwendigen Regelungen nicht an unterschiedlichen Auffassungen in Kompetenzfragen scheitern zu lassen. ", from the *Staatsvertrag über Mediendienste (Mediendienste-Staatsvertrag) vom 20. Januar-12. Februar 1997*, published in *Media Perspektiven Dokumentation* 1996:1, p.25.

the position of North Rhine-Westphalia and Baden-Württemberg on a federal draft law from 1963.

The Federal Government had tabled a federal draft law titled 'Competition Situation Between Press, Broadcasting/Television and Film' (*Wettbewerbslage zwischen Presse, Rundfunk/Fernsehen und Film*) in 1963. The draft law aimed to regulate commercial advertisements and called for the creation of a national commission to monitor these branches of mass media. The debate in Land parliaments display partisan issues at play between SPD and CDU with almost no reference to infringement of the constitutional division of governmental competences of the Basic Law through the 'nationalisation' of media policy.

The debate at the Baden-Württemberg Land Parliament over the issues of broadcasting and press on 9 September 1963 displays no controversy concerning the involvement of the Federal Government in these policy areas.²⁸ There are surely many issues over which disagreement exists, but these tend to be along the political party lines rather than Bund-Länder issues. For example, the Baden-Württemberg Minister-President Kiesinger's objection to the Federal Government's broadcasting and press competition draft law is not based on the level of government involved, but it is based on the absence of input from other relevant political actors in the preparation of this draft. Kiesinger mentions the risks of setting up a national 'opinion monopoly'

²⁸ Landtage von Baden-Württemberg, "Große Anfrage der Fraktion der CDU betr. Wettbewerbslage zwischen Presse, Rundfunk, Fernsehen und Film vom 9. September 1963", in Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD) (ed.) (1965), *Rundfunkanstalten und Tageszeitungen, Eine Materialsammlung, Dokumentation 2, Parlamentarische Diskussion*, ARD: Frankfurt am Main., pp. 1-27.

(*Meinungsmonopol*), and believes that a national competition policy should be based on a plurality of opinions.

The Land government for long has undertaken meetings with the participants, above all with governments of other Länder, with the coalition factions at the Bundestag who brought in the draft law, with representatives of broadcasting corporations and with representatives of the press.²⁹

During discussions at the North Rhine-Westphalian Land Parliament there was overall support for the same draft law creating a national commission for monitoring competition between press, broadcasting/television and film.³⁰ And such Länder acquiescence has not been an exception in broadcasting.

A member of the Research Commission on Broadcasting Policy in the South West (i.e. Baden-Württemberg) explicitly came out in support of a broader nation-wide broadcasting policy in his 1969 report:

That the Länder in general have the authority for coordinating and harmonising their tasks is certainly no longer a question which should be seriously discussed...The federal state principle provides the Länder indeed with the possibility for an actual divergence in the handling of their constitutionally assigned sphere of tasks. But this right for divergence in the implementation of their given competences does not correspond to a duty of the Länder for disunity.³¹

²⁹ "Die Landesregierung steht zur Zeit in Besprechungen mit den Beteiligten, vor allem mit Regierungen anderer Bundesländer, mit den Koalitionfraktionen des Bundestages, die den Gesetzentwurf eingebracht haben, mit Vertretern der Rundfunkanstalten und mit Vertretern der Presse", in Landtag von Baden-Württemberg, "Große Anfrage der Fraktion der CDU betr. Wettbewerbslage zwischen Presse, Rundfunk, Fernsehen und Film vom 9. September 1963", in Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD) (ed.) (1965), *Rundfunkanstalten und Tageszeitungen, Eine Materialsammlung, Dokumentation 2, Parlamentarische Diskussion*, ARD: Frankfurt am Main, p.26.

³⁰ Landtag Nordrhein-Westfalen, "Antrag der Fraktion der CDU betreffende und Wettbewerbslage zwischen Presse, Rundfunk/Fernsehen und Film vom 6. April 1964", in Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD) (ed.) (1965), *Rundfunkanstalten und Tageszeitungen, Eine Materialsammlung, Dokumentation 2, Parlamentarische Diskussion*, ARD: Frankfurt am Main.

³¹ "Daß die Länder überhaupt zur Koordinierung und Harmonisierung ihrer Aufgaben befugt sind ist wohl keine Frage mehr, über die ernsthaft diskutiert werden muß...Das Bundesstaatsprinzip gewährt den Ländern zwar die Möglichkeit zu einer sachlich divergierenden Behandlung der ihnen durch die Verfassung zugewiesenen Aufgabenbereiche. Diesem Recht zur abweichenden Handhabung der ihnen eingeräumten Kompetenzen korrespondiert aber keine Pflicht der Länder

An article written in the journal of 'Baden-Württemberg Administration Practice' gives us an idea how these centralising tendencies were interpreted amongst policy people in this Land:

A second level for carrying out Land competences in the federal State is certainly through State treaties between the Länder, among themselves they are increasingly successful there, where indeed the legislative competences of the Länder lie, regulations out of the force of circumstances [*Sachzwängen*] can only be successfully followed by Länder unity.³²

4. A Nation-Wide Mass Media Policy

There are strong similarities between the policy areas of education and mass media. In the field of mass media there appears to be a similar overall consensus that associates diversity with inefficiency. When deemed necessary a constitutional clause that creates unnecessary and inefficient diversity can be conveniently ignored:

Politicians and the press are increasingly prone to point out that the present organisation of broadcasting, with its lavish ninefold multiplication of resources, is a luxury that is hard to justify. The bulk of the material put out by various radio and television services is not of local or regional nature, and could be produced much less expensively at a national level without detriment to the possibility of producing more and better programmes that are genuinely regional in character.³³

zur Uneignigkeit.", in Klaus Stern (1969), "Föderative und unitarische Aspekte im deutschen Rundfunkwesens", in Hans R. Klecatsky, Klaus Stein, Ulrich Weber, Svente Bergström, *Rundfunkrecht und Rundfunkpolitik: Referate und Reden aus wissenschaftlichen Veranstaltungen des Instituts Rundfunkrecht an der Universität zu Köln*, Munich: C.H. Beck, p.33.

³² "Eine zweite Ebene der Wahrnehmung von Landeskompetenzen sind allerdings im föderativen Bundesstaat Staatsverträge der Länder, untereinander, die zunehmend dort erforderlich werden, wo zwar die Gesetzgebungszuständigkeit bei den Ländern liegt, Regelungen aus Sachzwängen aber nur ländereinheitlich erfolgen können", in Jörg Rüggeberg (1986), "Privater Rundfunk in Baden-Württemberg, Das Landesmediengesetz und die Perspektiven seiner Verwirklichung", *Baden-Württembergische Verwaltungspraxis*, Vol.13:1983. p.73.

³³ John Sanford (1976), *op.cit.*, p. 130.

Most interestingly, the Länder governments and Länder based public broadcasting corporations have been the main agents in the nationalisation of the German mass media. As it was the case in the field of education, these centralist initiatives originating from the substate level would certainly puzzle observers familiar with federal systems elsewhere. For example, in a report published in 1971, the Minister-President of North Rhine-Westphalia, Heinz Kühn calls for a 'rationalisation' of the federal system³⁴. He argues that a five Länder model is better, and he believes that such rationalisation should also be applied to public broadcasting corporations because of the cost-cutting possibilities and the needs for economic centralisation:

It is surely not at all certain that we can cope with the future tasks with the federal system that we institutionally have today. This holds true for the Länder as regards their constitutional tasks they have to carry out for their citizens in cultural, economic, social, administrative and other areas. And it valid is for the broadcasting corporations and their duty for communicational/informational supply to their populations by broadcasting.³⁵

It is interesting to hear such centralist remarks from the Minister-President from the most populous and arguably the most powerful Land of the Federal Republic. Kühn has not refrained from repeating these ideas elsewhere. In a conference at the Institute for Broadcasting Law at the University of Cologne in 1972, Kühn reiterated his calls for a five Länder federal model with five broadcasting corporations. He argued that the present structure was creating unacceptable inefficiency:

³⁴Heinz Kühn (1971), *Rundfunkneuordnung und bundesstaatliche Struktur*, Düsseldorf: Landesregierung Nordrhein-Westphalia, p.14.

³⁵ "Es ist nämlich ganz und gar nicht sicher, daß wir mit dem föderalistischen System, so wie wir es heute institutionell haben, die Aufgaben der Zukunft bewältigen können. Das gilt für die Länder in ihrer Form gegenüber dem Verfassungsauftrag, den sie kulturell, wirtschaftlich, sozial und administrativ und auf anderen Gebieten ihren Bürgern gegenüber zu erfüllen haben, das gilt für die Rundfunkanstalten und ihre spezielle Aufgabe der kommunikativen Versorgung der Bevölkerung durch Rundfunk", in *Ibid.* p. 8.

For the Länder I could fill the whole lecture with examples which show that the Länder cannot fulfill their tasks in the given structures. For me this tendency hold true also for the federal broadcasting structure.³⁶

The lecture of the director of ZDF, Karl Holzamer, at the same conference, also stressed the needs for organisational 'rationalisation' to counter the inefficiencies of the federal broadcasting regime.³⁷ These ideas seem to be widely accepted across the political spectrum. A nation-wide approach to mass media appears as the imperative of common sense to many German decision-makers and academics:

The cooperation between the Länder is daily matter of course in the Federal Republic of Germany. And furthermore, cooperative federalism is a command of the Constitution -and of common sense !(sic)³⁸

5. Conclusions

This chapter was an in-depth look at the development and regulation of mass media in the Federal Republic of Germany. The time frame under focus was from 1949 to 1995 and the two German Länder of Baden-Württemberg and North-Rhine Westphalia received close examination. An institutionalist logic would have expected the institutions of 1949 which gave the Länder exclusive jurisdiction over mass media to reproduce themselves over time and socialise the political actors into this institutional system. Accordingly, the

³⁶ "Für die Länder könnte ich einen ganzen Vortrag mit Beispielen anfüllen, die bewesen, daß die Länder ihre Aufgaben in den gegebenen Strukturen nicht erfüllen können. Das gilt für mich in der Tendenz ebenso für die föderative Rundfunkstruktur", cited in Heinz Kühn, Karl Holzamer, Peter Lerche (1972), *Rundfunkneuordnung und bundesstaatliche Struktur*, C.H.Beck: Munich, p.14.

³⁷ Karl Holzamer "Rundfunkneuordnung und bundestaatliche Struktur", reproduced in Heinz Kühn, Karl Holzamer, Peter Lerche (1972), *Rundfunkneuordnung und bundesstaatliche Struktur*, C.H.Beck, pp.35-44.

³⁸ "Zusammenarbeit der Länder ist in der Bundesrepublik Deutschland tägliche Selbstverständlichkeit. Und weiterhin bleibt kooperativer Föderalismus ein Gebot des

theoretical expectation would be to see the emergence of separate media politics within each new Länder of the Bonn Republic. Länder governments, bureaucracy, political parties, interest groups would take advantage of the veto points offered by this Allied imposed system and form the 'society' that would correspond to the new institutions. This has not been the case. Decision-making has not stopped at Länder boundaries and an all-German media policy has emerged. Instead of confining themselves to their respective Länder, the governments of Baden-Württemberg and North-Rhine Westphalia have actively participated in the nationalisation of media politics. Often they have disagreed over the contents of an all-German media policy, but the choice of venue has been Germany and the reference point has been the German nation. Through its emphasis on the social structure, in this case the ethno-linguistic homogeneity of Germany, congruence theory has proved to be a more reliable perspective to understand and explain the changes in mass media policy.

Case II

BELGIUM

Chapter VIII

Belgium: A Deeply Divided Society

Eendracht maakt macht/L'union fait la force
[Union is strength]

State motto of Belgium

1. Historical Background

It should not be a coincidence that a state with deep societal divisions has chosen a motto with almost surreal irrelevance. Most probably it is wishful thinking than anything else. This chapter will present an overall picture of the social divisions within Belgium. To put the post-1945 developments in context, it is imperative to sketch the background factors that would help make the federalisation process of the last five decades intelligible. To many outside observers, Belgium is still a unitary entity. However, in the last thirty years this once unitary country has transformed into a very loose federation. Some might say Belgium is a deeply divided society on its way to eventual disintegration.

For those writing on federalism in Belgium, it is of common practice to stress the artificiality of the Belgian state created in 1830. The underlying reason is, of course, to explain the federalisation of this once unitary state. If one considers two ethno-linguistic groups under one state to be an artificial construction, Belgium is indeed artificial, but it

has been 'artificial' for so long that the term seems somewhat inappropriate. According to Stengers:

To hail Flanders and the Flemish people as 'natural' and to consider Belgium as merely a political construction is self-contradictory since Flanders was originally only a by-product of Belgium.¹

The linguistic border between Dutch and French cuts across Belgium and roughly follows the Aachen-Calais axis. The fifth century witnessed the influx of the Germanic tribes, in particular the Franks, into the Roman Gaul. The area of present day Belgium was inhabited by Romanised Celtic tribes, i.e. the Walha. The Franks settled alongside the original inhabitants. This linguistic line between Latin and Germanic languages has remained virtually intact since the fifth century AD. In fact, the Dutch word for Walloon, *Walen*, is what the Germanic tribes used to call the Celtic people. The two linguistic groups have moved very little since then. The persistence of a linguistic border in the flatlands unmarked by any geographical barrier is a puzzling one. One explanation is an ancient Roman road that ran through Boulogne, Bavai and Cologne. The fortifications along this road are assumed to have prevented Frankish infiltration and led to a gradual demarcation of two linguistic groups. Once formed, the linguistic communities were probably able to assimilate new settlers.

The borders of present day Belgium roughly correspond to the lands of the XIVth century Burgundian state. Historically, the borders of the country have remained rather stable. The border with the Netherlands is a product of the 1648 Peace of Westphalia, while the borders with France go back to the 1713 Treaty of Utrecht. Present day Belgium was the region loyal to Spain during the revolt of the Netherlands, consequently

it became the Spanish Netherlands from 1648 till 1713. The country was then under Austrian Habsburg rule. In 1795 Belgium was occupied by the French and became a part of France until 1814. At the Congress of Vienna in 1815, the country became a part of the Kingdom of the Netherlands; but following the 1830 revolt a separate Belgian state was formed. The revolt against the Dutch was mainly an elite driven movement that rested on an alliance between the liberal bourgeoisie, aristocracy and clergy. The leaders of the revolt set up a unitary Belgian state the following year. But as it will be seen below, the new Belgian state was to face important difficulties from its inception, leading to a deviation from its original unitary character. Despite all these changes, the historical borders of the country remained intact save for the addition of the principality of Liège in 1830.

The new Belgian State was dominated by a French speaking elite. The country was traditionally inhabited by speakers of a number of Latin and Germanic dialects², but by early 18th century they had begun to converge around French and Dutch. The middle classes remained predominantly French speaking, even in Flanders where upper classes had assimilated into the what was then the higher culture. On the Francophone side standardised French became the norm, but in Flanders local dialects remained. Because of the absence of cultural ties with the Netherlands, and the assimilation of the middle classes into French, and most importantly, the lack of formalised education in Dutch, the

¹Jean Stengers (1990), "Belgian National Sentiment" in René Bryssinck, Marina Boudart, Michel Boudart (eds.), *Modern Belgium*, Modern Belgium Association: Belgium, p.96.

²Aunger lists four Latin regional languages (Walloon, Picard, Lorrain and Champenois) and four Germanic regional languages (West Flemish, Brabantish, Limburgish and Luxemburgish). These regional languages declined as they blended into standard French and Dutch. Edmund A. Aunger (1993), "Regional, National, and Official Languages in Belgium", *International Journal*

Flemings retained their regional dialects. The language of the ruling political class of this new state, even if they were of Flemish background, was French. The expectation at the time was that Belgium would gradually become a French-speaking state³. One of the leading politicians of the time explained this state of affairs in the following terms:

One of the first principles of good governance is the use of a single common language, and as far as Belgium is concerned, this can be French alone. To reach this goal, Walloons and Luxembourgers should be appointed to all civil and military posts. Consequently, the Flemings, who would temporarily be denied the benefits of similar appointments, would be well obliged to consider learning the French language, with the outcome that the Germanic culture would slowly but surely disappear.⁴

The domination of the French language in the new state added to the existing tendency of the upwardly mobile classes to choose French and assimilate. In addition, the Catholic Church also favoured French over Dutch, as Dutch was seen as the language of Protestant Holland. In the past, both the Spanish and Dutch Habsburgs had preferred French as their language of administration. As a result, French became the language of administration and business, even in predominantly Flemish-speaking cities of Gent/Gant and Antwerpen/Anvers. But despite all these factors, French failed to become the sole language of Belgium and the majority of Flemings retained their language. With demographics on their side, Flemings remained the silent majority during the first

of the Sociology of Language, Special Issue 'Sociology of Language in Belgium Revisited', Vol.104.

³ Murphy refers to Becquet, 1963: 104-106 to make this point, Alexander Murphy(1995), "Belgium's Regional Divergence: Along the Road to Federation", in Graham Smith (ed.), *Federalism: The Multiethnic Challenge*, London and New York: Longman.

⁴ "De eerste principes voor een goed bestuur zijn het gebruik van eenzelfde taal en het logt voor de hand dat zulks, wat België betreft, alleen het Frans kan zijn. Om dit doel te bereiken moeten alle burgerlijke en militaire ambten Walen en Luxemburgers worden benoemd. Hierdoor zullen de Vlamingen, die de voordelen van dergelijke benoemingen tijdelijk zullen moeten ontberen, zich wel verplicht zien de Franse taal aan te leren, met als gevolg dat de Germaanse cultuur langzaam maar zeker zal verdwijnen", From Charles Rogier's remarks to the new Minister of Justice Jean-Joseph Raikem, quoted in Robert Senelle, with Edgard Van de Velde and Emiel

decades of the Belgian state. During this time period, the linguistic divide remained of secondary importance to the confessional division within the Belgian society, that is to say, the division between Catholics and anticlerical Liberals.

The Catholic party had organic links to the Catholic Church and the Liberal party had close ties to Free-Masonry. These two political parties emerged as the main political forces in the new state. The Catholic party had a strong organisational structure due to the strong relationship it had with the Catholic Church. Liberals followed the Catholic example and tried to establish a social network to build a support base in the Belgian society. An observer of the Belgian society credits this process with the confessional pillarisation of the Belgian society:

Even Belgian Free Thought and Free Masonry (the might-have-been Protestantism of Belgium), the institutionalized opponent of the Catholic Church, and its supposed religio-philosophical antithesis, have been structured and shaped by Catholicism.⁵

This view is shared by another observer who argues that, in due course, Free Masonry was transformed into an anticlerical religion itself:

In Belgium freemasonry progressively became a kind of a substitute religion, set up against the Church. In this way by adopting the logic of the system, it ended up creating a kind of a secular [laïc] clergy composed of professors of secular morality of the public education.⁶

The confessional division within the Belgian society was reflected in the political elite. In its first fifty years, the ruling classes, who came from the same socio-economic

Clement (1999), *Kronieken van de Vlaamse Staatswording, Over de Identiteit van het Vlaming-Zijn*, Lannoo: Tielt, p.46.

⁵Renée Fox (1982), "Is religion important in Belgium?", *Archives européennes de Sociologie*, 23:1982, p.4.

⁶"En Belgique [la franc-maçonnerie] devint progressivement une sorte de religion de substitution, constituée en contre-Église. Ainsi finit-elle, emportée par la logique du système, à engendrer une sorte de clergé laïc composé des professeurs de morale laïque de l'enseignement public(...)", in Daniel-Louis Seiler(1999), "Un État entre importation et implosion: consociativité, partitocratie et lotissement dans la sphère publique en Belgique", in Pascal

and linguistic background but differed in terms of their distance to religion, began to divide the social and political institutions into Catholic and Liberal halves. Évelyne Lentzen interprets this first period of institutional change in the following terms:

The institutional reforms resulted from the demands of these 'communities of interest' and the necessary adaptation of the political institutions to the evolution of the society.⁷

As a result, the unitary Belgian State gradually changed in a way as to reflect the confessional pillarisation of the society. Towards the end of the 19th century, language emerged as a second important social cleavage. The linguistic issue became the first rallying point for the burgeoning Flemish movement. Tensions started to emerge as Flemings demanded cultural recognition and political redistribution.

The trial of two Flemish speaking workers, Jan Coucke and Pieter Goethals, in Hainaut in 1860 became one of the first symbols for the Flemish movement. Coucke and Goethals were accused of murdering a widow, but the Mons-Hainaut Court assigned a unilingual francophone attorney to their defense and deliberated the case in French. Unable to understand what they were accused of, the two workers who could not speak French were sentenced to death and executed by the guillotine. The Flemish protests at the unfairness of the trial marked the beginnings of a Flemish 'nationalist' movement led by petit-bourgeoisie and lower clergy. The first language law of 1856 had brought bilingualism to Flanders, but Wallonia remained unilingually Francophone. In 1888,

Delwit, Jean-Michel De Waele, Paul Magnette (eds.), *Gouverner la Belgique, Clivages et compromis dans une société complexe*, Presses Universitaires de France: Paris, p.31.

⁷ "Des réformes institutionnelles résultent de revendications de ces 'communautés d'intérêt' et de la nécessaire adéquation des structures politiques à l'évolution de la société", Évelyne Lentzen (1998), "Le processus de fédéralisation", in Marco Martiniello and Marc Swyngedouw (1998), *Où va la Belgique? Les soubresauts d'une petite démocratie européenne*, Paris: L'Harmattan, p.33.

Flemish was accepted as the second language of the Parliament. But it would take another ten years for the laws to be published in both languages. Starting from the 1890s there was a movement to turn the State University of Ghent into a Dutch-language institution. It was, however, going to take many years for this movement to attain its aims.

The Flemish movement of the late 19th century did not immediately become a major threat to the Belgian state, however, it laid down some of the core building blocks for a stronger nationalist movement. The Flemish movement had mobilised around an ethno-linguistic core which lacked an institutional recognition of their cultural distinctiveness. To this end, it had sought a political redistribution to redress the perceived 'injustices' they have suffered. Therefore, it displays characteristics similar to many other nationalist movements in Europe at that time: the leaders are drawn from the middle class and lower clergy, it is mixed with a Catholic reaction to the centralising and secularising tendencies of the central state. The francophone counterparts to the Flemish movement do not have such easily identifiable characteristics.

The name 'Wallonie' is a relatively new label for the southern francophone half of the country. The Dutch term 'Walen' has persisted for a long time as to denote the French-speaking inhabitants of southern Belgium, but the name of the region 'Wallonie' was penned by the Belgian poet François-Charles Grandgagne in 1844. The name later became popular with the journal of literary review edited by the Liègeois poet Albert Mockel titled *La Wallonie*.⁸ The region was to acquire its official name only with the constitutional reform of 1971. While middle and upper classes have been French speakers in Flanders, Wallonia remained a unilingual region. Many Flemish working-

class families who migrated south seeking employment in industrialising Wallonia assimilated into the Francophone culture.

Walloon identity largely emerged as a defensive reaction to the Flemish movement, and there is a very strong class component to it. The origins lie in the labour movements and strikes of the late 19th century combined with a distrust towards the Francophone elite based in Brussels, who the Walloon movement saw as pandering to the Flemish Catholics and haute bourgeoisie. From its inception it has been a socialist and anticlerical movement. To this day, the Socialist party is the most powerful political party in Wallonia. In contrast with the Flemish movement, the demands of the Walloon movement have not been in the cultural realm. But at the end of the day, it has to be noted that Walloon nationalism was much weaker than its Flemish counterpart during the 19th century. At that time, the French speakers of Belgium were dispersed throughout the country without much internal cohesiveness. In addition to the inhabitants of Wallonia, middle and upper classes throughout Flanders spoke French, and Brussels had a French-speaking population.

Geographically situated in Flanders, Brussels has never been a Walloon city. In fact, as their family names seems to suggest, most Brussels Francophones of today are of Flemish ancestry. Hasquin estimates the Francophone population of Brussels to be less than 15% in 1780⁹. Another study puts the number at 5%¹⁰. In 1846 around 60% of the

⁸ Phillipe Destatte (1991), *L'identité wallonne: Aperçu historique*, Namur: Présidence de l'exécutif régional wallon, p.p.

⁹ Wallon historian Hervé Hasquin's estimate is quoted in Kas Deprez (1985), "The Dutch Language in Flanders", in Theo Hermans, with Louis Vos and Lode Wils (eds.) (1992), *The Flemish Movement, A Documentary History 1780-1990*, London and Atlantic Highlands, NJ: Athlone, p. 420.

inhabitants of the city were Dutch speakers, in 1910 the number had decreased to 46%.¹¹ The Flemings call this the *verfransing* (frenchification) of Brussels. Presently, the voting patterns seem to suggest that 15 to 20 % of the city is Dutch-speaking. But as far as the situation in the 19th century is concerned, what we have is bilingual Flanders, francophone Wallonia, and an increasingly frenchified Brussels situated in Flanders.

Despite the linguistic tensions of the late 19th century, it would be misleading to present language as the main cleavage within the Belgian society. The confessional cleavage remained the most important social division well into the late 1800s. Towards the end of the 19th century a new class division emerged with the growing strength of socialism and the expansion of franchise.

Belgium was the first continental European country to undergo industrialisation, experiencing all the horrors associated with early industrialisation. With child labour, ninety hour work weeks, poor pay and near absence of occupational amenities, the situation was worse than England. Belgian workers -often Walloons in the industrialising southern half of the country- had to work more for less pay than their English counterparts. Poverty and unregulated sale of alcohol brought many social problems that came together with industrialisation. In 1905 for every thirty three Belgians there was one bar, a number much higher than other industrialised countries like Britain and the United States at that time.¹² As a direct consequence of this early industrialisation,

¹⁰ McRae cites a study which estimates the number of Brussels francophones in 1788 as a trifling 5%; in Kenneth McRae(1986), *Conflict and Compromise in Multilingual Societies: Belgium*, Waterloo: Wilfrid Laurier University Press, p. 294.

¹¹ Wilfried Dewachter (1992), *De duelistische identiteit van de Belgische maatschappij*, Koninklijke Nederlandse Akademie van Wetenschappen, Amsterdam: Noord-Hollandsche, p.15.

¹² Carl Strikwerda (1997), *A House Divided: Catholics, Socialists, and Flemish Nationalists in Nineteenth Century Belgium*, Lanham: Rowman and Littlefeld, p.34.

VIII. Belgium: A Deeply Divided Society

Belgium developed the first and most successful socialist movement in Europe which led to strong trade unions who demanded universal suffrage and a welfare state. Until then, the electoral system allowed only two per cent of the population, which amounted to ten per cent of the adult male population, to vote. Unable to get to expand the electoral franchise, the trade unions went on strike in 1893. This was the first ever general strike in Europe where more than 200,000 workers participated.

Confronted with a massive tour de force, the haute bourgeoisie acquiesced. In 1893 the Constitution was amended to bring universal franchise which gave every male over the age of twenty five one vote, which could increase up to three based on property and qualifications. Following the introduction of universal male suffrage, Socialists became the second party in the Belgian Parliament in 1894. This success is even more striking considering that most of their electorate did not qualify for the additional votes based on property and profession. Officially called the Belgian Labour Party (*Belgische Werkliedenpartij / Parti Ouvrier Belge*), but commonly referred to as the Socialist party, the workers movement replaced the Liberal party as the second party in the Belgian Parliament. But the real winner in the expansion of suffrage was the Catholic party. In the 1894 elections the Catholic party received 103 seats, Socialists got 28 and the Liberals were left with only 20 seats. The following years witnessed a Catholic domination of Belgian politics. In the meantime, the Christian Social wing of the Catholic party, which had endorsed leftist principles protecting workers' rights emerged as an influential force within the party.

The strength of both socialism and social Catholicism led to measures designed to accommodate the demands of the working class. Belgium would become the first welfare

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state in Western Europe with extensive social policies introduced after the First World War. Belgian socialism was very much a Walloon social movement, or more correctly, the labour movement in the francophone southern half of Belgium gave birth to the Walloon movement. An analysis of the labour movements of late 19th century Belgium interestingly starts with the question '*La Wallonie est-elle née de la grève ?*'¹³

The origin of the Belgian Labour Party (*Parti Ouvrier Belge*) is somewhat romantically attributed to a historic meeting at the Café du Cygne at the Grand Place of Brussels.¹⁴ Here the labour leaders established a common front to address the issues facing the Belgian work force. Following its creation in 1883, the Labour party sought to make its political presence felt by campaigning for universal suffrage. Its activities led to some of the first labour laws in Europe. Many of the pressing issues were thus regulated leading to the gradual elimination of pauperism and misery among the working class. The Labour party established workers' associations, mutual aid societies that would provide health care to its members, various insurance schemes and pension systems.

In addition to bringing in a class divide into Belgian politics, the emergence of a strong socialist movement also exacerbated the confessional divide since the socialists were also anticlericals and appeared to align themselves closer to the Liberal party than the Catholic one. In fact, originally the socialist movement was an offshoot of the progressive wing of the Liberal party and had embraced the anticlerical tradition.

The strength of the Labour party and its staunchly anticlerical stance greatly worried the Catholic Church. During most of the 19th century, the expansion of the state

¹³ Marinette Bruwier, Nicole Caulier-Mathy, Calude Desame, Paul Gerin, 1886 *La Wallonie née de la grève ?*, Editions Labor.

¹⁴ Vernon Mallison (1969), *Belgium*, London: Ernest Benn, p.81.

through education and bureaucratic centralisation, had pitted the Catholic Church and the state against one another. But the existence of a Catholic party had limited the success of *jacobin* ideas of state building in Belgium. In a political system where only a small percentage of property owners could vote, the Liberal party lacked the mass support to implement its modernist agenda. Whenever the Liberals were in power, they tried to implement reforms and whenever the Catholic Party came to power they reversed the reforms, but the general public was not a part of this bickering at the top. The emergence of mass politics in 1894 greatly altered this picture.

The Catholic Church feared that the socialist movement might give the modernist cause the vital mass support it needed. The socialist movement had started out from the Liberal pillar, and thus, they shared the same free-thinking *jacobin* ideals. Alarmed by this threat, the Catholic clergy decided to take an active role in Belgian politics. The papal encyclical *Rerum Novarum* allowed the Belgian Catholic Church to engage in political activity to counter the anticlerical movement. As a consequence, a sort of recruiting activity similar to that of socialists was carried out by an emerging Catholic labour movement under the guidance of the Catholic Church. The General Christian Workers' Union (*Algemeen Christelijk Werkersverbond*) was formed. But socialists had already made considerable progress in expanding their membership. The Catholic labour movement failed to establish inroads into already industrialised Wallonia where socialists enjoyed unrivaled strength. In Flanders, however, the early stages of industrialisation was ripe for the Catholic labour movement. The Catholic party, which had existed since the early days of the Belgian State, was thus able to tap into the disgruntlement of the Flemish working class. The Belgian Labour party did succeed in winning some support

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amongst the working class in Gent/Gant and Antwerp/Anvers, but the Catholic labour movement was by far the strongest representative of the Flemish workers. Although it was directed towards countering the expansion of socialism, the activism of the Catholic Church also influenced the path Flemish nationalism took.

Facing the threat of a modernising *jacobin* State, the Catholic Church had entered mass politics and tried to recruit the support of the newly franchised masses. To this end, the Church also capitalised on the class and language divisions in order to stem the expansion of a secular state. Thus, Flemish nationalism was internalised into the Catholic vs. secular cleavage of Belgian politics as the Catholic Party incorporated a mild form of Flemish nationalism into its platform.

These developments strengthened the pillarised social structure that already existed within the middle and upper classes. Until the birth of the socialist mass movement, the main dividing line was religion. There was a Catholic pillar drawing its base from certain middle class elements and aristocrats, provincial petit bourgeoisie, and rural areas mostly in Flanders but also from the Ardennes area. The Liberal pillar's base, on the other hand, was the middle classes, urban centres, and workers. By the late 19th century the emergence of a strong labour movement together with expanding suffrage and increased social activity, brought a new and an internally more coherent pillar; the socialists. The Catholic pillar had existed since the early days of the Belgian state, but first, as it tried to counter the expansion of the secular modern state, and then, as it tried to win the working classes from the burgeoning socialist movement, Belgian Catholics developed a complex pillar with a similarly strong degree of internal cohesion. In

contrast, by the end of the 19th century, the Liberal pillar, which has traditionally been very strong in Brussels, was much smaller and less institutionalised.

The expansion of suffrage induced the political parties to extend their social milieus in order to secure votes. Consequently, socialist, Catholic and liberal pillars acquired a far-reaching character. Mutual aid societies for insurance, newspapers, sports clubs, cooperatives, social clubs, even bakeries and pharmacies were set up as building blocks of exclusive social networks. In his outstanding comparative study on the workers' movement in Ghent, Liège and Brussels around the turn of century, Carl Strikwerda draws attention to the expansive political competition underlying the social pillars:

The 'pillars' or 'segmented plural' communities that have characterised modern continental European countries were not accidental creations or the result of pre-modern loyalties. They were thoroughly modern products of forces at work in mass politics.¹⁵

In addition to the three pillars (*zuilen* in Dutch, *familles spirituelles* in French), the linguistic division increasingly began to make its presence felt in political life by the turn of the century. Facing pressures from the Flemish movement, the institutions of the unitary state slowly began to acknowledge the linguistic divide in Belgium.

Introduction of universal suffrage in 1893 not only brought socialism into the Belgian political scene but also gave the Flemish movement a political and territorial base for mobilisation. The Flemish movement wanted linguistic education to be a personal choice, but fearing a domination by the majority Flemings, Francophone leaders made linguistic education a regional issue. As a consequence, Francophones living in Flanders could continue sending their children to French schools, at the same time, education in

Flemish was available for those who wanted in the officially bilingual region of Flanders. Despite the high number of Flemish migration to Walloon industrial centres like Liège and Charleroi, Wallonia was to remain unilingually Francophone.

Coinciding with the initial gains for the Flemings, a Walloon reaction to the Flemish movement as well as the Brussels based Belgian leadership began to take hold. On 15 August 1912, the Walloon Socialist leader and member of Parliament for Charleroi, Jules Destrée published a letter to King Albert in 'la Revue de Belgique'. Destrée's letter titled 'Lettre au Roi sur la Séparation de la Wallonie et de la Flandre' included the following sentence that would later become the most frequently quoted piece on Belgian politics:

Sire, allow me to tell you the truth, the great and horrifying truth, there are no Belgians. You reign over two people. In Belgium there are the Walloons and the Flemings, there are no Belgians.¹⁵

The First World War fueled the Flemish nationalist movement as thousands of Flemish soldiers died on the banks of river Yser/IJzer without understanding what the French speaking officers ordered them to do. The Flemish movement recruited many followers from the trenches under the wings of the *Frontpartij*. As the Belgian army was fighting the Germans in the West, some Flemish nationalists collaborated with the German forces occupying Eastern Belgium, who had promised them independence. The

¹⁵ Carl Strikwerda (1997), *A House Divided: Catholics, Socialists, and Flemish Nationalists in Nineteenth Century Belgium*, Lanham: Rowman and Littlefield, p. 407.

¹⁶ "Sire, laissez-moi Vous dire la vérité, la grande et horrifiante vérité, il n'y a pas de Belges... Vous rénez sur deux peuples. Il y a en Belgique, des Wallons et des Flamands, il n'y a pas de Belges.", from the letter titled 'Lettre au Roi sur la Séparation de la Wallonie et de la Flandre' written by the Walloon Socialist leader and member of Parliament for Charleroi, Jules Destrée published in *la Revue de Belgique*, 15 August 1912.

Germans would repeat their so-called 'Flamenpolitik' during the Second World War as well.

After the First World War, Flemish sacrifices at Yser/IJzer became an important symbol for the Flemish movement. During the inter-war period, the Flemish movement expanded its support base with the introduction of single franchise universal male suffrage in 1918. In 1930 a monument was erected on the battlefield in Dixmuide on the banks of Yser/IJzer to honour the slain. There were other gains for the Flemish movement. Most importantly, in 1935 Dutch was added to alongside to French as the second official language. But the Yser/IJzer monument in Dixmuide, which carried the slogan *Alles voor Vlaanderen, Vlaanderen voor Kristus* (everything for Flanders, Flanders for Christ) would later be the cause for yet another inter-community conflict. After the Second World War, the night of March 15 1946, the IJzer monument was dynamited sparking a wave of Flemish protests, but during this time period when Nazi collaborators -quite a few of them Flemish nationalists- were arrested and tried, the protests were often muted. Most of the leaders of the Flemish movement were imprisoned as collaborators during this time. A new monument was built during the fifties, and it would later become the destination for the Flemish nationalist pilgrimage (*IJzerbedevaart*) made every August.

By the end of the Second World War, the linguistic cleavage began to dominate and internalise the religious and the class cleavages. Dutch-speakers constituted the majority of the Catholic pillar, while the Walloons dominated the socialist pillar. Long before the federalisation of the country, Flemings and Walloons started to display different

approaches to the political issues facing the country. The public attitude towards the persecution of the collaborators after the Second World War was such an issue that roughly followed the linguistic divide. While Francophones have sought the harshest penalties for those who had collaborated with the Germans, Flemings believed that the purges went too far. In 1950 the Royal question divided the country along linguistic lines again as Francophones rejected the return of the King Leopold III who they believed acquiesced to the German occupation, while the Flemings supported his return. Although in a referendum the majority of Belgians voted for his return, riots broke out in Brussels and Wallonia. Socialists and Liberals, mostly Francophones, rejected his return to Belgium. Leopold II was forced to abdicate, leaving the throne to his son Bouduin.

After the Liberal-Socialist coalition of Van Acker introduced sweeping reforms into the educational system, a 'School War' (*guerre scolaire / schoolstijd*) broke out in 1955. As it is discussed in more detail in the chapter on educational policy, these so-called school wars have been a regular occurrence in Belgium. Traditionally, they have pitted Catholics against seculars and anticlericals, but increasingly these divisions have overlapped with the linguistic one between Flemings and Francophones. The law prepared by the Socialist Minister of Education, Léo Collard, sought to increase government spending for public schools and also increased the role of the state in education. This time it was the turn of the Catholics, mostly Flemings, to riot.

On 20 November 1958 a compromise was reached and an agreement was signed between the three traditional parties and the Catholic Church which would become law on 29 May 1959 as the Pacte Scolaire. The only major party that was excluded from this agreement was the Communist party. The compromise guaranteed equality in terms of

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state subsidies to the two educational systems. Indirectly however, the compromise brought another important division within the Belgian society to the forefront that was to mark the coming decades. To be precise, the settlement of the religious conflict isolated and exacerbated the linguistic conflict:

During the 1960s, after the School Pact guaranteed a pacification at the ideological level, the linguistic question found itself at the forefront of the political agenda.¹⁷

The 1960s witnessed the growing tensions within the Belgian society. The Francophones were no longer reacting to Flemish nationalism, but they started to take the initiative in the offensive against the Belgian State. In 1960 the Eyskens government introduced austerity measures to deal with the economic difficulties that Belgium was facing after the loss of Congo. The so-called Unity Law (*Einheidswet*) included increase in taxes and cuts in social services. Walloon dominated socialist trade unions called for a general strike, but the mainly Flemish Catholic trade unions did not join. The general strike ended up turning the winter of 1960-61 into a violent one with riots engulfing Wallonia and Brussels. A compromise was reached during late January, but the strike ended up being one other step in the polarisation of the country between Francophones and Flemings. The strikes also led to the emergence of a Walloon separatist movement, *Mouvement populaire wallon*, under the leadership of the Liègeois trade union leader André Renard. It was clear that minor adjustments to the unitary State were not going to be enough to contain the divisions within the Belgian society.

¹⁷ "Dans les années 1960, après que le Pacte Scolaire eut garanti une pacification au niveau idéologique, la question linguistique se retrouva à l'avant-plan de l'agenda politique.", in Dominique Grootaers (ed.) (1998), *Histoire de l'enseignement en Belgique*, Brussel: Crisp, p.157.

2. Two-and-a-half Solitudes

In the last fifty years, the linguistic division became the prevalent dimension of cleavage in the Belgian society. The tension between the two communities was accentuated by the socio-economic transformation of Belgium. A country once characterised by Francophone domination over the numerically greater but rural and underdeveloped Flemings witnessed the rapid economic growth of the Flanders region while Wallonia's traditional manufacturing industries have faced decline.

What was formerly a consociational regime based on three pillars, i.e. Catholic, Socialist and Liberal, was replaced with a bipolar one where the divisions of denomination, class, language and region tend to overlap: affluent, devout, Dutch-speaking Flanders vs. working class, anticlerical, French-speaking Wallonia. In general Flanders has a more pillarised social structure. Wallonia, on the other hand, seems to be dominated by the Socialists with deep divisions running with a small but obdurate Catholic minority. Brussels, as the third actor, has retained the consociational structure with the linguistic cleavage superimposed. The Liberal pillar, which is very small in national terms, is particularly strong in Brussels. It has to be noted that nowadays it is not uncommon to find individuals belonging to different pillarised organisations, especially in Brussels. To sum things up; nowadays the Belgian society is divided into two main groups with a third much smaller one often allied with one of these groups. But the divisions run deep. Stengers puts it in the following terms:

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Belgium is not at present a country containing two nations. Inside the Belgian nation are two linguistic communities, one of which is a nation.¹⁸

Statistics seem to corroborate anecdotal evidence, i.e. French-speakers and Dutch-speakers live in self-contained blocks with little interaction. Studies on long-distance phone calls in Belgium show very little communication between Flanders and Wallonia¹⁹. Similarly, geographical mobility in a given year between Flanders and Wallonia represent approximately only 7% of the relocations in that year²⁰. Almost 80% of the relocations are within the Regions. For example, in 1996 there were 7500 relocations from Brussels to the surrounding suburbs in the Flemish and Walloon Brabant, but relocations between Flanders and Wallonia were negligible.²¹ Belgian society can thus be described by Hugh McLennan's idea of 'Two Solitudes', i.e. Walloons and Flemings live in self-contained blocks with little interaction; in addition, there is a much smaller third 'solitude' of the Bruxellois. Together with the geographical division and the mutually enforcing social cleavages, Belgium is indeed a deeply divided society.

Within the two-and-a-half solitudes, the case of Wallonia is really an interesting one. The cultural nationalism of Flanders and the cosmopolitanism of Brussels are easier to understand than the working-class nationalism of Wallonia. Wallon nationalism is best

¹⁸ Jean Stengers (1990), "Belgian National Sentiment" in René Bryssinck, Marina Boudart, Michel Boudart (eds.), *Modern Belgium*, Modern Belgium Association: Belgium, p.97.

¹⁹ Murphy refers to the research of Jacques Charlier (1985), *Le flux téléphonique interzonaux en Belgique en 1982: une approche multivariété*, unpublished paper presented at the International Geographical Union, Montpellier, France, November 18-19. In Murphy, Alexander B. (1993), "Linguistic Regionalism and the Social Construction of Space in Belgium", *International Journal of the Sociology of Language*, Special Issue 'Sociology of Language in Belgium Revisited', Vol.104, p.53.

²⁰ Murphy states that this 7% includes the Brabant province, which houses the surrounding suburbs of Brussels, and the foreigners. Thus, the actual relocations between Flanders and Wallonia are much lower. Murphy (1993), *op. cit.* pp.53-54.

²¹ Ministerie van Economische Zaken, National Instituut voor de Statistiek (1996), *Statistisch Zakjaarboek 1996*, Brussel, p.37-8.

described as a reactionary regional movement mobilised around a linguistic core which has been dominated by its most powerful subgroup, i.e. trade unions. While Flemish national identity is largely based on Catholicism (e.g. AVV-VVK of Yser/IJzer monument), Walloon identity is unequivocally a working class one. The recently adopted Wallon national anthem 'Le Chant des Wallons'²² is probably the only of its kind where unemployment benefits are seen as part of national identity:

Among Walloons one always fraternises,
During bad times, one loves to help each other;
One does good without announcing it,
In an effort to keep anonymity.
Charity visits the cottage
During the night as it takes hundred precautions;
One gives little but it is from a sincere heart;
And that is why we are proud to be Walloons! ²³

In many ways, the French-Belgian, and in particular the Walloon identity, is a defensive reaction to the onslaught of Flemish nationalism. As the above piece suggests, it is more of a class identity. France, on the other hand, continues to exert a strong cultural influence on the French-speakers of Belgium. It is interesting to note that the building that houses the Walloon Regional Parliament and Executive in Namur is known as the *Elysette*.

Such a social setting of Dutch-speaking Christian Democrat dominated Flanders, French-speaking Socialist dominated Wallonia, and French-speaking cosmopolitan

²² Adopted by the decree of the Walloon Region of 15 July 1998. Text by Théophile Bovy, music by Louis Hillier.

²³
Entre Wallons, toujours on fraternise,
Dans le malheur, on aime à s'entraider;
On fait bien sans jamais qu'on le dise,
En efforçant de le tenir caché.
La charité visitant la chaumière
S'y prend le soir avec cent précautions;
On donne peu, mais c'est d'un coeur sincère;

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Brussels has put the unitary Belgian state under much strain. With a slight overstatement, the following quote sums up the picture:

Belgians have long known who they are: anti-clerical, French-speaking Brussels shopkeepers, many of Flemish ancestry, who regularly vote for the Liberals...; militant Walloon workers, most of whom vote for the Socialist party...; comfortable, Catholic, Flemish farmers, most of whom continue to vote for democratic, Flemish-minded Catholic candidates...²⁴

Connected with the different character of the 'nationalist' movements, their demands have been in different domains of national competences. For example, Van Dam draws attention to the character of Walloon nationalism and the different demands it has from the centre as a consequence:

The federalist demand does not therefore rely on a cultural injustice as it is the case with the Flemish movement, but of course on a socio-economic injustice. The regional conscience in Wallonia is thus firmly anchored in an economic 'class' consciousness and not in a cultural consciousness of the 'people' as in Flanders.²⁵

Be it cultural or socio-economic, Belgian State institutions have faced pressures to change in order to reflect the deep divisions within the Belgian society. The following chapter will look at the last fifty years Belgian political history through this lens of *question communautaire* and institutional change. In the remaining part of this chapter, the focus will be on the role the political parties play in this deeply divided country.

Voilà pourquoi l'on est fier d'être Wallons!

²⁴ Aristide Zolberg (1978), "Belgium", in Raymond Grew (ed.), *Crises of Political Development in Europe and the United States*, Princeton: Princeton University Press, p.133-4.

²⁵ "Le revendication fédéraliste ne s'appuyait donc pas sur une injustice culturelle, comme c'était le cas pour le mouvement flamand, mais bien sur une injustice socio-économique...La conscience régionale en Wallonie s'est donc ancrée dans une conscience économique de 'classe' et non pas dans une conscience culturelle de 'peuple' comme en Flandre.", in Denise Van Dam (1998), "Histoire de mouvement Wallon", in Marco Martiniello and Marc Swyngedouw (eds.), *Où va la Belgique? Les soubresauts d'une petite démocratie européenne*, Paris: L'Harmattan, p.81.

3. Political Parties

Historically, the three traditional political parties which represent the three social pillars of the Belgian society, i.e. Catholic, Socialist and Liberal, have dominated the political life. Until *Parti Ouvrier Belge*'s entry to the Parliament in 1894, the political scene was dominated by the Liberal and Catholic parties. These three parties, and their linguistically divided wings, are generally considered as traditional political parties.

Historically, Belgian Christian Democrats have been united within the Catholic party. The party's traditional support has been small town bourgeoisie and agricultural interests, especially the powerful *boerenbond*. The Catholic party, which changed its name to the Social Christians/Christian People's party after the Second World War, is very strong in Flanders but there is also a solid Christian Democrat support in the French-speaking Ardennes area. It has often been hard to classify Christian Democrats using anglo-american political concepts since left-right and social class do not help explaining European Christian Democracy. It would be fair to say that the most important element that Christian Democrats share is their proximity to religion. But such moral conservatism is combined with a somewhat left-wing socio-economic policy. Some observers have gone as far as to label it as the *deuxième gauche*.²⁶

The Belgian Labour Party also changed its name after the Second World War becoming the Socialist Party. It has some support in the Flemish industrial cities of

²⁶Seiler refers to the work of Pierre Verjans (1997), *Les matrices identificataires à l'oeuvre dans le mouvement ouvrier chrétien à l'heure du déclin du cléricalisme*, Thèse de doctorat Université Liège, Faculté de droit, p.125-131., cited in Daniel-Louis Seiler(1999), "Un État entre importation et implosion: consociativité, partitocratie et lotissement dans la sphère publique en Belgique", in Pascal Delwit, Jean-Michel De Waele, Paul Magnette (eds.), *Gouverner la Belgique, Clivages et compromis dans une société complexe*, Presses Universitaires de France: Paris, p.43.

Gent/Gant and Anvers/Antwerpen, but most of its support comes from Wallonia. It is largely a working class party with some middle class elements and a strong anticlerical tradition.

The Liberal party for the early decades of the Belgian state was one of the two parties. Traditionally its base has been middle class and upper-middle class, and especially in Brussels it has been very strong. Historically, the Liberal Party had close links to the Masonic Lodges. One of its characteristics has been its staunch anticlericalism but this has been officially dropped from the party programme in 1961 as the party also changed its name to the Party of Liberty and Progress. This is partly due to the settlement of the divisive religious conflict which dominated Belgian politics. Following the Pacte Scolaire of 1959, religion began to lose the centrality it previously enjoyed. Political parties began to cross the confessional lines in their appeal to the voters. The Liberal party's decision to distance itself from anticlericalism is an example of the new tendencies of political alignment. The party gradually changed its image towards a free-market Liberal party more attached to the unitary Belgian state than the Christian Democrats and Socialists.

The dominance the three traditional parties have enjoyed in Belgian politics has been on the decline in the last four decades. Until 1950 the Christian Democrats and Socialists have received more than 80% of the total votes. But their share of the vote has been in steady decline since the fifties. The case of the Christian Democrats is especially striking. In 1950 they received 48% of the votes, in 1995 the number was down to 25%, and in the June 1999 elections they were voted out of office. The Christian Democrats remain strong in Flanders, and the Socialists continue to dominate Wallonia, but new

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political parties have emerged challenging the dominance of the three traditional parties. In fact, due to the bitter divisions over community issues, the three traditional parties have separated into linguistic halves with no organisational ties between, indeed becoming separate political parties.

The political wing of the Christian Democratic pillar divided into two linguistic halves over the 1968 University of Louvain/Leuven crisis leading to split into separate *Parti social chrétien* (PSC) and the *Christelijke Volkspartij* (CVP). 1970 the political branch of the Liberal pillar divided into two along linguistic lines to form the *parti réformateur libéral* (PRL) and the *Vlaamse Liberalen en Democraten* (VLD).

The Socialist party managed to remain as a single bloc longer than the two other main political parties representing the consociational pillars. But they too succumbed to the linguistic pressures and divided into two in 1978 forming the *Parti socialiste* (PS) and the *Socialistische Partij* (SP).

In addition to the rift within the traditional parties, the inter-community conflict led to the establishment of new political parties who campaigned along community issues. The community parties tried to bypass the traditional divisions within the Belgian society. For example, *Le Front démocratique des Francophones* (FDF) was created in 1964 with the aim to defend the rights of the Brussels Francophones. FDF did not limit itself to the confessional boundaries and campaigned to protect the French language in Brussels and its periphery. As a result, it became the strongest party in the capital from 1971 to 1981. The *Rassemblement wallon* (RW) was a similarly pluralistic party in the sense that it crossed the confessional divisions in its formation and appeal. It was created in 1968 campaigning on protecting Wallonia's rights at a time when the Walloons were

becoming disillusioned with the Socialist party's ability to defend their rights. RW emerged as the second party in Wallonia in 1971 but disappeared from the political scene in 1985.

Historically, Flemish Christian-Democrats have dominated Flemish nationalism. But Flemish nationalism has not been within the monopoly of the Flemish Christian Democrat party CVP. The *Volksunie* (VU) is a moderate Flemish nationalist party created in 1954 whose platform has centered around the federalisation of the Belgian State. It was initially called *Christelijke Vlaamse Volksunie*, but it followed the RW and FDF in broadening its appeal to the electorate by dropping its Christian outlook. VU has a single issue agenda centering around increased Flemish self-rule. Nevertheless, VU has acquired a position among mainstream parties as a bona fide member whose concerns lie in the field of community issues. The composition of VU membership is not very different from the CVP, with a somewhat more provincial petit bourgeois character.

In 1993 the FDF allied with the PRL, and in 1998 they joined forces with *le Mouvement des citoyens pour le changement* (MCC). The PRL-FDF-MCC declared its aims to unify the centre-right in order to challenge the predominance of PS in francophone Belgium. The PRL-FDF-MCC includes former members of the PSC as well, but no organic link exists with the Christian Democrats. In the recent elections on 13 June 1999, this centre-right movement often referred to as the 'Liberals' managed to increase its votes and became the main party in francophone Belgium. The tendency seems to be towards a new left-right dimension, since parallel to the realignments on the right, a similar reorganisation seems to be taking place on the left as well. Recently, a

group known as the *Mouvement des progressistes chrétiens* (MPC) has split from the PSC and allied itself with the PS.

The 1980 witnessed the birth of a strong environmentalist movement in Belgium, but they were also divided along linguistic lines. The francophone environmentalist party, *parti écologiste* (Ecolo), created in 1980 is similar in formation and programme to the Green parties of West Europe. While the Flemish one, *Anders gaan leven* (Agalev), formed in 1982, is a different party whose support is concentrated in Anvers/Antwerpen.

In addition to the CVP and VU, Flemish nationalism has a racist fringe as well. The extreme right is organised within the increasingly visible ultra-nationalist *Vlaams Blok* (VB) whose slogan *Eigen volk eerst* (Our nation/people first) leaves no questions about their agenda. The origins of Vlaams Blok go back to the militant nationalists who defected from the nationalist Volksunie (VU) in order to protest against the VU participation in the 1980 State reform. Its ranks include veterans of the *Vlaams Nationaal Verbond* (VNV) which collaborated with the Nazis during the occupation, but it also has many young supporters. Vlaams Blok combines the racist anti-immigrant stance of parties like the French *Front National* with an anti-Belgian separatist nationalism. It emerged as the first party in Antwerpen/Anvers gathering around 30% of the vote in the recent June 1999 elections. In the 2000 municipal elections the Blok was the first party in Antwerpen/Anvers and Mechelen/Malines. In total, the party represents an electorate of almost 600,000 and is the third party in Flanders. Currently the mainstream parties and the media implement a *cordon sanitaire* around the Blok. That is to say, the party is not invited into any political coalition within the Belgian federal structure and the media tries to deny publicity to the movement. However, following the electoral losses the Christian

Democrats suffered at the recent elections, an influential CVP figure, Herman Suykerbuyk, with the support of a few other CVP deputies, flirted with the idea of a partnership with Vlaams Blok in opposition. Facing massive criticism, the leadership of the CVP distanced itself from the suggestion. However, a future breach of the *cordon sanitaire* around VB cannot be confidently ruled out. The nationalism of VB is on the anti-establishment fringe, different from the mainstream nationalism of the Flemish Christian Democrats and the Volksunie. In many respects, VB has more in common with the xenophobic extreme-right parties of Western Europe than with substate nationalist parties. But its message is couched within anti-Belgian terms as well, making it hard to separate the two tendencies from one another. French-Belgium does not have an extreme-right counterpart to the VB. The anti-immigrant *Front national* is much weaker in francophone Belgium.

Chapter IX

Communitarisation of Unitary Belgium 1945-1995

Nothing is as Belgian as Flemish nationalism. Had Belgium not existed, Flemish nationalism would have no reason for existence.

*Geert Van Istendael*¹

Geography has its laws. There are old cultural imprints which are slowly wiped out by the stormy winds of history and remain invisible for centuries. Remove the sand and the underlying pattern reappears.

*Manu Ruys*²

1. Introduction

A theory of congruence lies at the core of this research project. Congruence theory postulates that political institutions would face pressures to change in order to reflect the underlying social structure, in this case, the ethno-linguistic composition of the polity. Agents of this change are political actors; as long as an incongruence between political

¹ "[N]iets is zo Belgisch als het Vlaamse nationalisme. Bestond België niet, dan had het Vlaamse nationalisme geen reden van bestaan." Geert Van Istendael(1993), "Bestaat een Vlaamse of Nederlandse culturele identiteit?", in J.C.H. Bloom, J.Th. Leersen and P. De Rooy (eds.), *De Onmacht van het grote: Cultuur in Europe*, Amsterdam: Amsterdam University Press, p.22.

² "De geografie heeft haar wetten. Er zijn oude culturele afdrucken die door de stormwinden van de historie slechts traagies worden uitgewist en na eeuwen nog zichtbaar blijven. Verwijder

institutions and the social structure remains, their political choices will be induced by their ethno-linguistic backgrounds. In other words, regardless of their political affiliations, choices made by decision makers from the same linguistic group will converge until a match between institutions and social structures is attained.

The focus of this chapter is on how the unitary Belgian state changed in a way as to be congruent with its societal make-up composed of two linguistic communities. Both of the above quotations point out to this tetchy *question communautaire* within the shell of the Belgian state. By employing a quaint metaphor, the former editor of the conservative Flemish newspaper *De Standaard* and influential political commentator, Manu Ruys, seems to assert the importance of the underlying societal structure. Once decoded, the piece above becomes his affirmation of the historical continuity of the Flemish 'nation' despite having lived in a unitary political structure.

In general terms, this is what this study is about, i.e. the institutional reform process that has transformed the unitary Belgian state into a federation. The focus of the inquiry is on the processes which lead to a convergence between the social structure -in terms of ethno-linguistic composition- and the political structure. In a sense, the study is an attempt to operationalise the common sensical observation about the importance of underlying societal factors. The argument is that pre-existing societal structures would exert pressures on the political institutions to change if these institutions do not reflect the society. And in particular, the empirical research traces the primacy of the ethno-linguistic structure over class, ideology, religion, tenacity of existing institutions and the self-interest of political actors in influencing the political choices made.

het zand, en de draad ligt weer bloot.”, Manu Ruys (1973), *De Vlamingen, een volk in beweging*,

Chapter eight gave a brief overview of Belgian history and the important social divisions in order to provide a background for this case study which specifically deals with the communitarisation of the unitary Belgian state. Admittedly, in English, 'communitarisation' appears as a rather clumsy term, but it seems to better convey the issues at play in the Belgian case. At the end of the day, Belgians themselves prefer to use the term *communautarisation/communautarisering* to describe the developments. The term 'federalisation' stops short of capturing certain dynamics, such as the division of public corporations into linguistic halves. 'Decentralisation', similarly, cannot convey the duplication of national bodies into two separate linguistic entities. And it also creates some confusion as the traditional Belgian provinces have gradually lost powers to the newly created substate entities. That is to say, there has been considerable centralisation within the new level of government. 'Regionalisation' is also an improper term as the reform of the Belgian state has been a response to the demands of the two linguistic communities rather than particular regions. Some policy areas are divided linguistically at the national level without been delegated to the regions. 'Devolution', on the other hand, seems to imply the preexistence of certain entities to whom power can be devolved. All of the Belgian substate entities are new creations, and in fact, the reform process continues as questions over the nature of these political communities remain. So, for lack of a better term 'communitarisation' will be used throughout this case study.

The importance of the *question communautaire* lies in its centrality to the reform of the Belgian state. Compared to its neighbours, the Belgian Constitution of 1831

remained a very stable one until the communitarisation process began to unfold. Many issues that led to major state reforms in other countries took place in Belgium without pressures on the political system to change. Secular-religious divide, emergence of socialism, great depression, inflation, and the rise of fascism undoubtedly had massive impact on the Belgian society as it was the case across Western Europe, but the system managed to adapt itself and contain these challenges. Until the 1960s, save for a few constitutional amendments redefining the electorate in terms of voting rights, the Belgian Constitution remained unaltered. In the meantime, Belgium's neighbours were experiencing large scale constitutional change. 19th and 20th centuries were marked by major constitutional reforms in response to the prevailing divisive issues in the Netherlands. During the same time period, France experimented with republics, constitutional monarchy and Bonapartism, while Germany had a confederation, an empire and a republic. After the WWII however, the Belgian Constitution could no longer contain the *question communautaire* and began to change over issues which did not exist in Germany, France or the Netherlands.

This chapter will provide a general picture of this reform process the Belgian state has gone through in the last fifty years. The following chapters will concentrate on the communitarisation process in two specific policy areas, i.e. education and mass media regulation. Since the inquiry is based on the assumption that the linguistic composition of the country has been of foremost importance in influencing the state reforms, it is imperative to briefly deal with the question of language before we turn to the communitarisation of Belgium.

1.1. Language

Language is the single most important factor in explaining the divisions within contemporary Belgium. Language constitutes the core of Flemish identity. From its inception, Flemish nationalism has been about struggles for the recognition of the Dutch-language by the state and its establishment as the official language of Flanders. In the last hundred years Flemings have fought for cultural recognition which was epitomised by the slogans of the University students in the 1930s who were demanding Gent/Gant University to become a Dutch-language institution: *geen taal geen vrijheid* (no language no freedom) was their rallying cry. In a way, this slogan was used for external purposes to demand an official recognition of their distinctiveness. But the language was also used for internal purposes to define the nature of the community. A common phrase used by Flemish nationalists to this end has been *de taal is gans het volk* (the language makes the whole nation).

The Belgian Francophones have equally been aware of the importance and centrality of language. In his address to the Cultural Council of the French Cultural Community, the President of the Council quotes early 20th century Walloon socialist leader Jules Destrée's words:

But again it is certain that language is the most obvious and evident sign of -other than race, more or less a mentality, of a sensitivity, of a special way of understanding and feeling one's life.³

³ "Mais encore est il certain que la langue est le signe plus manifeste, le plus évident, sinon d'une race, tout au moins d'une mentalité, d'une sensibilité, d'une façon spéciale de comprendre et de sentir la vie.", From President Struye's opening address to the Council's 1972-73 session. He is quoting from Jules Destrée (1923), *Wallons et Flamands*, Conseil Culturel pour la Communauté Culturelle Française, Session Ordinaire 1972-73, Séance du Mardi 17 Octobre 1972, *Compte Rendu Intégral*, p.5.

At this point, it is imperative to correct one common misunderstanding concerning the language spoken in Flanders. Despite the existence of various Flemish dialects, there is no language called 'Flemish'. In the last fifty years, Flemish demands for cultural recognition have come with a standardisation around high Dutch (*Algemeen Beschaafd Nederlands*). In 1973, the so-called Cultural Council for Flanders at the time, adopted 'Dutch' as the official title of the language, removing any reference to a Flemish language.⁴ In the Dutch-language the term is *Nederlandstaal* and it literally means the language of the Low Countries, so it does not imply an accession to the cultural domination of Holland as the English and French connotations seem to suggest. And historically, the term Flanders was used to denote the southern half of the Low Countries, including southern Netherlands and northwest France.

This chapter will trace the process of communitarisation in Belgium which took place in the last fifty years based on this deep linguistic divide. In the preceding chapter, a general picture of the three important cleavages within the Belgian society was given. The cleavage between owners of means of production and workers is no longer a relevant issue for the stability of the Belgian state. On the other hand, despite its declining importance, the cleavage between Catholics and seculars is still relevant but it has been subsumed under the linguistic cleavage as free-thinkers in Flanders and Catholics in Wallonia are increasingly marginalised. This chapter, and the entire research project as a

⁴ Decree concerning the official designation of the language used by the Dutch-speaking Cultural Community of Belgium, Brussels, 10 December 1973, in Theo Hermans, with Louis Vos and Lode Wils (eds.) (1992), *The Flemish Movement, A Documentary History 1780-1990*, London and Atlantic Highlands, NJ: Athlone, p.389-90.

matter of fact, focuses on the *question communautaire* which is based on the linguistic communities.

2. Reform of the Belgian State

2.1. First State Reform 1962-63

Within the tense post-war climate, in 1946 Christian Democrat Pierre Harmel proposed the creation of a research center for studying solutions to the problems facing Belgium. With the law of 3 May 1948, an institution named *Centre de Recherches pour la Solution nationale des Problèmes politiques, sociaux et juridiques en Régions wallonne et flamande / Centrum van onderzoek voor de nationale oplossing van de maatschappelijke, politieke en rechtskundige vraagstukken van de Vlaamse en Waalse gewesten* was set up, but it came to be known as the Harmel Centre. The Centre published its report on 24 April 1958. In general terms, the report proposed the establishment of linguistically homogeneous regions. At that time, the linguistic border did not correspond to the administrative demarcations separating the Belgian provinces. In other words, Flanders and Wallonia were not legal entities yet. To institutionalise the principle of regional unilingualism, the Harmel report called for the demarcation of a linguistic border, establishment of Flemish and Walloon cultural councils and the division of the province of Brabant surrounding Brussels into Flemish Brabant and Walloon Brabant, while the Brussels *arrondissement/agglomeration* would remain bilingual. The report stated that:

Above all, cultural autonomy should allow each community to manage their cultural policies in a way which suits their identity and needs.⁵

This was the first step in the direction of communitarisation. The recommendations of the report would form the basis for the 1962-63 state reform.

The elections of 1961 had produced a Christian Democrat-Socialist coalition under Théo Lefèvre and Paul-Henri Spaak. The Minister of Interior Arthur Gilson, a francophone Christian Democrat from Brussels, set himself to implement the recommendations of the Harmel report. The law of 8 November 1962 demarcated three Dutch, French and German (for a few German speaking broughs along the German border) unilingual linguistic regions and a bilingual Brussels region. The demarcation included a modification of the administrative boundaries of the Belgian provinces to correspond to the linguistic border. This law was followed by the law of 2 August 1962 which regulated the use of languages for administrative purposes. The question of linguistic education in Brussels was not unequivocally solved, however. The issue of contention was the criterion to determine the choice of language. Was it to be the mother tongue of the children as declared by the parents, or was it going to be the language spoken at home? The law of 30 July 1963 established the criterion as the language spoken at home. What this actually meant was that the parents, or more precisely, the 'father of the family', no longer had the right to decide what school they wanted to send their children to. The 'language spoken at home' was subject to verification by

⁵ "L'autonomie culturelle doit surtout permettre à chaque communauté de mener la politique culturelle qui convient à son identité et à ses besoins.", quoted in Hugues Dumont and Georges-Henri Dumont (1996), "La Politique Culturelle Sociale-Chrétienne sous le Signe de l'autonomie et du pluralisme", in Wilfried Dewachter, Georges-Henri Dumont, Micehl Dumoulin, Manu Gérard, Emiel Lamberts, Xavier Mabilie, Mark Van den Wijngaert (eds.), *Un Parti Dans*

authorities. At the insistence of Flemish leaders, the law was installed in order to prevent the Flemings of Brussels to send their children to more prestigious Francophone schools.⁶ But still, the policy was based on the individual linguistic registry and not the region. Only in Brussels was the issue of language a personalisable one. Elsewhere in Flanders and Wallonia, the language regime and community affairs were based unilingually on the language of the region in question. The only exception to this rule was the minority language education available in a few boroughs along the linguistic border. 14 miles from the Walloon border, the university town of Louvain/Leuven, was such a borough where French language education was available. But the demonstrations and riots during the late 1960s led to the expulsion of the francophone university population from Louvain/Leuven putting an end to the minority francophone education here. Mouscron-Comines/Komen-Moeskroen in West Flanders had a sizable francophone population who were entitled to French-language education as well. In 1962 this commune was transferred to the Walloon province of Hainaut. The other borough was Fourons/Voer across from the province of Liège. Fourons/Voer whose inhabitants spoke a low German dialect was transferred from the Wallon province of Liège to the Flemish province of Limburg. But the situation here would be a major problem dividing the communities during the 1980s.

At the end of the day, the 1962-63 reforms were the first steps towards institutionally recognising what had existed for a long time. Christian Democrats

l'Histoire 1945-1995, 50 Ans d'Action du Parti Social Chrétien, Ducolot: Louvain-la-Neuve, p.556.

⁶An interesting point for those familiar with the Québec case is the approaches of the different linguistic groups to language policy in Belgium. Belgian Francophones have traditionally

dominating Flanders, and Socialists dominating Wallonia were the main beneficiaries of the communitarisation process. Consequently, Socialists in Flanders and Christian Democrats in Wallonia were marginalised. Following the 1962-63 State reform, Archbishop Leclercq made an attempt to assure francophone Catholics, who were now a minority within their linguistic region, that the State reform was necessary and that things could have been worse:

When institutions no longer apply to the social reality, they first engender a feeling of malaise...Then, if the situation continues, one reaches the state of shock and sometimes even disintegration.⁷

2.2. Second State Reform 1970

The representatives of the three traditional parties came together in 1964 to continue with the reforms of 1962. The Liberal party was the main opposition to the communitarisation of the Belgian political structure. They especially wanted to reestablish the right of the head of the family, *liberté du père de famille*, to decide the education language for their children in Brussels. But the Flemish dominated Christian Democrats and the Walloon dominated Socialists wanted to continue with the communitarisation process. They reached an agreement in January 1965 that foresaw the creation of two Cultural Councils and increased regional competences. However, the Liberal success in the 1965 elections

approached language policy as an issue that should remain deregulated and open to individual choice, whereas for the Flemings it is a part of public policy that should be strictly regulated.

⁷ "Quand des institutions ne s'appliquent pas à la réalité sociale, elles engendrent d'abord des malaises...Puis, si la situation continue, on arrive à des secousses et, parfois, à des écroulements." From Monseigneur J. Leclercq's 1963, 'Les catholiques et la question wallonne', quoted in Charles-Etienne Lagasse and Bernard Remiche (1973), *Une Constitution Inachevée*, Louvain-la-neuve: La Renaissance du Livre, p.168.

prevented the Christians Democrats and Socialists from carrying the reforms through the Parliament. Nevertheless, the agreement would form the basis for the 1970 Constitutional revision.

The late 1960s were marked by increasing inter-community tension. The crisis of Louvain -discussed in detail in the chapter on educational policy- brought the government to a deadlock, as members of the same parties began to divide along linguistic lines, forcing the Prime Minister Vanden Boeynants to admit the deep divisions:

[A]s soon as the language problem is raised all groups entrench themselves in fixed positions which make dialogue impossible.⁸

Following the crisis of Louvain and the fall of the government, the 1968 elections were contested with community issues dominating the agenda. The Prime Minister of the new coalition government Gaston Eyskens, brought all the parties -except the Liberals, together to accept a resolution for communitarisation and decentralisation of the Belgian State. On the 18th of February Eyskens announced that the Belgian unitary state had come to an end:

The unitary state with its guiding laws and even its structures and functions is overtaken by events. The communities and regions should take their place in the reformed structures of the State, better adapted to the specific situations of the country.⁹

⁸ quoted in Vernon Mallison (1969), *Belgium*, London: Ernest Benn, p.173.

⁹ "L'État unitaire tel que les lois le régissent encore dans ses structures et son fonctionnement est dépassé par les faits. Les Communautés et les Régions doivent prendre place dans les structures renouvelées de l'État, mieux adaptées aux situations spécifiques du pays. / De unitaire Staat, met zijn structuur en zijn werkwijze zoals die thans door de wetten nog geregeld zijn, is door de gebeurtenissen achterhaald. De gemeenschappen en de gewesten moeten hun plaats innemen in vernieuwde staatsstructuren die beter aangepast moeten aan de eigen toestanden van het land", from Prime Minister Eyskens' 'Communication du Gouvernement/Medeling van de Regering', Séance du mercredi 18 février 1970/Vergadering van woensdag 18 februari 1970, *Annales Parlementaire de Belgique, Chambre des Représentants, Session Ordinaire 1969-1970/Parlementaire Handelingen van België, Kamer der Volksvertegenwoordigers, Gewone Zitting 1969-1970*, Dewaricht: Brussels, p.3.

The reforms were incorporated into the Constitution by a Royal Commission in 1970 as special clauses that could only be amended by special majority, i.e. the simultaneous majority of Dutch and French speaking deputies at the Parliament. The 1970 Constitutional revision labeled the subgroups as the 'Cultural Communities' of Belgium.

The second state reform introduced the principle of parity between the Ministers. In a way, this was the legal recognition of a principle that was already in play. According to the constitutional amendment, the Council of Ministers had to be composed of equal number of Dutch-speakers and French-speakers. The Prime Minister was left out of this calculation.

The second state reform also introduced the 'alarm bell' procedure with the new Article 38. According to this procedure, if three fourths of the members of a linguistic group in the Parliament deem a decision or a proposal to be in conflict with the interests of their community they can invoke the so-called alarm bell. The decision or proposal in question is then referred to the Council of Ministers who, meeting in the principle of parity, try to amend the legislation or reach a conciliation. This procedure was installed in order prevent the polarisation of the relations between the two communities. At the end of the day, it was these very tensions which had brought about institutional change. In his opening address for the new Cultural Council for the French Cultural Community, the President of the Council, René Lefebvre, acknowledged the running bipolar tensions as the driving force for the communitarisation:

The creation of the Cultural Councils, which we have the pleasure to establish today, corresponds to the most noble aspirations of the two communities. One cannot say that their

creation is the result of improvisation: it is the result of a long, patient and sometimes painful effort.¹⁰

2.3. Third State Reform 1980

During the 1970s it became increasingly clear that unless further reforms were carried out, the disagreements would bring the functioning of the Belgian state to a halt. The inter-community issues were highly sensitive and complex compromises required protracted negotiations. After lengthy negotiations at the Egmont Palace, the Leo Tindemans (CVP) government managed to bring the six parties representing the three traditional political parties, the FDF and the Volksunie together to sign an agreement that came to be known as the Egmont Pact on 25 May 1977. According to Manu Ruys:

This pact was meant to reconcile the Flemish thesis regarding the duality of Belgium in the cultural and linguistic field with the Walloon-Brussels thesis of threefoldness where the social and economic field is concerned.¹¹

Despite the strong support given to the Pact by CVP chairman Wilfried Martens and VU leader Hugo Schlitz, many Flemish nationalists regarded the end of the parity principle in Brussels as it became a Region of its own and the language facilities given to the French-speakers in the Flemish Brabant unacceptable. Facing opposition from Flemish cultural associations the reform did not go through. In September, a new round

¹⁰ "La création des Conseils culturels que nous avons le plaisir d'installer aujourd'hui correspond à une aspiration des plus nobles des deux communautés. On ne peut pas dire que leur création soit le résultat d'une improvisation: elle résulte d'un long, patient et parfois pénible effort." From President René Lefebvre's opening address, Conseil Culturel pour la Communauté Culturelle Française, Session Ordinaire 1971-72, Séance du Mardi 7 Décembre 1971, *Compte Rendu Intégral de la Séance d'Instillation*, p.2.

¹¹ Manu Ruys (1981), *Flemings: A People on the Move, A Nation in Being*, Lannoo: Tielt and Bussum., p. 205.

of talks started at the Stuyvenberg Castle to appease the Flemish cultural associations. The talks led to a few new provisions without a major revision of the original agreement. The details of the reform package were reworked by four Ministerial committees created by the central government, which was then put to vote, and the Constitution was duly revised in July 1980. The reform package was introduced to the Parliament by the rapporteur De Grève in the following terms:

We thus stand with this project, that as result of the ordinary law has brought the reform of the institutions, which is a compromise. No one from the participating parties of the government received hundred percent of a reform as they would have wanted. The plan is garnished with mutual concessions between the two most prominent communities in this land. It is, however, in every respect, the only compromise that can receive a satisfactory broad majority.¹²

But De Grève also acknowledged the incompleteness of the reform package:

The disputed points between the Flemish and the Walloon communities for the time being remain unresolved, but their solution lies in the horizon.¹³

The constitutional reform was followed by the revision of pertinent legislation. As a result of the 1980 reforms, the 'Cultural Communities' became 'Communities'. Their competences were expanded into 'personalisable' policy areas like health and social welfare in addition to the already existing cultural ones. The 'regionalised' issues, on the other hand, were left to the newly created 'Regions'. Or to be more precise, Wallonia and Flanders acquired new non-cultural competences that they would carry out through the

¹² "Wij staan dus met dit ontwerp, zoals met dat van de gewone wet, voor een hervorming van de instellingen die het resultaat is een compromis. Geen enkele van de aan de regering deelnemende partijen krijgt honderd pct. een hervorming zoals zij deze zou wensen. Het plan is doorspekt met wederzijdse toegevingen tussen de twee voornaamste gemeenschappen in dit land. het is echter alleszins het enige compromis dat een voldoende ruime meerderheid kan bekommen" Séance du mercredi 30 juillet 1980/Vergadering van woensdag 30 juli 1980 (discussion on 'Project de loi ordinaire des réformes institutionnelles' and 'Projet de loi spéciale des réformes institutionnelles'), *Annales Parlementaire de Belgique, Chambre des Représentants, Session Ordinaire 1979-80/Parlementaire Handelingen van België, Kamer der Volksvertegenwoordigers, Gewone Zitting 1979-80*, Dewarichtet: Brussels, p.2773.

institutional framework of constitutional Regions. These new regional competences were about the economy and the environment, ranging from housing to forestry. The Parliaments of the Regions and Communities would be composed of members of the National Parliament sitting on these substate Parliaments according to their linguistic or regional registries. The problem of Brussels was not solved by this reform, but the changes gave a solid indication of how things would evolve. The Flemish side effectively merged into one as the Flemish Community took on the responsibilities of the Flemish Region with one legislative council, *Vlaamse Raad*. The divisions between the Walloon Region and Brussels prevented a similar solution. So the three main actors to emerge were the *Vlaamse Raad*, the Council of the Walloon Region and the Council of the French Community. Had Brussels not been in Flanders, the institutional solution would have been a tidy symmetrical bipolar federal structure. The 1980 State reform also established the Council for the German-speaking Community for the 60.000 German speakers who inhabit the four Walloon boroughs bordering Germany.

2.4. Fourth State Reform 1988

The fourth State reform was prepared in an environment of increasing inter-community tension brought by the Fourons/Voer problem. Originally the language of this area had been a dialect of low German, but French had since become the spoken language here. As a result, the inhabitants of Fourons/Voer in the Flemish province of Limburg have historically been closely associated with Liège. Following the demarcation of the

¹³ “[D]e twistpunten tussen de Vlaamse en de Waalse gemeenschappen blijven momenteel

linguistic border, they had continuously demanded to be placed within the francophone Region but Flemish politicians strongly rejected such a plea. Within the increasingly tense climate during the 1980s, the mayor of Fourons elected through the *Retour à Liège* list in 1979 brought the issue to the forefront of Belgian politics. Unilingually francophone Mayor José Happart exacerbated the lingering conflict by refusing to speak Dutch as he was required by law. He was removed from office by the Conseil d'Etat in 1986. Happart, a francophone Socialist MEP at the moment, has since become a hero for the Walloon movement. The Fourons/Voer conflict has lost the intensity of the 1980s but disagreements between Flemings and francophones continue. Happart was recently injured in clashes with Flemish activists over Prime Minister Verhofstad's decision to support a Fleming as the mayor.

At the height of the Fourons/Voer crisis in 1983, the government announced the creation of a new 'Centre d'études de la réforme des institutions'. Similar to many bodies set up for this purpose in the past, the Centre's aim was to come up with a rough draft of reforms that would be the basis for community to community talks. Its recommendations prepared the agenda for further reforms. In 1987 the Christian Democrat-Socialist-Volksunie coalition reached an agreement with the regard to a new set of constitutional revisions which aimed to solve some of the issues that were left unresolved from the previous state reform. But inter-community tensions prevented a quick resolution. Nevertheless, the agreement was finally put to vote at the Parliament during the summer of 1988 and subsequently the constitutional revisions were made and the necessary legislation was passed. The francophone side accepted the limitation of the Brussels-

onopgelost, maar een oplossing ligt in her verschiet", *Ibid.* p.2773.

Capital Region to the 19 boroughs, effectively bringing a halt to the spread of Francophone suburbs into Flemish Brabant. In return, the Flemish accepted to provide minority linguistic services in French when numbers warranted in the surrounding six boroughs left outside of the Brussels-Capital Region and in Fourons/Voer.

According to the reforms, members of the Community and the Regional Parliaments would be directly elected. This would end the double mandate practice where members of the national House of Representatives would hold seats at the substate level as well. The state reform also introduced residual powers for the Communities and Regions. That is to say, in a policy area where the Constitution does not explicitly grant competence to an order of government, the substate authorities are assumed to have jurisdiction.

The new reforms increased the powers of the Brussels-Capital Region. The law of 12 January 1989 established the new institutions of the Brussels-Capital Region. The Capital Region was divided into three Community Commissions, one Francophone (*Commission communautaire francophone, cocof*), one Flemish (*Vlaamse Gemeenschapscommissie, VGC*) and one for common affairs (*Commission communautaire commune/ Gemeenschappelijke Gemeenschapscommissie*). The fourth state reform gave the Communities additional competences over education, leaving the federal government with only a few powers in education. Jurisdictional control over radio, television and the press also became Community competences. Regions also acquired new competences that were left at the national level in the previous reform. Transport and public works were part of these new regional competences. But following these reforms the French Community ran into a major problem; it did not have the financial capacity and the

infrastructure to run the education system in Wallonia. This led to an agreement between the Walloon Region and the French Community. According to this agreement, the competences of the French Community were to be carried out by Walloon Region and the Brussels Commission of the French Community. This delegation of authority did not effect the constitutional division of powers. The Constitution tried to keep things relatively simple by establishing three Regions and three Communities. But the way the system functioned in practice was not that symmetrical; Flemish Community and Region were one entity, the Francophone side was composed of Brussels and Wallonia.

2.5. Fifth State Reform 1993

Following the November 1991 elections a new coalition government was formed under Jean-Luc Dehaene (CVP). The government programme published on 28 February 1992 contained a commitment to continue with the reforms. It stated the goal of the coalition to “pursue the development of a federal state structure through a community-to-community dialogue on the overall institutional problems”.¹⁴

All political parties represented at the Parliament, except the two extreme right parties Vlaams Blok, Front National and the anti-establishment Rossem list, participated in the negotiations to reach a compromise over the reforms. The agreement signed on St. Michael's day between the Christian Democrat, Socialist, environmentalist parties and the Volksunie was the basis of the fifth state reform which came to be known as the

¹⁴ “poursuivre le développement de structure fédérale de l'Etat...[par]...un dialogue de communauté à communauté sur la problématique institutionnelle global”, quoted in Xavier

St.Michel/Sint Michiel Accord. The agreement led to constitutional revision of 1993. The new article 1 of the Constitution declares that Belgium is federal state, thereby legally recognising a process that has been in play since the 1960s. With the announcement of the revisions on 6 February 1993, the unitary Belgian state has officially ceased to exist.

The 1993 reform extended direct elections to the Parliaments of the remaining substate entities, i.e. the Brussels-Capital Region and the German-speaking Community. In a separate agreement, the three main francophone political parties, PS, PSC, and Ecolo, agreed to delegate certain competences of the French Community to other substate entities. The agreement allowed the Walloon Region and the Brussels-Capital Region Commission of the French Community (*Commission communautaire francophone de Bruxelles, cocof*) to exercise the competences of the French Community. To be legally precise, using its newly acquired powers to delegate its competences under Article 138 of the Constitution, the Council of the French Community passed two decrees which allowed the Walloon Region and Cocof to exercise an important bulk of its constitutional competences¹⁵. This transfer was formalised by the Saint Quentin Accord signed between the Francophone substate entities which came to effect on 1 January 1994.

Mabille, (1997), *Histoire politique de la Belgique: Facteurs et acteurs de changement*, reviewed and updated new edition, Brussels: Crisp, p.409.

¹⁵ The first such decree transfers a number of cultural and personalisable competences, and the second one transfers educational policy: "Décret du Conseil de la Communauté française: Décret II du 19 juillet 1993 attribuant l'exercice de certaines compétences de la Communauté française à la Région wallonne et à la Commission communautaire française", *Moniteur Belge*, 10 September 1993; Décret du Conseil de la Communauté française: Décret I du 5 juillet 1993 relatif au transfert de l'exercice de certaines compétences de la Communauté française à la Région wallonne et à la Commission communautaire française", *Moniteur Belge*, 10 September 1993.

The Belgian federation that has emerged from the fifth State reform is not a neat symmetrical federation with clearly defined responsibilities for its orders of government. Its institutional complexity reflects the societal complexity that underlies it. The Flemish sources refer to the Belgian state as a *deelstaten*, which has no direct translation into English, but denotes a divided, portioned or partnered State.

The fifth state reform was yet another step in the communitarisation of this once unitary country. Despite the concessions and compromises over issues and the cross-cutting links between various policy areas, there has been a dominant underlying logic to the last forty years of Belgian state reform, i.e. the transformation of the state to reflect its society. A collective work by a group of observers who were either close or a part of the Saint Michael Accords points out to the prevalence of this underlying logic during the fifth state reform:

The transformation of unitary Belgium into a federal State was realised by a pragmatic approach to problems often very concrete. In spite of an approach which was sometimes acrimonious, the successive State reforms constitute a coherent and logical whole underpinned by a clear political vision.¹⁶

2.6. *Question Communautaire Overshadowed*

In the last few years Belgium has been shocked by other issues that relegated the *question communautaire* to the lower echelons of social priorities. The first one is the so-called

¹⁶ "La transformation de la Belgique unitaire en un Etat fédéral a été réalisée par une approche pragmatique de problèmes souvent très concrets. Malgré une approche parfois casustique, les réformes successives de l'Etat constituent un ensemble cohérent et logique, sous-tendu par une vision politique claire.", in Jan Clement, Julie de Groote, Marcel de Visscher, Hans d'Hondt, Jan

'Dutroux' affair, the leader of a pedophile ring who is responsible for the deaths of at least two young girls and two teenagers, and possibly related to the disappearance of many others. The incompetence of the police forces and the judiciary in their handling of the case reached an embarrassing all time low when Dutroux escaped from police custody and was only caught after a massive manhunt. It turned out that there were many leads that could have led the police to interfere before the deaths, but a failure of coordination and cooperation between the various police forces and judicial authorities led to an unacceptable delay. Some Belgians see this tragedy as somehow related to the nature of the Belgian State. One such observer sees a relationship between the incompetence of the authorities and the 'question communautaire':

The children were killed by the non-action of a non-State...I cannot stop myself from thinking that Julie et Mélissa [the two young girls killed in Charleroi, Wallonia] would have probably been still alive if the Belgian *départements* of France remained French after 1815, or that An et Eefje [the two teenagers killed in Oostend, Flanders] could have been better protected by a Flemish State.¹⁷

Belgian authorities' reputation for incompetence was supplemented by willful corruption as the details of the 'Augusta-Dassault' affair came out. Some top politicians of the country, many within the top ranks of the francophone Socialist Party, including the NATO Secretary-General Willy Claes, were implicated in a shady arms contract to the Italian firm Augusta over military helicopters and the French firm Dassault over the upgrading of fighter planes. Many had to resign, but in a bizarre turn of events, a retired general involved in the contract died in a mysterious accident, and one of the accused, the

Van Crombrugge, Christine Vanderveen (1994), *Les Accord de la Saint-Michel*, Brussels: Bruylant, p.154.

¹⁷ "Des enfants tués par la non-action d'un non-État...Je ne puis m'empêcher de penser que Julie et Mélissa seraient probablement encore en vie si les départements belges étaient restés français après 1815, ou que An et Eefje auraient été mieux protégés par un État flamand.", in Daniel-Louis

former president of the francophone Socialist Party, André Cools, was murdered in a parking lot leaving his mistress' apartment in Liège; and finally, the prosecutor investigating the case committed suicide under suspicious circumstances in 1999. Unrelated to the 'Augusta-Dassault' affair, former Prime Minister Vanden Boeynants was kidnapped for ransom around the time the nation was trying to come to terms with the extent of corruption that had permeated Belgian politics. The final straw, was the dioxine scare of June 1999 which brought Belgian food exports to a halt and led to the fall of the Christian Democrat led coalition. In the meantime, there were a number of other scandals adding to the social malaise, such as the suffocation of an illegal immigrant by the police during deportation, the death of the Belgian paratroopers in Rwanda, the shocking electoral success of the Vlaams Blok in municipal elections, and most recently the embarrassing images of the Interior Minister of the Flemish Government, Johan Sauwens, captured at a far right Sint Maartensfond tribute to Flemish SS volunteers during the WWII. Despite all these issues, the *question communautaire* once again managed to dominate the headlines in 2001.

2. 7. Sixth State Reform 2001

Following the recent 13 June 1999 elections, the new Prime Minister of the Liberal-Socialist-Green coalition, Guy Verhofstad, appointed two rapporteurs, Patrik Vankrunkelsven (VU) and Phillipe Moureaux (PS) representing the two communities, to prepare the agenda for a new set of reforms. The two rapporteurs put together a

Seiler (1998), "Non-lieu", in Marco Martiniello and Marc Swyngedouw (eds.), *Où va la*

Committee with the participation of all political parties represented in the Parliament, except Vlaams Blok. The Committee, known as the *Conférence sur le renouveau institutionnel / Commisie voor Staatshervorming (costa)* was composed of equal numbers of Dutch and French speakers as a continuation of the 'community to community' tradition of past reform talks. The main demands of the Francophone side were financial while the Flemings wanted increased powers within the Brussels-Capital Region. All parties agreed to further devolve foreign trade, international development and farm policy competences to the Regions. A deal was brokered in October 2000 during a meeting at the Prime Minister's residence in Lambermont. The so-called Lambermont Accord, however, soon faced opposition from the Christian Democrats and Flemish nationalists. Flemish Christian Democrats (CVP) and Francophone Christian Democrats (PSC) opposed the deal; while the moderate nationalist Volkunie was internally divided over the terms of the settlement and the conservative wing of the party adopted a hostile position similar to that of Vlaams Blok. After extensive negotiations to reach the required 2/3rd majority, the Lambermont Accord was finally approved by the Parliament in July 2001. According to the sixth state reform, Regions have acquired new international competences, Flemish representation at the Brussels-Capital Parliament has been increased from 11 to 17 seats, also Flemish representation in police and municipal boards have been increased in the Capital Region, and new funds have been allocated for education in the French Community.

3. Community to Community

It is interesting to note that while Francophones call the bilateral dialogue *communauté à communauté*, Flemings prefer using a term much stronger than community, i.e. *volk tot volk*. Undoubtedly, the choice of words reflects the asymmetry in the degree of nationalist sentiment and internal cohesion. Brussels and Wallonia together constitute the French-speaking community of Belgium but they would not go as far as to see themselves as a homogeneous *volk*. Flemings, on the other hand, enjoy a much greater degree of internal cohesion.

There is now a close approximation between society and political institutions on the Flemish side. Some inconsistency still remains between what the Constitution introduces and what the societal composition reflects, but through the workings of the existing institutions this gap is reduced. There is one Flemish Parliament where members from Brussels abstain when the issue is about the Flemish Region but at other times participate fully in the Community issues. There is also one Flemish Government which exercises the competences of the Flemish Region and Flemish Community.

In the last forty years, the reform process has pitted the two communities against one another overriding political party affiliation. Francis Delpéré has dubbed this 'Le fédéralisme de confrontation'¹⁸. For Flemings, this is less of a problem since there is a higher degree of internal cohesion. For Francophones, on the other hand, the federalisation process has forced Wallonia and Brussels to join forces. There is increasing cooperation between the Walloon Region and Brussels. In fact, the need to

¹⁸Francis Delpérée (1999), "Le fédéralisme de confrontation", in Pascal Delwit, Jean-Michel De Waele, Paul Magnette (eds.), *Gouverner la Belgique, Clivages et compromis dans une société complexe*, Presses Universitaires de France: Paris.

bring these two entities closer together as a way to balance the Flemish side has long been recognised within the French Community. The first declaration of the Council of the French Community is precisely on this issue:

To give a future to our community, we have to carry out the political project of assertion at first, then it is a question of bringing out the communal sensitivity of those who share the same community of thinking. This assertion is all the more necessary since it alone can establish an equilibrium between the two communities, an equilibrium which the country needs.¹⁹

But the necessity to act together is different from a feeling of 'national' solidarity. That is to say, as long as questions about the nature of the political community remain, Francophones will find it difficult to design common political institutions. Furthermore, since the federalisation process has settled most of the big questions pursued by the Flemings, there is less likelihood of acrimonious community to community confrontation on a massive scale. After all, the Flemings have got what they wanted; the unitary state has been transformed into a federal one. The issues that would emerge will likely be those of technical nature rather than the Constitution. And as the Flemish offensive for political redistribution wanes, Wallonia and Brussels will have less pressure to act collectively. At the end of the day, for Belgian Francophones, the federalisation process has been a defensive retreat forcing the Walloons and the Bruxellois to join forces in manning the ranks of the French-speaking community. De Bruycker and Vandernoot put it in the following terms:

¹⁹ "Pour donner un avenir à notre communauté, nous devons réaliser le projet politique de l'affirmation d'une d'abord, puis qu'il s'agit de mettre en relief ce qui est la sensibilité commune de tous ceux et toutes celles qui partagent la même communauté de pensée. Cette affirmation est d'autant plus nécessaire qu'elle seule peut établir l'équilibre entre les deux grandes communautés, équilibre dont le pays a besoin." Conseil de la Communauté Française, Session 1980-81, Séance du Mardi 4 Novembre 1980, *Compte Rendu Intégral*, p.14.

It is certain that for the Francophones federalism constitutes a obligatory and defensive reform, resulting from the dislocation of the Belgian nation.²⁰

The present situation in French-speaking Belgium suggests that the divisions between Wallonia and Brussels will continue to prevent a smooth functioning of the institutions. It would be safe to say that the 2001 constitutional revision is not the concluding chapter for the political institutions of the Francophone Belgium. Many questions remain over the relationship between, the Walloon Region, the French Community and the Brussels-Capital Region. In contrast to their Flemish counterpart, the absence of a strong cultural identity makes it harder to design the appropriate political institutions. The Capital of the Walloon Region is Namur, but the French Community has chosen Brussels as its Capital. In the long run, it seems likely that Wallonia would emerge as the counterpart to Flanders. It has more population than Brussels and has the territorial component to underpin its standing. But this process is definitely going to be a bumpy ride for Belgian Francophones.

4. The Present Institutional Structure

As a consequence of the successive state reforms, Belgium is now a federation which closely reflects the ethno-linguistic composition of the country. The legal hierarchy between the centre and the substate units have been removed with the 1993 reforms. That is to say, federal law no longer enjoys supremacy over substate legislation. The Regions

²⁰ "Il est certain que le fédéralisme constitue pour les Francophones une réforme obligée, défensive, surbie en raison de la dislocation de la nation belge.", in Philippe De Bruycker and Pierre Vandermoot (1999), "Un fédéralisme vivant", in *Le Soir, L'avenir des Belges, le fédéralisme à l'épreuve*, p.2.

and Communities have exclusive competence over many policy areas leaving the federal government only with foreign policy, defence and monetary policy.

The new Belgian Constitution recognises three language groups: the French-speaking, the Dutch-speaking, and the German-speaking Communities. In territorial terms the federal arrangement is based on three Regions: Dutch-speaking Flanders, Francophone Wallonia with a small community of German speakers, and cosmopolitan but mainly Francophone Brussels-Capital Region. The Regions have exclusive competence over regional economic development, employment, industrial restructuring, environment, land use, urban planning, road building, traffic, agriculture; while the Communities have exclusive competence over culture, language policies, education, health care, welfare and family. According to the latest state reform of 1993, the structure of the Belgian state is as follows:

At the federal level the lower House of Parliament, the Chamber of Representatives, is composed of 150 directly elected deputies. Of this 150, 91 are to be Flemings and 59 Francophones. The upper House of Parliaments, the Senate, is composed of 71 members. 40 are directly elected, 25 of this 40 are Flemings, 15 are Francophones. There are four coopted Francophone senators, and six Flemings. 10 senators are appointed by the Council of the French Community, 10 are appointed by the Flemish executive, and one senator is appointed by the Council of the German-speaking community. The Federal Cabinet is made up of 15 Ministers including the Prime Minister. The Prime Minister could be from either linguistic community, but since he is expected to be bilingual, and since Flemings have higher rates of bilingualism and numerical majority, chances of a Fleming assuming the position is much higher. The rest

of the Cabinet should be composed of an equal number of Ministers from the two linguistic communities.

The Government of the Flemish Community-Region has 11 Ministers, including the Minister-President. The Flemish Parliament has a total of 124 deputies, of which 118 are from the Flemish Region. In matters pertaining to community issues, 6 deputies from the Brussels-Capital Region join in, bringing the number up to 124.

The Government of the French Community is composed of 4 Ministers. Its Parliament has 94 deputies. 75 of this 94 are representatives of the Walloon Region who are at the same time members of the Walloon Regional Parliament. The remaining 19 are designated from the Brussels-Capital Regional Parliament.

The Parliament of the Brussels-Capital Region has 75 seats, 17 of which are reserved for Flemings. The Government of the Brussels-Capital Region has 5 Ministers, including the Minister-President who has been a Francophone. The remaining Cabinet is divided into an equal number of representatives from the two linguistic communities. The Parliament of the Walloon Region, on the other hand, has 75 deputies, who also sit on the Parliament of the French Community. The Government of the Walloon Region is composed of 7 Ministers.

Chapter X

Studying Communitarisation and Institutional Change

Wat we zelf doen, doen we beter [What we do by ourselves, we do better]
Slogan of the Flemish Government

[T]here is simply no one in charge, even in the capital.
*Tony Judt*¹

1. 'Content' vs. 'Control' in the Communitarisation Process

The first quote above is one of the catchy slogans the Flemish Government has used to garner support from the electorate. It is too early to decide if they really do better, but it is interesting to note that concerns over efficiency in public administration have followed the constitutional reforms and the communitarisation process which have massively increased Flemish self-rule. While the Flemings believe that the contents of their public policies would improve following the attainment of constitutional control over their own affairs, Belgian Francophones, on the other hand, are still trying to come to terms with their newly found competences. The second quote is by an academic visitor to Belgium

¹ Tony Judt(1999), "Is there a Belgium?", *New York Review of Books*, Vol. 46, No.19, p.52.

who has observed this administrative confusion following the new constitutional redistribution of administrative control over policy areas.

Both sentences highlight the notion of congruity at work. In the Flemish case, now that there is an adequate degree of congruence between political institutions and the societal structure, the primacy of the ethno-linguistic factors in inducing choices across the Flemish political spectrum is decreasing. Political actors can now focus on the content of the policies, and therefore, other indicators of political behaviour are increasingly becoming relevant. These indicators range from sociological analyses using class, religious affiliation or ideology to explain political choice, to institutional perspectives which emphasise the ability of the institutions to mould the society, or rational actor models which give prominence to the role of self-interest in explaining political behaviour. Once sufficient congruence is attained, the ethno-linguistic structure by definition is no longer a useful tool for understanding political change. Essentially, the political and the social structures have become one in Flanders. In Francophone Belgium, on the other hand, congruence is not firmly established between the political institutions and social structure. Consequently, the contents of public policies are still of secondary importance as questions of control remain.

Although the Flemish political discourse is increasingly on the contents of public policies and efficiency in delivering them, it is an entirely different question if the reforms in Flanders have really brought efficiency to political governance. What is important is that political attention has shifted towards the policies themselves rather than the level of government which should be responsible. Evidence suggests that, following 'national self-rule', Flemings have increasingly turned their attention towards the

contents of their policies and have accordingly carried out reforms which aim to increase efficiency and effectiveness. On the other hand, Walloons and Bruxellois are still divided over the nature of their political community and preoccupied with questions of political control over policies rather than their content.

The empirical inquiry carried out on the policy areas of education and mass media substantiates the theoretical assumptions on congruence. The initial inquiry was based on the deductive assumption that the contents of policies and efficiency in delivering these policies will become a concern provided that there is a match between the governance structure and the society -in terms of ethno-linguistic composition. That is to say, the subject matter of policies become politically salient with relative societal homogeneity, or where societal heterogeneity is not territorially based. With an adequate degree of congruence, the politics of 'who gets what, when, how' occupy the centre stage. In situations of incongruence, however, it is the politics of 'who gets to decide'. In other words, in the absence of a match between the political institutions and the society, the pressing issue would be acquiring political control over issue areas. Conflicts would be over who has to the right to decide, rather than what is done. Only after self-rule, can 'efficiency' become an issue for political governance and public administration. The results of the empirical inquiry corroborate the assumptions of the research question. The findings in the two policy areas of education and mass media are presented in the following two chapters.

It has to be noted at this point, however, that the present constitutional structure in Belgium with three Regions and three Communities does not neatly fit the underlying

societal structure. However, through its workings the political structure has reached a closer degree of congruence with the society. The Flemish Region and Community have effectively become one entity, while the French Community has devolved much of its powers to the Walloon Region and the Brussels French Community creating two main actors on the Francophone side. These two have a lot in common but lack the organic link that would tie them together as one. According to a publication put out by these two Francophone entities:

The theoretical model cannot resist the reality of facts. On the Flemish side, the Community and the Region have merged. On the francophone side, on the other hand, there are the Walloon and Brussels Regions who have seen their competences increase by the transfers from the French Community.²

2. Institutionalisation of Divisions

There have been two separate processes of institutional reform during the communitarisation of the Belgian state. One is regionalised self-rule where competences are devolved to the substate level, which is often called decentralisation. But as explained in the previous chapter, this term is open to misunderstanding since the historical Belgian provinces have lost their powers to the new substate entities. In other words, there has been centralisation within the substate level. Therefore, to denote the creation of a new substate level of government the term federalisation will generally be used. The impulse for 'federalisation' has been the broader *question communautaire*, but

² "Ce modèle théorique n'a pas résisté à la réalité des faits. Du côté flamand, la Communauté et la Région ont fusionné. Du côté francophone, par contre, ce sont les Régions wallonne et bruxelloise qui ont vu leurs compétences augmentées par des transferts de la Communauté française." in *Wallonie/Bruxelles, Revue bimensuelle internationale éditée par la Communauté française de Belgique et la Région wallonne*, September 1996: 57, p.7.

it is one of the two ways the communitarisation process has been implemented. At the same time, the term federalisation has its limits because the reforms carried out during the sixties were not a part of a wider federal project but were seen as the decentralisation of the Belgian state. Only after the increased self-rule of the constituent entities have the provinces started to lose power. It would, thus, be appropriate to use 'decentralisation' for the earlier stages of the reform process.

The second process of institutional change is the division of a policy area and the responsible institutions into two linguistic halves, while constitutionally the policy remains a national one. This second process of communitarisation can be labeled as 'deconcentration'. Put differently, deconcentration is a process of functional devolution without the territorial component. However, the experiences of successive state reforms seem to suggest that this second path often ends up leading to regionalised self-rule as well. Experiences of the last forty year of state reform suggest that non-territorial functional deconcentration is often subject to the strong pull of territorial politics.

2.1. Decentralisation and Deconcentration

Long before a federal structure was envisioned, deconcentration and decentralisation were seen as a way to surpass political deadlocks. Secretary-General of the *Centre d'étude pour la réforme de l'État* during the late sixties, academic and former Minister of Education and Culture, Walloon Christian Democrat, Pierre Wigny described the benefits of self-rule in the following terms:

Deconcentration, and especially, decentralisation reduces the surface friction. Insofar as matters are dealt with and settled on the spot of the regional language, many reasons for discontent

would disappear; that is so much more efficient than when it is precisely a matter of questions which objectively may be of little importance, but in fact touch the personal interests of the administration closely.³

A report published by the Ministry of Interior and Civil Service in 1985, outlines the increased efficiency in public administration which followed -what it calls- 'the territorial decentralisation' of the Belgian State.⁴ Author of the report, Rudolf Maes, seems to believe the removal of intractable issues from national agenda to be the most important benefit of decentralisation.⁵ In fact, the report calls for the abolishment of the provinces since they are seen to create inefficient additional layers of government.⁶ In other words, the report actually calls for centralisation within Belgian regions as long as the country is divided into ethno-linguistically homogeneous subunits of self-government.

The tendency for centralisation within the two linguistic communities appears to have accompanied the communitarisation process. For example, the party structures have increasingly become centralised and established hierarchical internal structure following the linguistic split within the traditional party structures. The power of the Regions and Communities have been centralised giving the executives branches of these substate entities unprecedented political authority. Both sides have established specialised

³ "La déconcentration et, surtout, la décentralisation diminuer...les surfaces de friction...[D]ans la mesure où les affaires sont traitées et réglées sur place la langue régionale, beaucoup de raisons de mécontentement disparaissant; c'est d'autant plus efficace qu'il s'agit précisément de ces questions qui, objectivement sont peut-être peu importantes, mais, en fait, touchent de près aux intérêts personnels de l'administré.", in Pierre Wigny (1969), *Comprendre La Belgique*, Verviers: Gérard, p.177.

⁴ Rudolf Maes (1985), *La Décentralisation Territoriale; Situation et Perspectives*, Rapport au Ministre de l'Intérieur et de la Fonction publique, Brussels.

⁵ *Ibid.* pp. 43-50, 138-44, 260-74.

⁶ To make his point, Maes quotes the accord signed between PSB, PSC and PLP on 30 January 1973 titled 'Les réformes institutionnelles': "Le gouvernement est aussi extrêmement soucieux

educational institutions to train their civil servants. But the most striking sign of centralisation within the subunits is the fate of the provinces. Once the sole substate level of government, the power of these administrative units modeled on French départements have steadily been eroded to the point of irrelevancy. The communitarisation of Belgium has definitely come at the expense of the provinces. The state reform of 1993 abolished the rule whereby the provinces had representatives at the upper house of Parliament together with other elected and appointed Senators. The 1993 reform replaced this category by Community representatives. The same tendency has been in play at the municipal level as well as many historical boroughs have been pooled together to create bigger local units.

This process of centralisation within the subunits is most pronounced in the case of Flanders. As one observer of the Belgian federalisation process put it: "A true Flemish nationalist is no friend of the provinces."⁷ Flemish self-rule has come together with a steady erosion of the powers of the pre-federalisation Belgian provinces and the municipalities. To a great extent, these tendencies are reciprocated on the Walloon side: The power of the provinces in Wallonia have been seriously curtailed, urban municipalities have been agglomerated. Therefore, one has to be very careful in labeling the contemporary tendencies in the Belgian State structure as 'decentralisation': decentralisation in terms of granting the two and a half constituent communities with more self-rule for sure, but definitely not administrative decentralisation across the board.

d'un fonctionnement efficient des institutions...Il est également d'avis qu'entre la commune et la région il ne doit exister qu'un échelon de pouvoir", *Ibid.* p.72.

⁷ Guido Dierickx, interview with author, University of Antwerp, 29 March 1999.

In addition to decentralisation in regional terms, the state reforms have also included the division of policies and institutions into two linguistic halves. The division of Belgian public administration into two linguistic halves during the sixties and seventies has been dubbed as *dédoublement* by francophone Belgians, which seems to better capture the essence of the reform than the English term 'division' or the Dutch one *splitsing*. These reforms, mainly carried out in response to Flemish cultural demands, have removed some very divisive issues from the national agenda. In the following two chapters, these two processes of communitarisation will be analysed in-depth within the context of education and mass media.

3. Belgian Bureaucracy and Public Administration

The Belgian federal system tends to allocate competences in juridical self-contained blocks with combined legislative and administrative powers. In other words, the division of responsibilities among the federal and substate political entities are along jurisdictional rather than functional lines with very few policy areas where concurrent powers exist. This allows for a clear identification of the level of government which enjoys leverage in a given policy area, and thus, makes it easy to trace the devolutionary process.

Following the communitarisation of the Belgian state, the bureaucracies of Flanders and Wallonia have started to differ from one another considerably. As it will be discussed later on, the Flemish public administration has adopted a new bureaucratic culture emphasising efficiency and effectiveness. But before we go on to analyse the contemporary concerns for efficiency in Belgian political governance and public

administration, it is necessary to briefly look at the way Belgian bureaucracy has worked traditionally.

In contrast with many European states and especially with France, Belgium has not established a detached homogeneous bureaucratic class at the central level. There is no equivalent of an *École nationale d'administration*, but bureaucrats have historically been appointed according to consociational principles. In other words, there is no clear line that separates politicians and bureaucrats. The Ministers are aided by party affiliated Secretaries of State and a fairly large administrative cabinet (often around fifty such officials exist in Cabinets) who accompany the new Minister to office once elected and who leave office with the Minister. In addition, many bureaucratic appointments are political as well. In many ways the administrative/political system is very different from other European countries. The system is, of course, a relic from the initial consociational system which managed to successfully absorb the first two waves of societal divisions; first the religious one, then the socio-economic one. For many years, the consociational structure succeeded in managing the ethno-linguistic cleavage as well, but as a result of the reforms -made possible through consociational negotiations and bargains- there is very little left for Flemings and Francophones to manage together. A political system based on coalitions between the three political parties representing the three pillars of the country might not be there anymore, but its politicised bureaucratic heritage has managed to live longer. An observer puts it in the following terms: "one can say that Belgium is 'depillarised' at the base, all that remains 'pillarised' is at the summit"⁸. As we will see,

⁸ "...[O]n pourrait dire que la Belgique est 'dépilarisé' à la base tout en restant 'pilarisé' au sommet", in Marc Swyngedouw (1998), "Les rapports de force politique en Belgique", in

the situation is changing on the Flemish side, but it seems to persist among Francophones and at the federal level:

In Belgium it is not the formal political organs who have most of the power, but the political parties and their member organisations (trade unions, mutual benefit societies...). Their decisions, valued behind the scenes, underpin the pacts and accords between interest groups of which parties are political emanations. That is what one calls a cleavaged state.⁹

The picture on the Flemish side is now considerably different from the traditional Belgian way of doing things. As we will see below, following the communitarisation process and the subsequent increase in Flemish self-rule, efficiency has increasingly become a pressing concern for the Flemish government and the public. Across the linguistic border, many of the Belgian bureaucratic practices remain in the workings of the Walloon Region, the Brussels-Capital Region and the French Community. The growing asymmetry between Flanders and francophone Belgium in terms of public administration is now been recognised by students of public administration:

The linguistic boundary has become more and more a frontier between two different cultures which comprise different political and administrative cultures.¹⁰

As the main driving force towards federalism, Flemings had a better idea about the political community they wanted to establish. Wallonia and Brussels, on the other

Marco Martiniello and Marc Swyngedouw (eds.), *Où va la Belgique? Les soubresauts d'une petite démocratie européenne*, Paris: L'Harmattan, p.54.

⁹ "En Belgique, ce ne sont pas les organes politiques formel qui ont le plus de pouvoir, mais les partis politiques et leurs organisations adhérentes (syndicats, mutualités...). Les décisions sont prises dans les coulisses sous forme de pactes et d'accords entre les groupes d'intérêts dont les partis sont émanation politique. C'est ce qu'on appelle l'État 'clivé'.", in Annie Hondeghem (1998), "La Politisation de l'Administration en Belgique: Vers une nouvelle culture?", *Revue française d'Administration publique*, 1998:86, Special Issue 'les fonctionnaires et la politique dans les pays de l'union européenne', p.258.

¹⁰ "La frontière linguistique devient de plus en plus une frontière entre deux culture différentes, y compris cultures politico-administrative.", in Annie Hondeghem (1998), "La Politisation de l'Administration en Belgique: Vers une nouvelle culture?", *Revue française d'Administration publique*, 1998:86, Special Issue 'les fonctionnaires et la politique dans les pays de l'union européenne', p.256.

hand, were caught off-guard as the constitutional reforms granted them new political institutions. In other words, Belgian Francophones had not only fought a defensive retreat, but they also ended up with autonomous institutions for which little preparation existed:

Since a few years this region is confronted with the novelty of a situation where there is a war it has not prepared for: an autonomy to be assumed and a regional power to be exercised.¹¹

The institutional reforms do not appear to have created a similar confusion in Flanders. Instead it was warmly welcome by Flemings, who, in fact, had been demanding these very reforms. According to a well-known scholar of Belgian constitutional law, and a Flemish nationalist, Robert Senelle, instead of creating confusion, the communitarisation process rendered public administration transparent:

It is not the federalisation process of the Belgian state that constitutes the greatest threat to the Kingdom, but on the contrary the loss of the political prestige of the national authority and the catastrophic inefficiency of the central government administration.¹²

4. Communitarisation and Increased Differentiation

The first section of this chapter looked at how issues concerning the contents of and control over public policies are related to the degree of congruence between political

¹¹ "Depuis quelques années, cette région est confrontée à la nouveauté d'une situation qu'elle n'avait guère préparée: une autonomie à assumer et un pouvoir régional à exercer.", in Jean Pirotte (1998), "Carences et autours de l'identité wallonne", Jean-Claude Van Cauwenberghe (ed.), *Oser être Wallon!*, Editions Quorum: Gerpinnes, p. 27.

¹² "Het is niet het federaliseringproces van de Belgische staat dat de grootste bedreiging voor het Koninkrijk uitmaakt, maar integendeel de teloorgang van het politieke gezag van de nationale macht en de catastrofale inefficiëntie van het centrale rijksbestuur", Robert Senelle with Edgard Van de Velde and Emiel Clement (1999), *Kronieken van de Vlaamse Staatswording, Over de Identiteit van het Vlaming-Zijn*, Lannoo: Tielt, p.173.

institutions and the social structure. In this context, efficiency and self-rule are essential components in the study of content and control. During the empirical research, it became clear that the use of these angles would help isolate the two policy areas of education and mass media from the broader state reform process they were embedded within. Therefore, before the presentation of the findings in the following two chapters, it is necessary to show why content of policies and efficiency in their delivery are closely related to issues of self-rule.

Federalisation itself was initially seen as a means to remove thorny issues from the national political agenda and increase efficiency. In its report published on November 13 1969, the working group set up by Prime Minister Eyskens, stated that a new political structure was necessary for Belgium and "the reorganisation and modernisation of institutions should result in a greater efficiency of the State"¹³.

As early as 1974, an observer writing about the communitarisation of the Belgian state expected the technocratisation of Belgian politics as an effect: "...*dédoublement* has helped to convert politically loaded issues into technically treatable matters"¹⁴. Institutional *dédoublement*, however, was not sufficient to contain the tensions. Communitarisation continued in the following twenty years with four more major state reforms. Subsequently, technocratic issues have increasingly replaced the *question communautaire*. But the picture is not a symmetrical one. There are many differences across the linguistic divide. Had the ethno-linguistic composition of the country been a

¹³ quoted in Manu Ruys (1981), *Flemings: A People on the Move, A Nation in Being*, Lannoo; Tielt and Bussum, p.189.

¹⁴ Martin O. Heisler (1974), "Institutionalizing Societal Cleavages in a Cooptive Polity; The Growing Importance of the Output Side in Belgium", in Heisler (ed.), *Politics in Europe*;

neat division into two halves, one would indeed expect the replacement of demands for 'self-rule' of the cultural communities by concern over the contents of policies. However, Francophone Belgium is not as unified as Dutch-speaking Belgium. The divisions within the French Community between Brussels and Wallonia, prevent them from forming a common front. There are many issues which divide them, and now that they are no longer united against a Flemish offensive for political redistribution, they have even less in common. Flemings usually see a Belgium of two communities which they label as a dual¹⁵ or bipolar¹⁶, but the Francophone side is surely not as homogeneous as the Flemish one. As a direct outcome of this situation, Flemish political issues are increasingly concerned with the content of policies, while Francophone ones are still about political competences. The Flemish politicians have been especially careful to point out that now that they have competence over many policy areas, the content of their policies will likely differ from their Francophone counterparts. In other words, the communitarisation of policies does not mean that there will be two identical French and Dutch-language halves. During the Parliamentary negotiations on institutional reform in 1988, the Minister-President of the Flemish Government made the following statement in order to demand further devolution:

Our current legislation already exists in Dutch and has full legal validity. A separate Flemish administration, on the contrary, requires different laws, with a different *content*....We must decide our priorities *for ourselves*, irrespective of the sums allocated to them in pre-reform national budgets.¹⁷[italics in original].

Structures and Processes in some Post-Industrial Democracies, New York: David McKay, p.215.

¹⁵ Wilfried Dewachter (1992), *De duelistische identiteit van de Belgische maatschappij*, Koninklijke Nederlandse Akademie van Wetenschappen, Amsterdam: Noord-Hollandsche.

¹⁶ André Alen (1990), *Belgium: Bipolar and Centrifugal Federalism*, Brussels: Ministry of Foreign Affairs.

¹⁷ From the statement of the Minister-President of the Flemish Government, Gaston Geens, in Senate during the discussion of the bill on institutional reform, 3 August 1988, in Theo Hermans,

The societal homogeneity of Flanders has allowed the Flemish Government to act as a single entity despite the institutional divisions between Regions and Communities. The Flemish executive has effectively surpassed the constitutional division between the Flemish Region and the Flemish Community creating a single Parliament and Government. In contrast with their Francophone counterparts, the Flemish Government is also increasingly visible in public life. Almost all of their publications include a section devoted to *goed Vlaamse bestuur* (good Flemish administration/governance), where they explain how efficient and effective their public policies have been. Since the Flemish side is largely responsible for the federalisation of the country, it is understandable that the Flemish Government is engaged in a public relations campaign because it has something to prove to its electorate. But it is still interesting to note that such policies have not engendered a similar Francophone activism:

Those concerned with the regions and communities would notice a clear difference between Flanders and Wallonia. In Wallonia, depoliticisation appears less as a priority. Political affiliation is still often a criterion determining nomination. In Flanders, the impression is that the nominations are depoliticised up to the intermediary level of staff. The new policy of human resources has contributed a lot to this.¹⁸

Along with *dédoublement*, the Flemish Government has carried out an extensive reorganisation of Flemish public administration. A recent report by two Flemish academics titled 'The Modernisation of Flemish Administration' covers the reforms

with Louis Vos and Lode Wils (eds.) (1992), *The Flemish Movement, A Documentary History 1780-1990*, London and Atlantic Highlands, NJ: Athlone, p.454.

¹⁸ "En ce qui concerne les régions et les communautés, on remarque une différence claire entre la Flandre et la Wallonie. En Wallonie, la dépolitisation apparaît moins comme une priorité. L'affiliation politique y est encore souvent un critère déterminant de nomination. En Flandre, l'impression est que les nominations sont dépolitisées jusqu'au niveau de l'encadrement intermédiaire. La nouvelle politique de ressources humaines y a contribué pour beaucoup.", in Annie Hondeghem (1998), "La Politisation de l'Administration en Belgique: Vers une nouvelle

within the Flemish Government in the last decade.¹⁹ The report outlines the major reforms carried out in the Flemish Government and public corporations. The reforms have sought to rationalise public administration by improving performance and increasing accountability. According to the authors, the pressing functional needs have called for a higher efficiency and effectiveness in government.²⁰ The authors of this report credit the influence of new ideas of public administration and the activism of a few Flemish politicians who were willing to carry these reforms through. One of these politicians and the most influential in the reform of Flemish public administration was the Flemish Minister of Official Affairs at the time, Luc Van den Bossche (SP). It is interesting to note that since the 1995 reforms, Van den Bossche had become the Federal Minister of Interior in the Dehaene Government where he did not display a similar reformist zeal. Following the June 1999 elections, Van den Bossche is now the Federal Minister of Public Functions in the Verhofstad Government; and so far there is no trace of public management reforms. Had the sole explanation been the influence of ideas and the willingness of Ministers to promote these reforms, one would expect Van den Bossche to introduce similar changes at the federal level. But the divisions between Francophones and Flemings at the federal level prevents a uniform approach to public policy. The priority of the coalition government seems to be the continuation of the delicate balance between community and political party interests. Within this context, efficiency is of secondary importance to dividing and sharing political control.

culture?", *Revue française d'Administration publique*, 1998:86, Special Issue 'les fonctionnaires et la politique dans les pays de l'union européenne', p. 261.

¹⁹ Gert Bouckaert and Tom Auwers (1999), *De Modernisering van de Vlaamse Overheid*, Brugge: Die Keure.

It is clear that concerns for efficiency in public administration have followed the realisation of the Flemings' quest for self-rule. At the same time, the Flemish Government has benefited from a new found 'legitimacy' in the eyes of the Flemish public opinion to do what is necessary. Vlaanderen-Europa 2002 project of the Flemish Government displays an awareness of this phenomenon:

The starting point is efficiency and effectiveness of providing services for the community through the democratic decision making process. The provision of services must be in accordance with recognised social needs and established priorities.²¹

At the same time, the decreased distance between the electorate and the administration increases the accountability of the Flemish Government. They are now in a position where the Flemish electorate can closely associate them with failure or success of public policies. The consequence is full scale modernisation of public administration. Currently, there is one ministry for government organisation and one for modernisation in the Flemish Government. It seems that the Flemish Government has reached the level of self-rule where they are now in a position demonstrate the validity of the slogan that was the driving force in their demands, *wat we self doen doen we beter* (what we do by ourselves, we do better). But the pressures to provide a good track record in governing Flanders has not stopped the Flemish Government to seek more competences from the Federal Government. As the former Flemish Minister-President Luc Van den Brande puts it:

²⁰ "De algemene assumptie geldt dat deze druk functioneel is en zal leiden tot een hoghere efficiëntie en effectiviteit van de dienstverlening.", in *Ibid.* P.38.

²¹ "Het uitgangspunt vormt de efficiënte en effectieve dienstverlening aan de gemeenschap via het democratische besluitvormingproces. De dienstverlening moet in overeenstemming zijn met de erkende maatschappelijke behoeften en de gelegde prioriteiten." Vlaamse Regering (Luc Van Den Brande, Norbert De Batselier, Theo Kelchertmans, Hugo Weckx, Luc Van Den

The Flemings should rightly judge us on our results, not our promises. This forms the solid basis for more competences in order to eliminate the doubts and the Belgian inefficiencies.²²

In his presentation of the government programme to the Flemish Parliament on 21 June 1995, Luc Van den Brande, continued the quest for increased competences: "What we can beter do by ourselves, we should not leave to others; we must do it ourselves"²³. It seems that the long-running Flemish concerns with self-rule is been replaced by concerns for the quality of government. Van den Brande's successor Patrik Dewael has continued the reorganisation of Flemish public administration. The debate on administrative efficiency has permeated almost all aspects of Flemish politics. It is interesting to note that even the current debate about drafting a Flemish Constitution is couched in terms of administrative efficiency:

A Constitution for the constituent state [*deelstaat*] Flanders is the legal base which would declare how Flanders would provide transparent and efficient governance, how Flanders would refine democracy, how Flanders would realise the essential rights for its people.²⁴

It is too early to decide if the reforms will really bring greater efficiency. But what is important here is that the debate has shifted from acquiring self-rule over institutions towards carrying out policies, and doing this with increased efficiency. The

Bossche, Johann Sauwens, Leona Detiège, Wivina Demeester-De Meyer) (1993), *Vlaanderen-Europa 2002, Een Project Van de Vlaamse Regering*, Tielt: Lanno, p.187.

²² "De Vlaming zal ons, en terecht, beoordelen op onze resultaten en niet op onze beloften. Dit vormt de solide basis om meer bevoegdheden op te vragen en Belgische inefficiënties weg te werken" Ministrie van de Vlaamse Gemeenschap (1995), *Een regering voor de Vlamingen*. Brussels, p.51.

²³ "Wat we zelf beter kunnen doen, mogen we niet aan anderen overlaten; we moeten het zelf doen", from the Regeringsverklaring, uitgesproken door minister president Luc Van den Brande op 21 Juni 1995 in het Vlaams parlement, Ministrie van de Vlaamse Gemeenschap (1995), *Een regering voor de Vlamingen*. Brussels, p. 55.

²⁴ "[Een grondwet voor de deelstaat Vlaanderen] is in de rechtsbron die aangeeft hoe Vlaanderen zal omgaan met doorzichtig en efficiënt bestuur, hoe Vlaanderen de democratie zal verfijnen, hoe Vlaanderen essentiële rechten voor zijn bevolking zal realiseren.", in Robert Senelle with Edgard Van de Velde and Emiel Clement (1999), *Kronieken van de Vlaamse Staatswording, Over de Identiteit van het Vlaming-Zijn*, Lannoo: Tielt, p.227.

change in the Flemish political discourse is due to the high congruence between the society and the political institutions. In Francophone Belgium, the issue is still who gets to decide.

Chapter XI

Educational Policy in Belgium

Building a country is setting up its education.
*Phillipe Destatte*¹

1. Introduction

The 1993 OECD report on Belgian education quotes a Flemish Minister who tells the OECD examiners that it is no longer appropriate to speak of a *Belgian* educational policy². The same report ends up with suggestions for the harmonisation and standardisation of education between the Communities. The very incongruity in Belgian educational policy is, however, the direct product of the state reforms carried out in the last thirty years, and the leitmotif of Belgian politics. Standardised national education has been replaced by two separate educational systems as a result of these reforms. The communitarisation of education has naturally been accompanied by differences between

¹ "Bâtir un pays, c'est construire son éducation.", Director of Institut Jules Destrée, Phillipe Destatte makes the argument on the cover of *La Wallonie au Futur, Le Défi de l'Education, Conférence-Consensus, Où en est et où va le système éducatif en Wallonie? Comment le savoir?* (1995), Charleroi: Institut Jules Destrée.

² OECD (1993), *Review of National Policies for Education, Belgium*, Paris: OECD, p.9.

the two systems. Therefore, OECD's arbitrary and naive suggestion for standardisation fails to grasp the powerful process of communitarisation in Belgian education.

In fact, it would be fair to say that education has been the most important political issue throughout the history of Belgium. For most part of Belgian history, education has pitted Catholics against secular and anticlerical Belgians. Until the emergence of a Socialist party in the late nineteenth century, the conflict was between the Liberals who wanted to introduce a secular state education and the Catholics who wanted to prevent the central state from expanding into the traditional domain of the Church. Despite their disagreements on economic issues, the Socialists joined forces with the Liberals within the anticlerical camp.

The issue of religion in education was finally solved with the School Peace of 1958. The status of both religious schools and secular schools were settled as two sides agreed to receive the same amount of subsidies from the state. The settlement of the religious conflict in education brought the language issue to the forefront however. The educational system subsequently became the new battleground for Belgium's ethno-linguistic divisions. This chapter concentrates on this second dispute.

After a brief summary of the former religious conflict, the main focus of this chapter will be on the process of communitarisation in the field of education. In particular, the empirical inquiry shows the compelling force the ethno-linguistic social structure has on the choices made by political actors. Class, religion, political affiliation, ideology or self-interest have played little, if any, role in the choices made by decision makers. The behaviour of Belgian politicians have, thus, closely reflected their respective ethno-linguistic backgrounds.

2. Historical Background

The conflict between anticlerical liberals and Catholics found its first avenue in the field of education. Education subsequently became the most sensitive issue in Belgian politics. Initially religion divided Belgian education into two opposing blocs; later on in the second half of the twentieth century, language became the major fault line.

The beginnings of the conflict over education go back to the Liberal Government of Charles Rogier. On 1 June 1850, the government passed a law which established public education in Belgium. Until then secondary education was under the control of the Catholic Church. The state had entered into a partnership with the Catholic church in the field of primary education in 1842. But the law which aimed to bring all education under state control faced fierce resistance from the Catholic Church and the Catholic party. In 1854 a compromise was reached in Antwerp and two parallel educational systems began to emerge, but this was not sufficient to settle the issue. Both sides tried to outmaneuver one another and tried to introduce their respective versions of an educational system once they were in government. The following decades witnessed the intensification of the conflict.

While the radical anticlerical elements within the Liberal party sought to fully secularise education, the Catholic party became increasingly intransigent. Facing an uncompromising ultramontane Catholic reaction, the moderates within the Liberal party were driven to embrace the radical stance as well. Meanwhile in France, under the leadership of Léon Gambetta and Jules Ferry, anticlerical republicanism had unleashed its

onslaught against Catholic schools. Belgian anticlericals clearly saw themselves as a part of this secular crusade.

In 1878 the Liberal government of Frère-Orban passed a law creating the Belgian Ministry of Education, and appointed a well-known anti-Catholic Freemason, Van Humbreek, as the first Belgian Minister of Education. The Liberal Government replaced the 1842 Law on primary education with a new system which introduced full secularisation. As a reaction to Van Humbreek's activism, the number of Church controlled schools free from state control (*écoles libres*) multiplied. The ensuing tension between free-thinkers and Catholics came to be called the School War. It was the first so-called School War (*guerre scolaire/schoolstrijd*) in Belgium, but there would be a quite a few to follow. During this first School War, the Catholics went on the defensive and built an alternative educational system to that of the State.

Following the introduction of universal male suffrage in 1883, Catholics emerged as the dominant party from the 1884 elections. They immediately set out to undo the secular reforms. One of the first things the Catholic government of Beernaert did was to abolish the Ministry of Education. The Catholic party was to control the government until 1918; consequently, it was now the secularist side's turn to retreat into their alternative social network of schools. The secular school network included schools set up by the state, but in opposition, the Liberal and Socialist alliance depended more on communes and municipalities in their constituencies to set up and run secular schools whose administration was carried out by non-denominational lay school boards.

The conflict dragged on destabilising many governments who were unable to reach compromises with the opposition while also antagonising the radical elements

within their own parties. In the meantime, with expanding suffrage and defection of leftist elements from the Liberal party, the Socialists had become a major force. Within constant public unrest, two educational systems, state controlled public education and Church controlled free education, continued to exist side-by-side.

The religious division between Catholics and free-thinking anticlericals was the most salient political cleavage in Belgium during the late 19th century. The most prominent arena for their political battle had ended up being the field of education. Social class and language were emerging as important political cleavages, but they were often absorbed into the existing divisions rather than replacing them.

By early 20th century linguistic tensions appeared as an independent issue now separate from the religious cleavage. In terms of political salience, language was still of lesser significance, but it was starting to make its presence felt. In 1921 Dutch-language secondary schools were introduced, in 1926 Dutch became compulsory for all secondary school students in Flanders. The linguistic laws of 1932 legally entrenched the educational unilingualism of Flanders and Wallonia, while Brussels continued to offer education in both languages. From that moment onwards, education was no longer an issue determined by mother-tongue regardless of domicile, it had become a regional issue, save for the exception of Brussels.

The tensions between public education and free education continued to divide the Belgian society until the 1950s. But the final straw was the comprehensive education reform introduced by the Liberal-Socialist coalition in 1955. As the Catholics protested violently to these reforms, another School War (*guerre scolaire/schoolstrijd*) broke out, bringing the country to a standstill.

For the following three years a workable solution was sought, but the two sides had dug deep in. After extensive rounds of negotiations, on 20 November 1958 a compromise was reached and an agreement was signed between the three traditional parties and the Catholic Church, which would become law on 29 May 1959 as the School Peace (*pacte scolaire/schoolpact*). The compromise guarantees equality in terms of state subsidies to the two educational systems. The School Peace effectively brought the issue of public vs. free education to a conclusion, thereby opening the arena for the linguistic conflict. According to Mabilie:

The School Peace has not, of course, created the linguistic problems, but it has certainly contributed to allow confrontation on these problems to reach a degree of acuteness which was observed little after [its settlement]; the new lines of opposition from now on cut across parties and groups which had so far remained very much homogeneous³

The School Peace settled the religious conflict over the Belgian educational system, but the secular vs. Catholic education divide is still relevant to the communitarianisation process because of the close overlap between the Flemish side and Catholic schools on the one hand, and Francophones and the public educational system on the other. In a way, it can be then said that the *question communautaire* takes up an older issue and continues with it at a new level.

³ "La Pacte scolaire n'a certes pas créé les problèmes linguistiques mais il a certainement contribué à permettre à l'affrontement sur ces problèmes d'atteindre le degré d'acuité qui fut peu après observé, des lignes d'opposition nouvelles pouvant désormais traverser des partis et des groupes jusque-là beaucoup plus homogènes.", In a book written by the Brussels correspondent of *Le Monde*, the author recites a discussion he had with the chairman of the Brussels think-tank

3. Communitarisation of Education

3.1. State education vs. the Catholic Church

Before we start looking at the post-war communitarisation of Belgian education, it is necessary to reiterate the main lines of cleavage in the Belgian society with regard to educational policy. As it was explained in the previous section, for a long time, the main division within the Belgian society had been between the seculars and anticlericals who supported the expansion of state administered and funded public school system on the one hand, and the Catholics who wanted to keep their religious schools on the other. This old division is still relevant for the examination of the communitarisation process because the linguistic cleavage tends to overlap with the public vs. private education division in Belgium.

So-called private education in Belgium is, in fact, denominational education administered by the Catholic Church. It is more often called 'free' education because of its independence from the state. Free Catholic education is also literally free of charge since all education in Belgium is state subsidised. Historically, there is a close connection between the Church schools and the Flemish movement. As seen in the first chapter dealing with Belgian history, the Catholic Church had adopted a mild form of Flemish nationalism into its agenda in response to the challenges of anticlerical liberalism and socialism, which were largely Francophone led movements. The teaching of Dutch was, therefore, first carried out by the free Catholic schools in Flanders. But following the introduction of unilingual Dutch education in Flanders, a number of public schools

have also been set up. Despite the existence of a public school network based on schools administered by communes, provinces and the state, free Catholic education is still more common in Flanders. For example, in 1993 Flanders had almost double the amount of students in public schools in free schools.⁴

The picture on the Francophone side is almost a mirror image: public education is more common within the Francophone community than free Catholic schools. Furthermore, the divisions between the free and public education camps run very deep. Especially for the free Catholic education side of Francophone Belgium, the communitarisation of education is of secondary importance to their struggles with the socialist anticlericalism dominant in the French Community. Public education, which is also known as official education, includes schools run by the state, provinces or communes. Free education, on the other hand, is run by the Church. In 1983 the breakdown of the public and free education was as follows:

In Francophone Belgium (including the small German-speaking community), students at official educational institutions formed 56.40% of the total student body. Of this number 19.75% were at state schools, 4.76 were at provincial schools, and 31.89% were at schools run by the communes. 43.60% of the student body was enrolled at free schools. On the Dutch-speaking side the majority of the student body, 67.37%, were enrolled at free schools. Of the remaining 32.63%, the provincial schools had the lowest

Paris: Éditions du Seuil, p.23.

⁴Ministerie van de Vlaamse Gemeenschap, Departement Algemene Zaken en Financien (1993), *VRIND: Vlaamse Regionale Indicatoren 1993*, Brussels, p.197.

number of students with 1.77%. State schools had 17.41%, and communal schools had 13.45% of the student body.⁵

In general, public schools are set up by various levels of government while the free schools are tied to the Catholic Church. But this bipolar classification contains other schools unrelated to the confessional divide. Schools created and run by the state, provinces, communes and by all other public law institutions are called official or public schools. This includes professional schools as well. All other schools, including those set up by other religious orders, are also grouped under free schools. After this brief note on the persistence of the older confessional cleavage and its relevance to the linguistic divide, we can now turn to the communitarisation of Belgian education.

3.2. The Process of Communitarisation

The process towards differentiation in education had begun before the official federalisation of the country. From 1961 onwards there were two Ministers of Education within the same Ministry, a French speaker and a Dutch speaker. The first State reform had demarcated the linguistic boundary and had changed the Constitution in order to recognise two unilingual regions, and bilingual Brussels. Prime Minister Théo Lefèvre of the Christian Democrat-Socialist coalition which introduced the 1962-63 reforms explained the need to communitarise the Belgian educational system in the following terms:

⁵Ministère de l'Éducation Nationale/Ministerie van Onderwijs (1984), *Le Mouvement Éducatif en Belgique*, Brussels, p.7.

It seems that in the creation of cultural councils, equipped with real competences, we have the best means of encouraging the developments of two communities with respect for their own character. Within the same spirit acknowledged, in the same structure of government, there is the need for a profound transformation of the departments of public education and cultural affairs according to the existence of two cultures within the country.⁶

The 30 July 1963 law on education divided primary and secondary education into Francophone and Dutch language halves, but higher education was left untouched. Education was to be organised in the language of the Region, i.e. French in Wallonia and Dutch in Flanders. As explained in the second chapter, Brussels was a special case where education would be in French or Dutch depending on the mother tongue. The head of the family would make a language declaration to establish the 'mother tongue', but this was subject to verification by officials. In other words, the law was set up in a way as to prevent the parents from making a choice for language of their children's education. The Bruxellois greatly resented this limitation on the principle of the 'liberté de père de famille' which had determined the language of education in the capital. The 1962-63 reforms abolished the bilingual schools in Brussels which offered courses in both languages. All schools had to become unilingual, and depending on the 'mother tongue' Bruxellois students were divided into two. Once again, Brussels had emerged as a complex case as both sides feared linguistic assimilation. The outcome was a gradual consolidation of the inter-communal partitioning, *cloisennement*.

⁶ "Il voit dans la création de conseil culturel, dotés de compétences réelles, le meilleur moyen d'encourager le développement des deux communautés, dans le respect de leur caractère propre. C'est dans le même esprit qu'a été reconnue, dans la structure même du gouvernement, la nécessité d'une transformation profonde des départements de l'Instruction publique et des Affaires culturelles en fonction de l'existence de deux cultures dans le pays." From the declaration of the government during the discussion on the law proposals 'emploi des langues en matière administrative' and 'Régime linguistique dans l'enseignement', Séance du jeudi 27 juin 1963/Vergadering van donderdag 27 juni 1963, *Chambre des Représentants, Annales Parlementaires/ Kamer der Volksvertegenwoordigers, Parlementaire Handelingen*, Dewarichttet: Brussels, p.4.

All the major state reforms carried out in 1970, 1980, 1988, 1993, and 2001 had impact on the educational system. But in addition to these constitutional reforms, there was constant institutional change and fine tuning through legislation. With the law of 25 September 1969, national education and cultural affairs were split into two. Consequently, the Ministry of National Education and Culture was split along linguistic lines, but education still did not become full Community competence. In 1971 the Ministry of Education was officially divided into two separate Ministries, each responsible for one half of the population, but there would still be a national education policy until 1980. However, the state reform of 1980 was also unable to settle the vexing issue of Community competences over the education. Flemish nationalists had failed to realise their goals of full communitarisation of education. The frustration of the Volksunie leader Hugo Schlitz displays the importance Flemings attach to educational self-rule:

A community, that does not have the right to show that on education and/or subordinate administration it has more or less expressed consent, is not autonomous on its ground. It becomes a payment organism, a box office counter, an office of the central state.⁷

Education remained a national competence with the 1980 State reform, but the Ministry of Education would continue to function in two linguistic halves with two Ministers, one Francophone one Dutch speaking. The Francophone Socialists (PS), the strongest party in Wallonia, opposed the communitarisation of education, fearing that

⁷ "Een gemeenschap die niet het recht heeft te zeggen dat zij aan onderwijs en/of aan ondergeschikte besturen meer of minder wil besteden is geen gemeenschap die autonoom is op die terreinen. Zij wordt een uitbetalings organisme, een loket, een beambte van de centale Staat", Séance du mercredi 30 juillet 1980/Vergadering van woensdag 30 juli 1980 (discussion on 'Project de loi ordinaire des réformes institutionnelles' and 'Projet de loi spéciale des réformes institutionnelles'), *Annales Parlementaire de Belgique, Chambre des Représentants, Session Ordinaire 1979-80/Parlementaire Handelingen van België, Kamer der Volksvertegenwoordigers, Gewone Zitting 1979-80*, Dewarichtet: Brussels, p.2782.

once communitarised they would be unable to fund the extensive public educational system in the Walloon Region. The Flemish side, on the other hand, wanted to acquire exclusive competence over the educational system. Gradually, French-speakers came to terms with the Flemish-driven communitarisation of education and recognised the essentially political character of educational self-rule. As a FDF-RW member of Parliament announced to his colleagues at the first meeting of the newly renamed Council of the French Community in 1980:

In fact, the educational project always constitutes a choice of political character, a choice of intimate social bounds, in this case, the future of our French Community.⁸

But it was clear that this recognition was a defensive one largely carried out in response to the movement towards Flemish cultural self-rule. The words of the Minister of the new Council of the French Community, Hansenne, display the defensive game played by the French Community in the reforms:

Our problem is protecting our dignity as Francophones, that is being capable to correctly assume our autonomies with the means that are ours.⁹

In a report published in 27 April 1983, the Flemish executive outlined its position concerning the changes in educational policy.¹⁰ In order to establish the communitarisation of education, The Flemish executive demanded article 59 of the

⁸ "En réalité, le projet éducatif constitue toujours un choix de caractère politique, un choix de société intimement lié, en l'occurrence, à l'avenir de notre Communauté française.", FDF-RW member Brasseur during the reading of the Council Executive's declaration, Conseil de la Communauté Française, Session 1980-81, Séance du Mardi 4 Novembre 1980, *Compte Rendu Intégral*, p.45.

⁹ "Notre problème...c'est de garder notre dignité de francophones, c'est d'être capables d'assumer correctement nos autonomies avec les moyens qui sont les nôtres." From the Declaration de l'Exécutif, Conseil de la Communauté Française, Session 1980-81, Séance du Mardi 4 Novembre 1980, *Compte Rendu Intégral*, p.62.

¹⁰ Vlaamse Executieve (1983), *Standpuntbepaling van de Vlaamse Executieve i.v.m. 'de communautarisering van het onderwijs'*, 27 april 1983, in Jan de Groof (ed.) (1990), *De Schoolpactwet: Coördinatie en annotatie*, Brussels: Story Scientia.

Constitution, which gave the competence over education to the federal government, to be repealed.¹¹ It, furthermore, demanded all the institutional, structural, financial and administrative measures necessary for the communitarisation of education to be introduced.¹² In an agreement signed on 8 February 1984, all four political parties (CVP, SP, PVV, VU) represented in the Flemish Government pooled their resources and declared their support for the communitarisation of education.¹³

During the July 1988 debate on the communitarisation of education, a Flemish Christian Democrat member of Parliament tried to explain the reasons behind the Flemish demands educational self-rule:

Why is the communitarisation of education now so important?...The history of the Flemish movement above all has been a history of fight for cultural autonomy. The various steps in the Dutchification [*vernederlandsing*] of the education were many steps on the road to cultural autonomy for the Flemish nation/people. What is more evident than a community administering its education? ¹⁴

The 1988 reforms expanded the power of the Communities over education except for a few issues that were left at the federal level. The beginning and end of the study year, the minimum requirements for the diplomas and the pensions of the teachers were issues that the federal level would continue to administer.

¹¹ Art.1.1. *Ibid.* p.100.

¹² Art.2.1. *Ibid.* P.100.

¹³ *Overeenkomst van 8 februari 1984 betreffende de onderwijsaangelegenheden die krachtens de Grondwet niet tot de bevoegdheid van de Gemeenschappen behoren*, in Jan De Groof (ed.) (1990), *De Scholpactwet: Coördinatie en annotatie*, Brussels: Story Scientia and Centrum voor Politieke, Economische en Sociale Studies CEPES, p.103.

¹⁴ "Waarom is de communautarisering van het onderwijs nu zo belangrijk?...De geschiedenis van de Vlaamse Beweging is vooral de geschiedenis van de strijd om culturele autonomie. De verschillende stappen in de vernederlandsing van ons onderwijs zijn evenvele stappen op weg naar culturele autonomie voor het Vlaamse volk. Wat is meer evident dan dat een Gemeenschap haar onderwijs beheert?" From the speech of CVP deputy Moors, Séance Plénieres jeudi 7 juillet 1988/Plenaire Vergadering van donderdag 7 juli 1988 (1989), *Annales Parlementaire et Rapports nominatifs des Commissions, Chambre des Représentants de Belgique, Session Extraordinaire 1988*, Dewarichtet: Brussels, p.946.

For a long time francophone Christian Democrats (PSC) resisted the communitarisation of education since they feared that such communitarisation would adversely affect free education in Socialist dominated Wallonia. However, receiving guarantees about the free Catholic schools in Wallonia from the other major parties in 1987, PSC relented to the process of communitarisation.

As a part of the 1988 state reform package, the legal communitarisation of education was introduced on 15 July 1988 through a special majority vote in the two Houses of Parliament which changed three articles of the Constitution. This amendment was a part of the broader state reform of 1988. As a consequence, the *ministre de l'Education national du rôle Français* became the *ministre de l'Enseignement de la Communauté française*. However, the Socialist and Christian Democratic disagreement prevented an uniform approach to education within the French Community. This division was exacerbated by the divisions between the Socialist dominated Walloon Region and the rest of the French Community in the Brussels/Capital Region. As a result of many disagreements and complex negotiations, the new Ministry of Education of the French Community was divided between one Socialist and one Christian Democrat Minister. The outcome was two Ministries: *ministre de l'Education et de la Recherche scientifique* and *ministre de l'Enseignement et de la Formation*.

Following the 1988 state reform and the communitarisation of education, problems emerged within the French Community in terms of the financing of education. This led to a initiative between the executives of the French Community and the Walloon Region to create a joint entity called the '*Etablissement*' to administer

education¹⁵. This initiative was based on a clause introduced by the state reform which allowed the Communities and Regions to set up joint services and institutions for their common tasks. But this effort did not succeed in solving the problems. Difficulties continued to affect the ability of the French Community to administer educational policy. In 1990 there was another round of negotiations between the francophone substate entities, and the Walloon Region and the Brussels-Capital Region agreed to help the French Community in financing education.

The divisions within the French Community were not only between the political parties. There are important divisions between the Walloon Region and Brussels which prevent them from tackling the issues facing the French Community in harmony. Although the 1993 constitutional reform placed education under the Community competence, the French Community delegated the implementation of its constitutional competence over education to the Walloon Region and the Commission of the French Community of Brussels-Capital Region. At the moment, the future of the educational system in Francophone Belgium is still unclear. The questions still evolve around deciding who will be the competent authority for education. There appears to be a general malaise within French-speaking Belgium concerning educational policy. Not only that the French Community and Walloon Region are facing difficulties in financing education, but there seems to be widespread public disappointment with the communitarisation of education and the subsequent confusion over competences and

¹⁵Mabille, Xavier (1997), *Histoire politique de la Belgique: Facteurs et acteurs de changement*, reviewed and updated new edition, Brussels: Crisp, p.388.

declining quality of education.¹⁶ Despite the new funds the 2001 Lambermont Accord allocates to education in the French Community, financial and administrative problems seem to continue for Brussels and Wallonia.

In contrast with the experience of French-speaking Belgium, following the communitarisation of education, the competence questions are settled on the Flemish side. The focus is increasingly on the contents of educational policy, and presently there appears to be an extensive reorganisation of the Flemish educational system.

The Flemish Government has continuously reiterated the importance it attaches to education. However, together with increased self-rule, the Flemish Government has changed its target audience. Throughout most of the reform process Flemish views on education were directed towards the federal authorities and the French-speakers in an attempt to attain the communitarisation of education. Recently, the audience has become the Flemish electorate as the Flemish Government now has to affirm its commitment to the well-being of its own people. In a recent publication by the Ministry of the Flemish Community titled 'A Government for the Flemings' (*Een Regering voor de Vlamingen*), educational policy is presented as the most important responsibility the Flemish Government has *vis a vis* the Flemings:

Education remains an essential pillar of the Flemish Government. It surely remains our first concern towards each other.¹⁷

¹⁶ For example Destatte puts it in the following terms: "[La dénonciation] a pourtant pris l'acuité des espoirs déçus depuis la communitarisation de l'enseignement en 1989", Destatte, Philippe (1998), "La Wallonie dans l'enseignement de l'histoire", in Jean-Claude Van Cauwenberghe (ed.), *Oser être Wallon!*, Editions Quorum: Gerpinnes, p. 45.

¹⁷ "Onderwijs blijft een essentiële pijler van het Vlaamse beleid. het blijft immers onze eerste zorg éénieder.", Ministrie van de Vlaamse Gemeenschap (1995), *Een regering voor de Vlamingen*. Brussels, p.41.

Traditionally, the Belgian educational system has had a number of advisory bodies, often divided along linguistic lines. Following the School Pact, most of the advisory bodies had Francophone and Dutch-speaking halves. But parallel to the communitarisation process, there has been increasing institutional asymmetry. The earliest example of such asymmetry is the reorganisation of primary education in Flanders. On 1 September 1973, what was then called the Cultural Council for Flanders introduced the Flemish educational reorganisation project (*Vernieuwing Lager Onderwijs*). Accordingly, a new Commission (*Commissie onderwijsvernieuwing Basisschool*) was set up to oversee the reforms at the primary level and cooperate with the National Ministry of Education for the implementation. In addition to this major asymmetrical approach to primary education, almost all of the new advisory bodies set up differed along linguistic lines often without parallel institutions on the other side. For example, of twelve the new advisory bodies set up between 1973 and 1983, only two have French and Dutch language parallel halves.¹⁸ The rest of the institutions display the differing policy priorities on each side as they deal with issues that their respective linguistic communities deem important. According to De Groof, this asymmetry is natural and should remain as it is:

The split between the 'legal' country and the 'real' country, joined by the progressive distancing between the two educational communities, would give the appearance of artificial character to a national legislation on the matter. Divided and thus differentiated responsibility, best epitomised

¹⁸For a list of the advisory bodies, please see, Ministère de l'Éducation Nationale/Ministerie van Onderwijs (1984), *Le Mouvement Éducatif en Belgique*, Brussels, pp.14-16.

by the field of education, cannot be corrected by the unity of interventions after complete transfer.¹⁹

3.3. Communitarisation and Increased Differentiation

As Flemings and Francophones acquired control over their educational systems, contents of their educational policies gradually changed in line with their political priorities. Especially between 1980 and 1988 educational policy between the two Communities started to differ considerably. The changes in Flanders have been notably more visible. Most importantly, a new system for secondary education was installed. With the progressive increase in the competences, the attributes of educational policies between Francophones and Flemings have started to vary as well.

With the 1988 state reform the Communities became wholly autonomous in the field of education. Article 59b of the Constitution placed education exclusively within the jurisdiction of the Communities. The Communities became fully responsible for education, in fact, the new system did not even establish a national framework for consultation. As a consequence, the Communities developed and changed their educational policies without any coordination with one another.

As outlined in the previous section, the current situation is a deeply asymmetrical one. While the French Community remains divided over many aspects of educational

¹⁹ "La scission entre le pays 'légal' et le pays 'réel' jointe à la distanciation progressive des deux communautés éducatives, faisait apparaître le caractère artificiel d'une législation nationale en la matière. La responsabilité partagée et donc différenciée, par excellence en matière d'enseignement, ne pouvait être corrigée que par l'unicité des interventions après transfert intégral." in Jan De Groof (1996), "Les Sociaux-Chrétiens et l'enseignement", in Wilfried Dewachter, Georges-Henri Dumont, Micehl Dumoulin, Manu Gérard, Emiel Lamberts, Xavier

policy, the Flemish Government has followed a reorganisation of the educational system which ran parallel to the communitarisation process. There have been institutional reforms as well as standardisation of curricula and programmes for all the schools in Flanders. The Flemish Community, in particular the Flemish Ministry of Education, has delegated its authority to a number of autonomous public institutions (*openbare instellingen*). The Autonomous Board for Community Education, ARGO (*Autonome Raad voor het Gemeenschaps-onderwijs*), is responsible for what was formerly called state education. ARGO was set up by the law of 8 November 1988 which created an autonomous central body for public education, thereby releasing the Flemish Ministry of Education from its double duty of both being the overarching political authority for education in Flanders and running the public school system at the same time. Belgian public schools have traditionally been run by the state and they provide nonconfessional education. In addition to state run schools there are public schools run by the communes, which also belong to the public educational system together with the much smaller group of public schools run by the provinces. This provincial system has its own peak organ called the Unit for Flemish Provincial Education, CVPO (*Cel voor Vlaams Provinciaal Onderwijs*). The Catholic educational system, on the other hand, has had its own board VSKO (*Vlaams Secretariat van het Katholiek Onderwijs*) since 1957. All of these organisations, together with unions and interest groups, cooperate within the peak association of the Union of Formation and Education Organisations, BVVO (*Bond van Vorming -en Ontwikkelings Organisaties*).

While the religious issue divides the Flemish educational system into various school boards, the contents of nonconfessional education are increasingly harmonised. The law of 1 September 1989 standardised Flemish secondary education into two types; in 1995 a unified system was introduced combining elements from these two types of secondary education. The unified system has been gradually replacing the existing ones, and according to the law of 1 September 1999 all other systems will eventually be phased out²⁰.

In addition to the three educational boards, an overarching non-political body with advisory powers was created with the law of 31 July 1990. The Flemish Educational Council, VLOR (*Vlaamse Onderwijsraad*) is responsible for all levels of education, including the universities. The Flemish Ministry of Education is obliged to seek its advice, but the letter of the law is unclear on the extent to which this advice has to be followed. Nevertheless, its compulsory advisory powers (*verplicht adviesorgaan*) endows the VLOR with a great deal of influence. In sum, the differences between the Flemish and French Communities in terms of political activism in the field of education is striking. Almost all of the reforms and new developments have been on the Flemish side.

3.4. The case of the Catholic University of Louvain/Leuven

The story of the Catholic University of Louvain is an example of how sensitive educational issues can become in ethno-linguistically divided countries. Historically,

²⁰ Jos Tielemans (1999), *Onderwijs in Vlaanderen: Structur-Organisatie-Wetgeving*, third

Belgium had four Universities, two private and two public ones. Of the two public Universities, Gent/Gant was the first Belgian University to become a Dutch language University in 1930, while the other State University in Liège has remained a Francophone institution. Of the two private ones, the Free University of Brussels has traditionally been an anticlerical institution with Liberal and Socialist leanings. It was set up by the Belgian Masonic Lodges. The other private University, Catholic University of Louvain, on the other hand, had traditionally been the choice of education for Belgian Christian Democrats and has organic links to the Catholic Church.

The Catholic University of Louvain is one of the oldest in Europe whose history goes back to 1425. After many centuries with Latin instruction, it gradually became a francophone institution. A traditionally conservative Catholic university geographically situated in Flanders, University of Louvain had an almost exclusive French-speaking student population, faculty and administrative staff. For long time, the bishops who ran the University had prevented Louvain (Leuven in Dutch) from accepting Dutch as the second language. In the decades following the end of the Second World War, Flemish presence at this francophone University increasingly became visible. Flemish faculty and students began to demand the introduction of Dutch-language instruction at the University. Catholic University of Louvain first became bilingual, but in practical terms still remained a francophone institution with a small but growing Flemish student body and Faculty. The similarities with a Montréal University, which has traditionally been the bastion of the anglo establishment, is up to here only. From now on, the story begins to change a bit.

Tensions escalated as Flemings gradually established administrative inroads and demanded major changes at this traditionally francophone University. The growing tension finally led to a major crisis between French speakers and Dutch speakers in 1962. The dispute continued until 1965 elections, but the new Liberal government was unable to solve the crisis. As the tension escalated, the slogan of the demonstrators, *Walen buiten* (Walloons out), captured the degree of animosity the inter-communal dispute had reached. Riots continued to disrupt the education. The bishops also started to divide along linguistic lines. In 1966 Flemish members of the Christian Democrat Party presented a proposal which placed higher education unilingually under the language of the region in question. This led a major division in the Christian Democratic party that would eventually lead the party to separate into two parties along linguistic lines. The final straw was the statement of a University administrator in 1968 who outlined plans to establish Louvain as a Francophone academic region adjacent to Brussels and Wallonia. The description of the Louvain-Woluwe Saint Lambert-Wavre triangle within Flanders as a French 'rayonnement' led to massive protest because, this was seen by the Flemings as an attempt to alter the linguistic border. The conflict reached a new heightened phase dividing all social groups in Belgium, including the other political parties along linguistic lines. The three Flemish cultural associations of the consociational structure; Catholic Davidsfonds, Socialist Vermeylefonds, and Liberal Willemsfonds, formed a united front on the issue. Riots paralysed the University. The Vanden Boeynants government was unable to solve the problem and following the resignation of the Flemish Christian Democrats in the Cabinet, the government fell.

The Christian Democrats entered the 1968 elections as two separate parties, the francophone PSC (*Parti social chrétien*) and the Flemish CVP (*Christelijke Volkspartij*). In Brussels, the Socialists presented two separate lists. Only the former Liberals, the Party of Liberty and Progress campaigned for a unitary Belgium and lost votes as a consequence. On the other hand, new political parties campaigning on community issues, VU (*Volksunie*), FDF (*Front démocratique des Bruxellois francophones*), RW (*Rassemblement Wallon*), were very successful in this election. In many ways, the Louvain/Leuven problem crystallised the deep divisions within the Belgian society. The new government of Gaston Eyskens caved in to Flemish demands and allowed the expulsion of the French from the University. The French-speakers moved across the Walloon border and established the new Université Catholique de Louvain at Ottignies which was to become Louvain-la-Neuve, while the old campus became the Katholieke Universiteit te Leuven.

The execution of the division in academic and institutional terms was indeed a painful one. The question of the library holdings is particularly representative of the difficulties encountered. Unable to agree on a method to divide the holdings, as a result of a lottery, the odd numbered shelves stayed in Leuven and the even numbered ones moved to Louvain-la-Neuve.

As a by-product of the so-called *splitsing* of Catholic University of Louvain, the Free University of Brussels was also divided along linguistic lines as a Dutch language campus was set up for the new Vrije Universiteit Brussel just next to the old Université Libre de Bruxelles. Initially the two campuses of the Free University would have same

top administration, but this system was discarded a few years later and both became fully independent institutions.

4. Conclusions

Following the School Peace settlement of 1958, linguistic divisions assumed centre stage of the political scene in Belgium. From then onwards, the process has been towards a congruence between the educational system of the country and its ethno-linguistic structure. Without the complexity of Brussels, congruence would have been achieved much easier. In other words, had the country been neatly divided into two unilingual halves, the issue of educational self-rule would have been settled as early as 1962 when the first linguistic laws were put into effect.

Empirical examination of parliamentary minutes, proposals, inter-party accords, government publications and public inquiries reports suggest an inexorable tendency towards communitarisation which has gradually divided all aspects of education into two linguistic halves. This does not mean that there has been a shortage of highly contentious issues -especially that of Brussels and its Francophones suburbs in Flemish Brabant- otherwise the question of education would have been settled much earlier. What the empirical research demonstrates is the power of the ethno-linguistic structure in providing the direction of change. The specific terms and the details of the consecutive deals would have been difficult to predict, but the goals of the political actors were preordained by their ethno-linguistic background. Many other issues which divide societies and engender political partisanship were subsumed under the question communautaire:

In the field of educational policy and in the time frame under focus, social class, political affiliation and ideology do not appear as reliable indicators of political behaviour. The institutions of the unitary state, on the other hand, appear to have failed in moulding the society into a 'unitary' one as well. That is to say, the institutional set-up of a national educational system has proved to be rather malleable than sticky. Similarly, assumptions about the rational self-interest of national politicians are not very helpful in explaining the communitarisation process in education. In fact, politicians of a unitary state have taken part in a process of carving out the central state into much weaker smaller components.

One factor other than the ethno-linguistic structure has been a relevant factor in the field of educational policy however. The division between anticlericals and Catholics has, despite the declining intensity over the years, continued to make its presence felt in the changes to the country's educational system. But the decreasing importance of religion as a politically salient cleavage, and the increased marginalisation of the anticlericals in Flanders and the Catholics in Francophone Belgium, have prevented religion from undercutting the primacy of the ethno-linguistic social structure. Religion has very much been internalised into this structure in the form of devout Flanders and anticlerical Wallonia.

The process of congruence, however, has not been a smooth one. There have been many disagreements, very often over the details rather than the broader notion of demands for educational self-rule. The most problematic issue of the last thirty years has been the status of French-language education in the suburbs of Brussels situated in Flemish Brabant. And it is these details which have been the hardest to settle to the

mutual satisfaction of both sides. While settling many other thorny issues, the 2001 Lambermont Accord has failed to bring a solution to the status of French language in these six boroughs.

At the end of the day, what is clear from the empirical research is the commitment of both sides to the communitarisation process, even if they differ over the specific terms of the solutions. Especially more recent material takes this communitarisation tendency as a given, or as an already realised state of affairs, and when required refers to the seemingly self-evident 'necessary communitarisation of education' (*noodzakelijke communautarisering van het onderwijs / la nécessaire communautarisation*).

Chapter XII

Mass Media Policy in Belgium

Broadcasting is really too important to be left to the broadcasters.

*Tony Benn*¹

Quod non est in radio vel televisione, non est in mundo.²

1. Introduction

The communitarianisation of the mass media predates the official federalisation of the Belgian state. In print media this has taken the form of a de jure recognition of the linguistic division which already existed. In terms of radio and television broadcasting, there has been a marked process towards communitarianisation as well. The Belgian national public broadcasting corporation, which enjoyed monopoly over radio and television broadcasts until recently, was first split along linguistic lines; and as the Communities acquired jurisdiction over mass media, Belgian broadcasting bifurcated into two

¹ Tony Benn was a British Labour politician and the Minister of Technology when he made the above remark in 1968.

² The latin formulation seems to be Hermann's rendition of "Was nicht im Radio und nicht im Fernsehen erscheint, existiert in der Welt gar nicht." Günther Hermann (1994), *Rundfunkrecht; Fernsehen und Hörfunk mit neuen Medien*, Munich: C.H.Beck, p.34.

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autonomous and distinct halves. Self-rule in mass-media resulted in an asymmetrical picture as Flanders privatised most of the broadcasting while the French Community retained the francophone half of the public broadcasting corporation.

As it is the case in the field of education, the last forty years has witnessed a steady process of communitarisation in media often accompanying the successive state reforms. In education, the stumbling-block in the path of a smooth and early settlement had been the linguistic status of Brussels. In the field of media, such a distinct point of contention does not exist between Flemings and Francophones. Different approaches to public and private broadcasting, however, augment the linguistic divisions, and thus add to the difficulties. Nonetheless, the communitarisation of the Belgian mass-media has been a much less controversial affair than that of Belgian education.

The following empirical survey traces the process of congruence between the institutional structure in mass media and the ethno-linguistic make-up of the country. Through the various stages of state reform, political actors have behaved in accordance with what the social structure would suggest. That is to say, regardless of their political affiliations, decision makers have made choices induced by their ethno-linguistic backgrounds in a move towards changing the institutional structure of Belgian mass media to better correspond to the composition of the country. As a result of the communitarisation process, the nation-wide structures of unitary Belgium have changed in order to fit the underlying divided structure.

In terms of print media, radio broadcasting and television broadcasting the country is clearly divided into two. Viewers/listeners/readers seldom cross linguistic

lines. In parallel, newspapers and broadcasters certainly do not target audiences across the linguistic divide. In other words, both in terms of consumers and producers of media, the country is split into linguistic halves. The television viewership is a good indication of the underlying divided societal structure:

The Belgian viewers appear to be strongly divided along linguistic lines. There is very little cross-community viewing. 75% of Flemings watch Flemish channels, 10% watch Dutch channels and 15% watch non-Dutch language channels. Only 3% of this non-Dutch group watch Belgian French channels.³ The same thing appears to exist on the Francophone side as well. One of the most prolific observers of the Belgian media, Jan Servaes, has come to the conclusion that the viewers of the francophone channels RTBF and RTL-TVi never watch the Flemish channels BRT and VTM, and vice versa.⁴

The divisions within the Belgian society have not only predated the Constitutional reforms, but in many ways, they have brought the changes. As Dewachter puts it:

The communications order in Belgium -in way that combines economy and culture- is clearly divided into two separate networks...There are the Dutch-language newspapers, radio, television, weekly papers and there are the French-language ones. They have hardly penetrated each other's language region.⁵

³ Wilfried Dewachter (1998), "Belgique: La Déchirure", *Politique internationale* 1998:78, p.185.

⁴ Jan Servaes (1998), "Médias et politique", in Marco Martiniello and Marc Swyngedouw (eds.), *Où va la Belgique? Les soubresauts d'une petite démocratie européenne*, Paris: L'Harmattan, p.167-8.

⁵ "Het communicatiebestel in België -en daarmee slaat men de brug tussen economie en cultuur- is duidelijk opgedeeld in twee aparte netten...Er zijn de Nederlandstalige kranten, radio, televisie, weekbladen en er zijn de Franstaligen. Zij penetreren nauwelijks elkaars taalgebied.", Wilfried Dewachter (1992), *De dualistische identiteit van de Belgische maatschappij*, Koninklijke Nederlandse Akademie van Wetenschappen, Amsterdam: Noord-Hollandsche, p.22.

2. Communitarisation of Mass Media

French and Dutch-language print media have historically always remained separate, but the legal competence of the cultural Communities over mass media is a product of the last forty years. Subsequent state reforms brought the media under the legal and technical competence of the French and Flemish Communities. But the beginnings of institutional changes in Belgian mass media lie in an earlier time period. The origins of the communitarisation process in media go back to the recommendations of the Harmel report of 1959. The report constituted the basis of the first state reform carried of 1962-63. Long before the federalisation of the country, the report suggested community control over broadcasting in an endeavour to ease the tensions afflicting the relations between the two linguistic groups:

For radio broadcasting and television a Walloon council of management and a Flemish council of management should be created.⁶

In many ways, the legal communitarisation of mass media competences is a belated response to the social disunion. Press has always remained separate, and in the Belgian public broadcasting corporation for many years the process of deconcentration acted as a substitute for communitarisation. That is to say, the public body was divided into linguistically separate parallel halves without officially devolving media competence

⁶ "Pour radiodiffusion et la télévision, un Conseil de gestion wallon et un Conseil de gestion flamand devraient être créés.", quoted in Hugues Dumont and Georges-Henri Dumont (1996), "La Politique Culturelle Sociale-Chrétienne sous le Signe de l'autonomie et du pluralisme", in Wilfried Dewachter, Georges-Henri Dumont, Michel Dumoulin, Manu Gérard, Emiel Lamberts, Xavier Mabilie, Mark Van den Wijngaert (eds.), *Un Parti Dans l'Histoire 1945-1995, 50 Ans d'Action du Parti Social Chrétien*, Ducolot: Louvain-la-Neuve, p.556.

to the substate entities. This process of deconcentration, or *dédoublement* in French, helped to contain the linguistic tensions until constitutional changes arrived.

The 1980 state reform placed cultural matters -including broadcasting- under the exclusive competence of the Communities. However, the cultural autonomy law of 8 August 1980 did not include competence over government communications and commercial advertisements. These were to remain federal competences. The Federal Government also retained control over technical aspects of mass media, but this would often turn out to be a contested issue since the lines between technical and cultural aspects of media were hard to draw, leading the Communities to make the following statement in 1985:

One should avoid national technical regulations that would influence cultural affairs. The exercise of the technical competence should emanate from and be dependent on the autorisation by the Community.⁷

The section of the cultural autonomy statute allowing the Federal Government to retain control over media technology was amended during the 1988 state reform, removing the remaining federal competences. The law of 8 August 1988 modified the earlier 1980 law and added commercial advertisements to the existing competences of the Communities. Article 1 of the same law placed print press under the competence of the Communities as well. The 1988 state reform added regulatory and financial control over mass media to Community competences as well as the right to provide public funds to media. The 1993 state reform finally gave the Communities exclusive jurisdiction,

⁷ "On doit éviter que les réglementations techniques nationales influencent les aspects culturels. l'exercice de la compétence technique doit dès lors être subordonné à l'autorisation par la communauté", quoted from a report prepared by a working group composed of representatives of the Community executives, published on 17 January 1985, in André Nayer and Suzane Capiiau

removing the Federal Government from the picture entirely. As a result of the last state reform, Communities are now fully in charge of all aspects of mass media. The following sections will trace the communitarisation process in the spheres of print media, public broadcasting and private broadcasting.

2.1. Print Press

Belgian print press strictly follows the language division. Of the 35 daily newspapers in Belgium, 15 are in Dutch, 19 in French and 1 in German⁸. Although the print media is open to international competition from the Netherlands and France, Belgian newspapers control most of the market. There is a strict separation between the Flemish and French-language print media in terms of ownership as well. While cross-ownership is widespread within linguistic groups, there is no cross-ownership across the linguistic divide. There seems to be a great deal of press concentration within the communities as three leading press groups in each linguistic group control most of the daily newspapers.

In terms of political affiliation, among the Flemish press, Catholic newspapers have the widest circulation, while in the French-speaking press neutral newspapers dominate. Conservative *De Standaard*, *De Morgen* and *Het Laatste Nieuws* are the main Flemish newspapers; neutral *Le Soir* and *La Dernière Heure* and the conservative *La Libre Belgique* are their French-language counterparts. In addition to the mainstream

(1989), *Artistes et Media: Relations juridiques, Perceptions des droits, Compétences institutionnelles*, Brussels and Liège, p. 275.

⁸ Pierre Musso, Philippe Souëtre and Lionel Levasseur (1995), *The Printed Press and Television in the Regions of Europe*, Strasbourg: Council of Europe, p.121.

press, tabloids in both languages have a wide circulation, and there are also a number of local newspapers.

Due to the clear divisions between Flemish and Francophone newspapers and readership, the de jure recognition of the linguistic divisions in print media has been a colourless technical development without the tensions which characterised the communitarianisation of public broadcasting. This is of course aided by the fact that print media is entirely based on private ownership which means that many of the divisive issues of public funding and subsidisation are safely bypassed. In public broadcasting, however, the difficulties the French Community has in financing public broadcasting and the neo-liberal policies of the Flemish Government complicated the communitarianisation process.

2.2. Public Broadcasting

The origins of Belgian public broadcasting go back to the SBR (*Société Belge Radio-Electrique*) created in 1922. At that time, there were a number of burgeoning private radio stations around the country. But in with the law of 18 June 1930, the State monopolised broadcasting under the newly established Belgian public broadcasting service INR/NIR (*Institut national de Radiodiffusion/ Nationaal Instituut voor Radio-Omroep*). Along the prevailing consociational practice the INR/NIR divided its broadcast into three; *Radio-Catholique*, *Radio-Libérale* and *Radio-Socialiste*. After the war, the INR/NIR gradually replaced the consociational practice of programming with one based on linguistic lines. The public service broadcast was divided into French and Dutch-

language halves. Along with this development the name of the national public broadcasting institution changed as well. It became *RTB/BRT (Radio-Diffusion-Télévision Belge / Belgische Radio en Televisie)* with the law of 18 May 1960. This marked the beginnings of a decades long reform process:

The Harmel Law (of 18 May 1960), born as a result of the long negotiations on the reform of the status of INR, opened -and this was the first time in the Belgian context- perspectives on cultural autonomy.⁹

Accordingly, RTB/BRT was divided into three autonomous units; a Francophone section, a Dutch-language section, and a third section dealing with common issues. As the state reform of 1970 devolved most of the mass media policy to the cultural Communities, the common affairs section was gradually split along linguistic lines into two halves as well. Based on the constitutional amendments of 1970, the public broadcasting corporation was divided into two administrative boards in 1971, who would follow different policies from then onwards.

In 1977, the division of the Belgian public broadcasting corporation was completed and the common services section was fully abolished. With the end of the common services, even the musicians of the RTB/BRT symphony orchestra were divided between the two broadcasting institutions according to their language registry¹⁰. With the 1977 reform the RTB became RTBF (*Radio-Télévision Belge de la Communauté culturelle française*), and the BRT became BRTN (*Belgische Radio en Televisie*,

⁹ "La loi Harmel (du 18 mai 1960), née à l'issue de longues négociations portant sur la réforme du statut de l'INR, a ouvert -et c'était la première fois dans le contexte belge- des perspectives sur l'autonomie culturelle.", in Christian Carette, Jan de Groof, Patrick Peeters, Jan Vermeire (1993), *La Legislation des Media, Le cadre normatif général, Les normes administratives et techniques relatives aux radio- et télécommunications*, Cepess: Brussels, p.14.

¹⁰ Kenneth McRae (1986), *Conflict and Compromise in Multilingual Societies: Belgium*, Waterloo: Wilfrid Laurier University Press, p.239.

Nederlandse Uitzendingen). The RTBF established centres in Liège, Charleroi and Namur. The BRTN, on the other hand, centralised its operations in Brussels. The institutional ties between RTBF and BRTN were completely dissolved as the two corporations became fully autonomous. This led to the creation of a public broadcasting corporation for the German-speaking Community since there was no national public body left. Therefore the public broadcasting corporation of the German-speaking Community, *Belgische Rundfunk und Fernsehen* (BRF), came into being the same year in 1977.

In the years to follow, the BRTN gradually decreased its nation-wide reach and effectively became the public broadcasting corporation of Flanders only. In 1995 it changed its name to *De Nederlandse Radio- en Televisie-uitzendingen in België, Omroep van de Vlaamse Gemeenschap*, but for practical purposes decided to continue using the BRTN acronym¹¹. The absence of a nation-wide programming policy was finally legally incorporated into the BRTN charter. The 25 January 1995 decree of the Flemish Community and Region on radio and television regulates broadcasting in Flanders. According to article 4 of this treaty the BRTN, is responsible for public broadcasting in the Flemish Community:

The programmes should contribute to the further development of the diversity of Flemish culture and of a democratic and tolerant society.¹²

¹¹ Article 3.1. of Vlaamse Gemeenschap en Gewest, Decreten betreffende de radio-omroep ende televisie, gecoördineerd bij Besluit van de Vlaamse Regering van 25 January 1995, Belgische Staatsblad May 1995, zoals bekrachtigd bij Decreet 8 March 1995, Belgische Staatsblad, 31 May 1995, eer Belgische Staatsblad, 31 October 1995, reproduced in Leo Neels, Dirk Voorhoof, Hans Maertens (eds.) (1996), *Medialex: Selectie van bronnen van de media- en informatie wetgeving*, fourth edition, Kluwer: Antwerp, p.154.

¹² "De programma's moeten bijdragen tot de vereder ontwikkeling van de diversiteit van de Vlaamse cultuur en van een democratische en verdraagzame samenleving." Vlaamse Gemeenschap en Gewest, Decreten betreffende de radio-omroep ende televisie, gecoördineerd bij Besluit van de Vlaamse Regering van 25 January 1995, b.s. May 1995, zoals bekrachtigd bij Decreet 8 March 1995, b.s., 31 May 1995, eer b.s., 31 October 1995, reproduced in Leo Neels,

Most recently, in 1998 the BRTN decided to officially become the public broadcasting corporation of Flanders by adopting the name VRT (*Vlaamse Radio en Televisie Omroep*), and thereby dropping any reference to Belgium proper. The name change has been accompanied by an extensive administrative reform of the institution. The top administration is been 'depoliticised', meaning political appointments are replaced by managerial ones. Market-oriented management principles are been introduced, and the status of the workers is changed from being civil servants to contract workers.

The Communities still provide the public broadcasting corporations with financial backing and the governing bodies of these public bodies are appointed by their respective Communities. Until recently, the composition of the BRTN board displayed the existence of strong pillarised, albeit intra-Flemish, representation of various social groups. According to the 31 July 1991 regulation of the Flemish Community and Region, the board of the BRTN should be composed of representatives of political parties, religious groups, trade unions, employers associations, professional groups and other associations.¹³ According to the same regulation, the BRTN had to reserve space for broadcasts reflecting the different political views of the consociational subsegments of the Flemish society. However, these programmes made by the political parties or interest groups known as the *Uitzendingendoor Derden* were very unpopular among viewers.

Dirk Voorhoof, Hans Maertens (eds.) (1996), *Medialex: Selectie van bronnen van de media- en informatie wetgeving*, fourth edition, Kluwer: Antwerp, p.154.

¹³ Vlaamse Gemeenschap en Gewest, B.V.Reg 31 July 1991 houdende de regels volgens welke derden kunnen worden gemachtigd om radioprogramma's te verzeigen, b.s. 25 December 1991, in Leo Neels, Dirk Voorhoof, Hans Maertens (eds.) (1996), *Medialex: Selectie van bronnen van de media- en informatie wetgeving*, fourth edition, Kluwer: Antwerp, p.208-9.

This system is now totally discarded. The new organisation of the VRT has done away with the institutional relics of the consociational system, and has introduced internal reforms using market driven principles. Its status has been changed from a public corporation to a limited liability company (*naamloze vennootschap*) with the decree of 27 April 1997 of the Flemish Government, which also introduced the name change from BRTN to VRT to accompany the reforms. As of 1 January 1998 the VRT officially replaced the BRTN as the public broadcasting corporation. It is also interesting to note that since 1995 media is under the competence of the Flemish Ministry of Economics rather than the Ministry of Culture.

While such major reforms are implemented on the Flemish side, the RTBF is still known as the 'Belgian radio-television of the French Community', and it follows the original principles of Belgian public broadcasting. The administrative council of the RTBF is appointed by the French Community according to the proportion of the political party seats at the Council of the French Community. In addition to its consociational tradition of political appointment, the RTBF is also subject to control by two political institutions. The *Commission de la radio-télévision* is an advisory body to the French Community; but more importantly, the media of French-speaking Belgium is under the regulatory authority of the *Conseil Supérieur de l'Audiovisuel*. Despite its resistance to institutional reform, the RTBF has gradually lessened its Belgian-wide character and has accepted its role in bipolar Belgium. Article 8 of the decree of 14 July 1998, makes this recognition explicit by stating that the RTBF is responsible:

(...)for ensuring the cultural development, in particular by installing the values and the promotion of the cultural activities of the French community, its heritage in Wallonia, in Brussels and abroad, as well as the appropriate advancement of regional specificities.¹⁴

2.3. Private Broadcasting

During the 1980's the federalisation of mass media policy and the deregulation of broadcasting went hand in hand. The initiative in this sphere mostly came from the Flemish side. In 1987 the Flemish Government allowed private broadcasts of licensed stations. As a result, there are now two private television channels in Flanders in addition to the two VRT channels. The first private channel VTM (*Vlaamse Televisie Maatschappij*), which is owned by a consortium of Flemish print press, has been influential in bringing about such change. The second channel is a pay movie channel from the Netherlands called *Filmnet*.

This has opened up the market for private channels on the Francophone side, as French Community has emulated the Flemish licensing practice. The French-language media similarly has two public and two private television channels now. In addition to the two RTBF channels, the Luxembourg based *Radio-Télévision Luxembourg* (RTL) is an important player in Belgian media. RTL is situated in Luxembourg but its parent company *Compagnie Luxembourgeoise de Télédiffusion* (CLT) is largely owned by Belgian capital, and RTL directs most of its broadcast towards French-speaking Belgium

¹⁴ "pour assurer le développement culturel, notamment par la mise en valeur et la promotion des activités culturelles de la Communauté française, son patrimoine en Wallonie, à Bruxelles et à l'étranger ainsi que la valorisation appropriée des spécificités régionales.", quoted François Jongen (1998), "Radiodiffusion et Culture en Droit Belge", in Hugues Dumont and Strowel (eds.), *Politique culturelle et droit de la radio-télévision*, Brussels: Publications des Facultés universitaires Saint-Louis.

through RTL-Tvi (*Télévision Indépendant*). The second private channel is the much smaller *Canal Plus Belgique*.

Private broadcasting has largely followed the communitarisation process, and therefore, has not emerged as a point of discord between the two sides. The Flemish side allowed the introduction of private broadcasting into Belgium, but this has not pitted the Francophone Belgium against Flanders since the Flemish decisions were exclusively aimed at the Dutch language media. The case of public broadcasting is slightly different since there was a common public broadcasting corporation whose functions and finances had to be divided between the two linguistic groups. Naturally, this brought with it a fair deal of disagreements over the proper means of the institutional splitting and the future of public subsidies since Flanders is larger and richer than its Francophone counterpart.

2.4. Communitarisation and Increased Differentiation

Once a sufficient degree of congruence was achieved between political institutions and the social structure, the different political priorities of the two linguistic communities became visible. Now that the 'control' issue was satisfactorily settled -at least for the Flemings- the 'content' issue increasingly became the primary concern. In this context, the changes in mass media policy after the communitarisation of the field follow the same pattern which we saw education, i.e. concerns about the contents of public policy and efficiency in delivering them dominating the Flemish public agenda, inertia and confusion on the Francophone side. As a consequence of the divisions between Brussels and Wallonia, public policies are not approached with the same considerations efficiency

that seem to be prevailing on the Flemish side. Thus it is not surprising that, communitarisation has produced different outcomes for the two sides. In Flanders, extensive reforms have been carried out and new institutions have been established, while such activism is absent on the Francophone side. The differences between the two linguistic groups owe their existence to the communitarisation process which has approached the reform process of the media in a symmetrical way, i.e. two communities and two identical sets of competences. But there is still a degree incongruence between the political institutions of francophone Belgium and its social structure based on a complex mix of Walloons and Bruxellois. Consequently, questions about control still make their presence felt and prevent a complete restructuring of the media system along the Flemish example.

Regardless of the lingering control issue on the Francophone side, the two linguistic halves of Belgium look less and less alike. At the end of the day, the communitarisation of mass media policy has brought a growing degree of asymmetry between Flanders and francophone Belgium. This asymmetry is reflected in the different paths the public broadcasting corporations have taken, it is also reflected in the approaches towards private broadcasting. Another difference is the method for media regulation. The French Community prefers to regulate directly through the government apparatus, while the Flemish Government has set up a number of autonomous public institutions (*openbare instellingen*) with quasi-governmental character. A similar pattern was described in the previous chapter on educational policy.

The French Community first formed a Commission for Audiovisual Affairs under the Ministry of Culture in 1984.¹⁵ This body was replaced by the High Council for Audiovisual Affairs (*Conseil supérieur de l'audiovisuel*) in 1987¹⁶. Its members are appointed by the executive of the French Community, but this body is relatively insignificant one. The Socialist dominated RTBF is by far the most important actor in the heavily regulated francophone mass media.

On the Flemish side there is less regulation in general and the VRT does not assume a similarly central role, but the existing public regulatory bodies have more weight in comparison with their francophone counterparts. The private channels in Flanders are under the supervision of the Flemish Media Council (*Vlaamse Mediaraad*). The Council's competences cover radio and television broadcasting, print press and all other means of communication and information.¹⁷ The Flemish Media Council is one other example of the numerous Flemish public institutions which have emerged after the federalisation of the country. Its responsibilities are mainly advisory, but its close relationship with the Flemish Government and various sectors of the Flemish public gives the Media Council a considerable regulatory capacity. Its chairman is appointed by the Flemish Government, who works together with a general board composed of the representatives of relevant social groups. They are assisted by a committee of experts in preparing their advisory reports.

¹⁵ "Arrêté de l'Exécutif du 21/11/1984", *Moniteur Belge*, 31 January 1985.

¹⁶ "Décret du 17 juillet 1987 sur l'audiovisuel", *Moniteur Belge*, 22 August 1987.

¹⁷ "Tot de bevoegdheidsfeer van de Mediaraad behoren de volgende sectoren: de radio-omroep en de televisie, de schrijvende pers en alle andere communicatie- en informatiemiddelen", Art.3 of, Vlaamse Gemeenschap en Gewest, Decr.VI.R. 2 mei houdende oprichting van d Vlaamse Mediaraad, from the 9 July 1985 Belgische Staatsblad, reproduced in Leo Neels, Dirk Voorhoof,

Another such public body is the Flemish Arbitration Board for Radio and Television (*Vlaamse Geschillenraad voor Radio en Televisie*) established in 1996¹⁸. The Arbitration Board is a similar government appointed body which aims to solve disputes that arise within the field of broadcasting. But these two institutions are not the only ones: there is the Flemish Council for Local Radio (*Vlaamse Raad voor lokale radio's*), the Flemish Book Commission (*Vlaamse Commissie voor het Boek*), the Foundation for Flemish Press (*Stichting voor de Vlaamse Pers*), the Flemish High Council for Films (*Vlaamse Hoge Raad voor de Film*), the Flemish Film Commission (*Vlaamse Filmcommissie*), and the Office of Flemish Film Production (*Dienst voor de Vlaamse Filmproductie*). The creation of these autonomous public institutions have been accompanied by various proposals to coordinate and harmonise their activities.¹⁹

In sum, even if in performance terms developments in Flanders do not signify major leaps in policy efficiency, the activism represents an increasing concern with the content of policies. On the Francophone side, however, the major issue is still political competence. This flows from the fact that congruence between the society and political institutions is almost complete on the Flemish side, but for Francophones there is more institutional engineering in the waiting. And as far as a nation-wide mass media system

Hans Maertens (eds.) (1996), *Medialex: Selectie van bronnen van de media- en informatie wetgeving*, fourth edition, Kluwer: Antwerp, p.243.

¹⁸Reglement van orde en procedure van de Vlaamse Geschillenraad voor Radio en Televisie van 12 juni 1996, Belgische Staatsblad 2 august 1996, reproduced in Leo Neels, Dirk Voorhoof, Hans Maertens (eds.) (1996), *Medialex: Selectie van bronnen van de media- en informatie wetgeving*, fourth edition, Kluwer: Antwer, p.191-4.

¹⁹In addition to various legal mechanisms to coordinate and harmonise the activities of these institutions, Voorhoof mentions proposals to establish an overarching Institute for Media (*Instituut voor de Media*), Dirk Voorhoof (1995), "Mediabeleid en mediarecht in Vlaanderen", in Jean-Claude Burgelman, Daniël Biltreyst and Caroline Pauwels (eds.), *Audiovisuele media in Vlaanderen*, Brussels: VUB press, p.206-8.

is concerned, Dewachter sums up the picture in the following terms: "It is clear that, in the field of media a Belgian society no longer exists"²⁰

2.5. The Present Situation

The previous section displays the growing asymmetry between the mass media set-up in Flanders and in Francophone Belgium. As a result, the ensuing institutional differences have further strengthened the social differences which initially necessitated the reforms. That is to say, the communitarisation process has augmented the primacy of the divided societal structure by allowing the Communities to carry out policies promoting the cultural distinctiveness of their respective ethno-linguistic communities. The process of cultural homogenisation within subgroups has run parallel to the communitarisation of media. This has especially been the case for the Flemish side. In comparison to its Francophone counterpart, the Flemish Government has been very active in the cultural field. A report published by the Ministry of the Flemish Community demonstrates the importance given to the media:

The media are of essential importance for the reinforcement of democratic society and the cultural development and identity of Flanders.²¹

The result of the State reforms is that self-rule in mass media has further consolidated the already existing the divisions. Through Dutch-language public broadcasts, standardised high Dutch (*Algemeen beschaafd nederlands*) has been

²⁰ "Sur le plan des médias, il est clair que la société belge n'existe plus", Wilfried Dewachter (1998), "Belgique: La Déchirure", *Politique internationale* 1998:78, p.185.

introduced as a way to bring the various Flemish dialects together. In his memoirs, the former general director of the Flemish public broadcasting corporation, outlines the extensive linguistic engineering process carried out in order to standardise the language.²²

The author concludes this section with a quote from a well-known Flemish journalist:

Forty years of television has done more for the Flemish culture than hundred and fifty years of education.²³

Such activism has been less pronounced on the Francophone side. Despite the common language, differences between Wallonia and Brussels prevent extensive social engineering. At the same time, the lengthy francophone domination of Belgium had already provided a degree of cultural consolidation which has historically been absent on the Flemish side. In terms of magnitude, Francophone attempts at promoting cultural distinctiveness are much weaker compared to the Flemish project of cultural rejuvenation. The differences between Brussels and Wallonia contribute to a comparatively low level of activism. In a recent article on the media in French-speaking Belgium, the author calls for a stronger affirmation of the common culture between Brussels and Wallonia after he summarises the existing problems:

Having a common language and culture, the French Community covers two socio-economically distinct regions, Wallonia and Brussels. All of this is a matter for a sufficiently balanced construction beyond the apparent asymmetry. However, one point of contradiction remains and necessarily so: the two regions of Brussels and Wallonia have not granted objectively their full

²¹ "De media zijn van essentieel belang voor de versterking van de democratische samenleving en voor de eigen culturele ontwikkeling en identiteit van Vlaanderen" Ministerie van de Vlaamse Gemeenschap (1995), *Een regering voor de Vlamingen*. Brussels, p.49.

²² The author mentions specific television programmes like the *Hier spreekt men Nederlands*, and the daily radio programme *Taalpraatje*, in Cas Goosens (1998), *Radio en televisie in Vlaanderen: een geschiedenis*, Leuven: Davidsfonds, p.31.

²³ "Veertig jaar televisie hebben voor de Vlaamse cultuur meer gedaan dan honderd vijftig jaar onderwijs", *Ibid.* p.32.

assertion insofar as the principal dimension of identity, culture, which is not the subject of different institutional translations.²⁴

As it is the case in almost all other policy areas, the Francophone response to the communitarisation of media has wavered between indifference, inertia, and inaction, followed by a defensive retreat which lacks the driving energy which the Flemish movement possesses. For a long time, Belgian Francophones approached the communitarisation of mass media as a fleeting process of symbolic political redistribution fueled by Flemish demands. Recently, there appears to be a growing realisation that this is not really the case. As late as 1989, an analysis of the media regulations written for a francophone audience seems to try to yet convey to its readers the inexorable logic in the communitarisation of Belgian media law:

Maybe this interlude of shared competences between the francophone national Minister of Education and his Dutch-speaking colleague is not only an episode; but shouldn't it be seen as an ineluctable pull towards language, the most powerful vehicle of a culture? As everyone knows well, this is becoming the pivot in the reform of the state.²⁵

The contrast with Flemish attitudes is striking. The recently published New Encyclopedia of the Flemish Movement describes the communitarisation of media in the following terms:

²⁴ "Se voulant de langue et de culture communes, la Communauté française recouvre deux régions socio-économiquement distinctes, la Wallonie et Bruxelles. Tout cela relève d'une construction assez équilibrée, par-delà la dissymétrie apparente. Un point de contradiction subsiste cependant et comme nécessairement: les deux régions que sont Bruxelles et la Wallonie n'accèdent pas objectivement à leur affirmation plénière dans la mesure où le principal vecteur d'identité, la culture, n'est pas l'objet de traductions institutionnelles distinctes.", in Jacques Dubois (1998), "Réalité wallonne et médias", in Jean-Claude Van Cauwenberghe (ed.), *Oser être Wallon!*, Editions Quorum: Gerpinnes, p.58-59.

²⁵ "Peut-être l'intermède des compétences partagées entre le Ministre de l'Education nationale francophone et son collègue néerlandophone n'est-il qu'une péripétie, mais ne faut-il pas songer au rattachement inéluctable à la langue, véhicule puissant d'une culture? C'est en revenir au pivot de la réforme de l'Etat que tout un chacun connaît bien.", in André Nayer and Suzane Capiau (1989), *Artistes et Media: Relations juridiques, Perceptions des droits, Compétences institutionnelles*, Brussels and Liège, p. 265.

Out from a national institute blossomed the Flemish radio, and thereafter the Flemish television, rapidly as precursors of cultural autonomy and they played an important role as instruments in the development and protection of the Flemish Community.²⁶

3. Conclusions

The last forty years of mass media policy in Belgium is a story of congruence. The empirical research establishes the primacy of the ethno-linguistic structure in explaining the institutional changes Belgian unitary structure in mass media went through. The political choices made by decision makers can be explained by their ethno-linguistic background. Regardless of their political affiliations, Belgian politicians and bureaucrats have hardly ever deviated from the expected behaviour imposed by the social structure. Both Flemings and Francophones have sought self-rule in mass media for their linguistic communities. Within the French Community the internal cohesion has not been as solid as it is in Flanders, but despite their differences, Brussels and Wallonia have not wavered in their commitment to the Francophone common front *vis a vis* the Flemings during the communitarisation process.

Empirical research covering the process of institutional change points out to the permanent alliance between Francophone parties, including Socialists, Christian Democrats, Liberals, Brussels-based FDF, Wallonia's RW, and somewhat less consistently, the Francophone Green party, Ecolo. By the same token, there has been a permanent alliance between Flemish Christian Democrats, Liberals, Socialists, and the

²⁶ "Vanuit een national instituut ontloopten de Vlaamse radio en nadien de Vlaamse televisie zich snel als voorlopers van de culturele autonomie en speelden zij een belangrijke rol als instrument

nationalist Volksunie during the communitarisation process. Even the Flemish Green party, Agalev, has often been a part of this Flemish front; while Vlaams Blok's position has always remained on the far right end of Flemish nationalism.

Following the attainment of full Community control over mass media, political divisions have started to appear within the confines of the two linguistic communities. Recently, certain divisions between Brussels and Wallonia have surfaced within the French Community concerning the role of public broadcasting. While in Flanders, there is less controversy as all political parties and interest groups have backed the privatisation of media carried out by the Flemish Government.

Regardless of the new divisions within the two sides, one point that emerges from the empirical survey is the relative lack of controversy compared to educational policy. Education has traditionally divided public opinion and politicians have fought bitter wars over many issues of educational policy, but the communitarisation of media has not been equally controversial. Print media was already divided long before the legal recognition of the two linguistic communities. The *dédoublement* of the RTB/BRT on the other hand has been gradual and relatively problem-free compared to the deeply divisive issues in educational policy. The only issue that led to a major political debate was that of private television channels and commercial advertisements in the television channels of the Belgian public broadcasting companies. Belgian parliamentary minutes display almost no major debates when the issues under discussion are related to media and communitarisation. These issues are dealt with in a technocratic manner with little substantive discussion. Between the two sides, it appears that there was an overall

in de ontwikkeling en ontvoeding van de Vlaamse gemeenschap", Herroelen, Patrick (1998),

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agreement concerning the direction of institutional changes, i.e. towards increased Community control over the mass media. It was largely on the technical and financial aspects of this process that the negotiations took place.

"Omroep", in *Nieuwe Encyclopedie van de Vlaamse Beweging*, Tielt: Lanno., no page no.

Conclusion:

Congruence and Institutional Change

What know they of England, who only England know?
Rudyard Kipling

1. Institutions and Society in Federalism

The preceding chapters demonstrate the processes of congruence at work in Belgium and Germany. The study of these two cases was informed, however, by an implicit comparison with other federations along the way. In this concluding chapter, the broader comparative focus will be brought out into the open by looking at federal experiences elsewhere to set the study in a bigger context. Following a review of the findings on Belgium and Germany, the focus will shift to the United States, Canada, Switzerland, Spain, Australia and Austria.

The empirical research shows that the logic of congruence works in the context of German and Belgian federal structures. In the policy areas of education and mass media, Flemish and Francophone political actors have led the process towards congruence by demarcating their policy concerns to the boundaries of their respective linguistic

communities. The outcome has been a process towards a closer match between the public policy competences and the constituent linguistic communities. Political actors in Baden-Württemberg and North Rhine-Westphalia, on the other hand, despite their disagreements over the contents, have continued to approach education and mass media in all-German terms, consequently leading to a process of nationalisation for these public policies.

Although the empirical focus is limited to two policy areas and four federal subunits, what is constructed here is a macro-social theory which can explain institutional change by linking agents and structures. Empirical research confirmed the theoretical arguments outlined in the first chapter. The aim of the research project was to explore a big theory about change based on congruence. But in order to do so, a small and focused comparative study was undertaken to test the theory. What is of interest in this research project is the long run equilibrium between social structures and political institutions. The inquiry uses a theory about congruence between society and institutions to explain the course of broad changes in the Federal Republic of Germany and Belgium since World War II. The starting point was a paired comparison beginning in 1949 of two very different social structures, one heterogeneous and one homogenous. The heterogeneous case had unitary political institutions, the homogenous case had federal institutions. Each case represented a different model of politics. The German case comes closer to the traditional nation-state although with a decentralised federal system, while Belgium was deeply divided society albeit within the confines of a unitary state. In each case, political institutions which were organised according to a political logic that ran against the grain of social structures. In the following fifty years, these political institutions changed

towards a closer match with the social structure. The empirical inquiry presented in the previous chapters closely examines how policy-making has framed issues in education and the development and regulation of mass media. Consequently, the centralising and decentralising tendencies in both cases were exposed. Contrary to the expectations that would derive from institutionalist perspectives, this empirical research has demonstrated that, in the long run, the institutions have changed rather than the other way around.

The primacy of the ethno-linguistic structure depends on the relative decline of other politically salient social cleavages such as class and religion, however. In this respect, the theoretical argument is applicable to developments in post-WWII modern politics. But even if class is relegated behind ethno-linguistic structures, the macro-social perspective of this dissertation is not unlike Marxism in terms of the weight it puts on social structures. The logic of congruence suggests that political institutions would change in order to be congruent with the underlying social structure. But its social determinism is moderated by an emphasis on how the behaviour of political actors are influenced by social structures. In other words, there is no assumption of an automatic process of congruence, but a link is provided through public policy concerns. The starting point is still the structure -in this case ethno-linguistic composition- but it is reflected in the choices agents make about public policy. All political actors in Germany took the whole of Germany as their frame of reference and fought their political battles over education and mass media in an all-German arena despite strict constitutional clauses imposing exclusive substate competences in these policy areas. While in Belgium, political actors took their respective linguistic communities as their frame of reference and competed within the boundaries of these subnational cultures despite

national competence over education and mass media assigned by the constitution. Consequently, these two policy areas gradually devolved towards the constituent communities until a satisfactory level of congruence was attained. This process was charted in the first chapter in the following way:

Figure II

	Unitary Political Institutions	Federal Political Institutions
Non-Federal Society	full congruence (national policies)	standardisation of substate policies (national standards) substate initiatives for policy harmonisation federal involvement
Federal Society	division of national policies into linguistic halves devolution towards substate policy competence	full congruence (policies correspond to constituent communities)

It should be stressed that congruence does not bring an end to political divisions by settling the issues concerning the nature of the political community. Rather it brings about a form of politics where 'traditional' issues of distribution dominate: social class and socio-economic issues divide the working class and middle class, blue-collar labour and white-collar workers, traditional industries and information/service industries; religion -both between different denominations and also between seculars and confessionals- divides the society and brings in deep disagreements over issues such as euthanasia, abortion and gay rights; new political questions such as gender and environment create new political alignments and alliances; in the meantime, institutions

provide new opportunities and choices for the various competing taking part in the politics of 'who gets what, when, how'.

But at the end of the day, all the above issues require a prior match, an unspoken consensus over the demarcations of the political entity. In the absence of such a match between the 'nation' and the 'state', all other political issues are submerged under the politics of recognition. The politics of recognition, or the politics of 'who gets to decide', does not necessarily mean a large scale confrontation over the nature of the political entity; it is more often an incremental process towards congruence. Ethno-linguistic 'nations' apply the politics of 'who gets what, when and how' internally to their own policy concerns; consequently, public policies face pressures to conform to this pragmatic choice. In sum, nationalism exerts incremental pressures towards a congruence between social structure and political institutions indirectly through public policy concerns.

2. Applicability to Federal Systems Elsewhere

How generalisable are the findings from this research, or more specifically, does the theory of congruence work for other federal experiences? The obvious choices for a tentative examination of plausibility would be other federations in the industrialised world, i.e. Canada, the United States, Switzerland, Spain, Australia and Austria. There are other federal states around the world but political volatility prevents them from becoming reliable indicators for the process of congruence. Therefore, Nigeria, the Russian federation, Yugoslavia, South Africa and India are not included in this overview. For the six federations covered here, on the other hand, the overview is only a

'plausibility probe' (Eckstein 1975). This overview is not meant to be definitive of course, however, the theoretical model of this study should have broader applicability. Therefore, a brief examination of other federal experiences in the industrialised world is provided here, both to assess the potential applicability and to consider further avenues for comparative research.

Of the six federal systems covered here, the United States, Australia, and Austria have ethno-linguistically homogeneous social structures, while Canada, Switzerland, and Spain have territorially-based distinct ethno-linguistic communities. The logic of congruence would suggest that in the United States, Australia and Austria the contents of public policies would be the main public concern due to ethno-linguistic homogeneity. In this context, one should expect the harmonisation and standardisation of educational policy and media regulation -assuming they are substate competences- and a general tendency for public policies to be couched in 'national' terms. In Canada, Switzerland, and Spain, on the other hand, congruence theory would predict that the issue of control over public policies would play a prominent role in the federal division of responsibilities. Accordingly, public policies should tend to be segmented according to the boundaries of ethno-linguistic communities. In this context, ethno-linguistically distinct constituent 'nations' seek public policies which correspond to their respective communities and thus exert pressures towards a congruence between federal institutions and the underlying ethno-linguistic structure. The research carried out on German and Belgian politics further suggests that this process should be visible particularly in the two policy areas of education and media.

In the North American context, Canada and the United States represent an interesting pair. In terms of the territorial concentration of ethno-linguistic distinctiveness, Canada comes close to Livingston's 'federal society'. The United States, on the other hand, is a federation where the social structure is more unitary than the institutional divisions of the federal system. Austria and Australia are closer to the American and German cases. Spain and Switzerland, on the other hand, have territorially based ethno-linguistic diversity along Belgian lines. But they also have linguistic groups -Castilian speakers in Spain and German speakers in Switzerland- constituting the majority of the country similar to the position of English speakers in Canada. In all six cases discussed, the core assumptions of congruence theory seem to reverberate well. The logic of congruence -based on the primacy it accords to underlying social structures- seems to present a useful perspective to interpret the patterns of federal change in the six countries.

2.1. The United States

The origins of federalism in the United States date back to the confederation of 1776 between thirteen former colonies. However, the confederation was replaced by a new federal Constitution in 1787 which allowed for a stronger national government. Nevertheless the 1787 Constitution granted the constituent states considerable powers, notably over education and the press. The federal government, on the other hand, acquired stronger powers than its confederal predecessor. For the following hundred years, the American federal system remained a 'dual' one where the two levels of

government retained separate areas of responsibility over which they enjoyed exclusive jurisdiction.

Starting around the turn of century, the two levels of government entered the phase of 'cooperative' federalism whereby they pooled their efforts in order to provide the public services modern mass politics demanded. The joint efforts increased as the country tried to deal with the problems of the Great Depression and the new responsibilities expected from government. According to Zimmerman: "the overall trend since the 1930s is in the direction of policy-making centralization in the Congress and administration of national policies by state and local governments".¹ The New Deal programme of the 1930s and the creation of national standards brought about uniform national public policies in many areas. The process towards centralisation culminated in President Lyndon B. Johnson's announcement of the 'Great Society' programme in 1964. National goals and standards were set in all areas of public life. Education was one of the key elements of the Great Society. Many observers at that time interpreted this programme as a part of a general pattern towards a unitary national society. According to Sundquist: "the nation for decades has been coalescing into a national society"². Sundquist interpreted this, not as a presidential initiative, but as a general tendency towards unity: "the Great Society is, by definition, one society: the phrase is singular, not plural".³

¹ Joseph Zimmerman (1992), *Contemporary American Federalism: The Growth of National Power*, New York: Praeger, p.189.

² James Sundquist (1969), *Making Federalism Work*, Washington DC: Brookings Institution, p.10.

³ *Ibid.* p.12.

The centralisation process was slowed down during Ronald Reagan's Presidency. Reagan's advocacy of state rights, however, has been interpreted by some observers as a partisan attempt to cut down on social spending rather than a genuine realignment of federal-state responsibilities.⁴ Regardless of differing interpretations, it should be noted that nowadays a great deal of de facto harmonisation between education and media policies of the states has well been attained. This has renders a further push towards *de jure* standardisation along German lines unnecessary.

Despite the differences between North America and Europe, and despite the 'exceptionalism' of America (Hartz 1955; Lipset 1967 and 1996), it is still possible to see the logic of congruence at play in American politics -both in terms of actual developments and also the observations made by students of American federalism. The assumptions about public policy concerns made in the context of Germany in this research project appear to be applicable to the American experience with federalism and public policies. Thomas Dye points out to the importance attached to the content of public polices rather than the issue of jurisdictional control.

Most debates over federalism [in the United States] are only lightly camouflaged debates over policy...Citizens as well as political leaders consistently subordinate constitutional questions to immediate policy concerns.⁵

This observation is echoed by David Nice as well:

Most people [in the United States] have little interest in abstract debates that argue which level of government should be responsible for a given task. What most people care about is getting the policies they want.⁶

⁴ See, Robert B. Hawkins, Jr. (1982), *American Federalism: A New Partnership for the Republic*, San Fransisco: Institute for Contemporary Studies, p.5.; and Samuel Beer (1988), "Introduction" to Timothy Conlan, *New Federalism: Intergovernmental Reform from Nixon to Reagan*, Washington DC: The Brookings Institution, pp. ix-xxii.

⁵Thomas R. Dye (1990), *American Federalism, Competition Among Governments*, Lexington: Lexington Books, p. 184-5.

Without territorially based ethno-linguistic distinctiveness, the American society comes closer to the 'non-federal' German pattern. There are often bitter conflicts between states and the Federal Government, but with a satisfactory degree of harmonisation between state laws and a fairly strong political centre it is natural that the politics of 'who gets what, when, how' dominates the political scene. Samuel Beer's following remarks lend support to this argument:

Overwhelmingly...most Americans treat federalism -that is, a territorial allocation of authority secured by constitutional guarantees- as a means to an end, not as an end in itself. The question that moves individuals and groups in the political arena is not which government proposes to act, but what action some government proposes to take.⁷

2. 2. Canada

In contrast to the United States, the politics of 'who gets to decide' is very much in play in relations between Quebec and the rest of Canada. Quebec is the only province among the ten Canadian provinces where the majority are French-speakers. Following the conquest of New France by the British, French Canada was allowed to retain some its original powers and institutions with the Quebec Act of 1774. Quebec later became a part of the Canadian federation with the British North American Act of 1867. The French-English axis has since remained the most important fault line of Canadian federalism. Quebec enjoys a unique status within the federation while there appears to be a stronger degree of common identity among the English-speaking provinces. The experience of the

⁶ David C. Nice (1988), *Federalism: The Politics of Intergovernmental Relations*, New York: St.Martin's Press, p.24.

⁷ Samuel Beer (1988), "Introduction", in Timothy Conlan, *New Federalism: Intergovernmental Reform from Nixon to Reagan*, Washington D.C.: Brookings Institution, p. xii.

nine provinces of English Canada come close to the German and American experiences.

But between the two linguistic communities, the picture resembles the Belgian case more.

Will Kymlicka describes the attitudes towards federalism and public policies in English

Canada in the following way:

[S]urvey data has repeatedly shown that most English-speaking Canadians have no principled commitment to respecting the existing constitutional division of powers. On the contrary, their expectations and attributions of responsibility are naturally directed to the federal government even in areas of provincial jurisdiction (the most commonly cited area for federal action is education), and they would support federal intervention in almost any area of policy so long as it provided good governance.⁸

The Quebec case, on the other hand, shows that the issues of jurisdictional control still dominate the politics of the province and its relationship with the rest of the country.

The contents of public policies mean less since battles are fought along issues of control:

Having the ability to collectively debate and determine policies on issues that matter to them is not just a *symbol* of Québécois nationhood, it is the *substance* or *practice* of nationhood. Having developed a strong sense of national identity, Quebecers want to act together as a political community -to undertake common deliberations, make collective decisions and cooperate in political goals. They want to make these decisions with each other, not because their goals are different from other Canadians, or from Americans or Belgians, but because they have come to see themselves as members of the same society, and, hence as having responsibilities to each other for the ongoing well-being of that society. That is just what it means to think oneself as forming a nation. [*italics in original*]⁹

Kymlicka's observation appears to be particularly valid in the two policy areas of education and media. Public broadcasting is under exclusive federal jurisdiction in Canada, but a steady process of congruence has led to the bifurcation of Canadian broadcasting. The issue of French-English divisions in Canadian media is well documented (Siegel 1983; Smith 1989; Fletcher and Fletcher 1989, Raboy 1997), leading one observer to remark:

⁸Will Kymlicka (1998), "Multinational Federalism in Canada: Rethinking the Partnership", in Roger Gibbins and Guy Laforest (eds.), *Beyond the Impasse, Toward Reconciliation*, Montreal: Institute for Research on Public Policy, p.37.

Basically, inevitably, the institutions and practices of Canadian communications have reflected the inconsistencies of Canada rather than the national unity designs of their architects.¹⁰

While French-English dualism characterises both print and broadcasting media, education remains a provincial jurisdiction. However, the process of congruence is visible in this policy area as well, as English Canada often standardises its policies with frequent Federal Government involvement, whereas Quebec is very sensitive about federal encroachment. One issue of contention between the Quebec Government and the Federal Government used to be manpower training which the Quebec Government saw as provincial jurisdiction and the Federal Government as federal. Similar disagreements do not exist between other provincial governments and Ottawa. Recently the tensions have reemerged between Quebec City and Ottawa over the Federal Government's Millennium Scholarship initiative. While all nine provinces of English Canada have welcomed these new funds to education, Quebec has seen it as a federal intrusion into its prerogatives. Another recent example is the Social Union Framework Agreement between the Federal Government and the nine provinces of English Canada signed on February 4, 1999. Amongst other things, this agreement aims to increase mobility within Canadian post-secondary education by eliminating residency-based policies of the provinces. Alain Noël notes that many provinces shared the pan-Canadian vision of the Federal Government in terms of a preference for national solutions.¹¹ This reduced their bargaining leverage in negotiations with the Federal Government. In addition, according

⁹ *Ibid.* pp.31-2.

¹⁰ Marc Raboy (1997), "Media, Nationalism and Identity in Canada and Quebec", *Res Publica* 1997: 2, p. 318.

¹¹ Alain Noël (2000), "General Study of the Framework Agreement", Alain-G. Gagnon and Hugh Segal (eds.), *The Canadian Social Union Without Quebec*, Montreal: Institute for Research on Public Policy, p.17.

to Noël "English-Canadian public opinion on these questions is either indifferent or favours the federal government"¹², thereby further strengthening pressures towards a nation-wide settlement.

The different approaches to federal involvement and nation-wide public policies between Quebec and the other provinces was noted by Simeon some time ago in his influential study of federal-provincial relations in the 1960s. Simeon noted how in Quebec "...policies will be examined from the point of view of Quebec first; Quebec, not Canada is the reference point".¹³ For the rest of Canadians, the reference point was the nation as a whole and there tended to be strong public support for national policies¹⁴.

2.3. Switzerland

The origins of the Swiss federation go back to the thirteenth century. The three Alpine regions Uri, Schwyz and Unterwalden established independence from the Holy Roman Empire in 1273. These three *reichsfreie* communities then agreed on a contractual union, the *Eidgenossenschaft*, in 1291 which became the name of the country. The Swiss confederation gradually expanded to include thirteen cantons where two religions and four languages coexisted. The religious tensions often flared up in violence, however. During the 16th century, the country divided into two Confederations, a Protestant one based in Aarau and a Catholic one based in Lucerne, and fought four internal religious wars.

¹² *Ibid.* pp.17- 18

¹³ Richard Simeon (1972), *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada*, Toronto: University of Toronto Press, p.175.

In 1798, Napoleon's armies occupied Switzerland and established the 'one and indivisible' Helvetic Republic. The creation of modern centralised state with national citizenship was supported by large segments of the Swiss population, but it met hostility from the conservative Catholic cantons. In order to solve the problems, Napoleon restored some of the original powers of the cantons with the 1803 Mediation. Following Napoleon's defeat the Swiss confederation was reestablished in 1815. French republican ideas remained influential however, as the restored Eidgenossenschaft soon faced strong state-building pressures from its richer Protestant cantons. The driving force were the so-called 'radicals', i.e. anticlerical liberals mostly from Protestant cantons. There were deep divisions between the conservative rural Catholics who resisted a strong national executive and these radicals from the industrialising cantons who pushed for a stronger union. Seven radical cantons formed the *Siebener Concordat* and went to war to prevent the conservative *Sonderbund* from seceding in 1847. The industrialised Protestant cantons won. The outcome was the federal constitution of 1848 which stripped the cantons of sovereign state rights and turned them into members of a federation but stopped short of a unitary state.

Until the end of the Second World War, religion remained the main social cleavage in Switzerland. The Swiss population was almost evenly divided between Protestants and Catholics; while 75% of Swiss spoke German, 20% were French-speakers, 4% were Italian speakers, and finally a tiny group of Rhaeto-Romanche (an old Latin dialect, literally 'Old Roman') speakers lived in the isolated Alpine canton of Grisons/Graubünden where they constituted 30% of the population. During this time

¹⁴*Ibid.* pp. 232-3.

period, the former adversaries, i.e. anticlerical radicals and conservative Catholics, periodically joined forces in face of the socialist labour movement. While religion declined in political salience, language increased as a base of collective identity dividing the Swiss into French-speaking Swiss Romands and German-speaking Swiss Alamanns (Kerr 1974). The emergence of language as a key social cleavage became particularly visible during the 1960s as the French-speaking Jura region sought separation from German speaking Bern.

The recent Swiss federal experiences appear to follow the theoretical reasoning put forward in this research project. Ethno-linguistic divisions have increasingly become the main fault line within the Swiss society, replacing the centuries-old Protestant-Catholic division which cut across the linguistic lines. The most important reflection of this development has been within the educational system. A country deeply divided over private education controlled by the Catholic Church and secular public education has moved in a direction where linguistic issues have come to dominate the political agenda. Article 27 of the Federal Constitution places education under cantonal jurisdiction, but gradually federal standards have been introduced into an area which had traditionally remained a cantonal jurisdiction with the effect of bringing standardisation to education in German, French and Italian. The degree of educational standardisation is the highest amongst French-speaking Swiss as they have agreed on a common educational system, the so-called *École Romande*.¹⁵ A parallel harmonised German educational system which cuts across cantonal demarcations has also emerged.

¹⁵ The *École Romande* is in effect in the French-speaking cantons of Geneva, Neuchâtel, Vaud and Jura, and also in the cantons of Valais and Fribourg with French-speaking inhabitants. Carol

As it is the case in many divided societies, education has remained a very sensitive area. There was even a national referendum on making education a federal responsibility in 1973. 52.8% of the population voted in favour of a federal educational policy, but the motion was blocked by an alliance of smaller cantons.¹⁶ Nevertheless, educational policy has increasingly become congruent with the constituent ethno-linguistic communities of Switzerland despite the cross-cutting cantonal demarcations. There has been a move towards congruence in the field of mass media as well, whereby each linguistic group has acquired its own public radio and television network. As result of these developments, the Swiss federation of twenty-six cantons has increasingly moved in the direction of becoming a country of two large constituent ethno-linguistic groups of Swiss Alamanns and Swiss Romans, with the much smaller third group of Italian-speakers and a tiny linguistic minority of Rhaeto-Romanche speakers.

2. 4. Spain

A pattern towards congruence between political institutions and the ethno-linguistic social structure can also be seen in the Spanish experience with federalism. The Spanish federalisation process runs parallel to the democratisation of the country. Following the death of General Franco, a new Constitution was adopted in 1978 which provided the 'historical nationalities' the right of autonomy. Catalonia, the Basque provinces, and Galicia had passed Autonomy Statutes during the Second Spanish Republic (1931-36),

Schmid (1981), *Conflict and Consensus in Switzerland*, Berkeley: University of California Press, p. 45-46.

hence their 'historical' claim for autonomy. However, the constitutional right to autonomy led all the Spanish regions to follow the path of the 'historical nationalities' of Catalonia, the Basque provinces and Galicia and to adopt statutes of autonomy. Some of these Castilian-speaking (those who speak the mainstream 'Spanish' vernacular) Autonomous Communities correspond to historical principalities like Leon and Andalucia, others like Cantabria, Murcia and La Rioja are artificial new creations. Currently there are seventeen Autonomous Communities, but their powers are widely different. Constitutionally Spain is not a federation in name, but there are strong federal characteristics in the 1978 system of state of Autonomous Communities (*estado de las autonomías*).¹⁷

In this 'federal society', there appears to be process towards congruence between the underlying ethno-linguistic structure and the policy-making in the areas of education and media. Catalonia, the Basque provinces and Galicia run their own educational systems and have mass media networks in their own languages. The remaining fourteen Castilian speaking regions have standardised much of their educational policies and have invited the central government to run the system. The same process has also taken place in the field of mass media leading a number of observers to label the Spanish state of Autonomous Communities an asymmetrical system of federalism (Agranoff 1994; Ma and Cuchillo 1988; Moreno 1999).

¹⁶ Wolf Linder (1998), *Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies*, London: Macmillan and New York: St. Martin's Press, p.74.

¹⁷The omission of the word 'federal' from the Constitution was mainly done to prevent a conservative nationalist reaction against the democratic reforms. Despite the lack of a *pro forma* label, the political structure of Spain is sufficiently federal to allow comparisons with federal experiences elsewhere.

The asymmetrical character of Spanish federalism has emerged in a piecemeal fashion rather than as a product of a grand constitutional design. At one point, the two largest parties of the Spanish centre, the centre right UCD and the socialist PSOE tried to impose uniformity on the Autonomy Statutes in terms of the powers granted to the Autonomous Communities. Consequently, a bill entitled 'Organic law on the Harmonization of the Autonomy Process' (*Ley Orgánica del Armonización de Process Autonómico*, LOAPA) was tabled in the Cortes in September 1981. But in its 1983 ruling, the Spanish Constitutional Court (*Tribunal Constitucional*) found parts of the Organic Law to be unconstitutional, which led the Spanish Government to withdraw the bill (Gagnon and Erk 2001). Since then, the Spanish federalisation process has moved further in the direction of devising institutions to correspond to underlying ethno-linguistic structures.

2. 5. Australia

While Canada, Switzerland and Spain have elements of a 'federal society', Australia is closer to Germany and the United States in terms of its ethno-linguistic homogeneity. The Commonwealth of Australia was created in 1901 as result of the recommendations put forward by the constitutional conference of 1890 to unite the seven antipodean colonies of the British Crown. Due to geographic difficulties New Zealand was not included in the final design which established the Commonwealth of Australia. The citizens of this new country were almost exclusively of Anglo-Celtic background. One of the forefathers of the Australian Commonwealth and its first Prime Minister, Edmund Barton, declared

that for the first time in history there was an opportunity to "have a nation for a continent and a continent for a nation."¹⁸

Australia has no territorially based diversity that corresponds to the demarcations of the six constituent states of the Commonwealth. The most important politically salient social cleavage is class, which is a nation-wide phenomenon. There seems to be little regional identification and there is a high degree of geographic mobility¹⁹. In his comparative study on federalism, William Riker found Australia to be the most homogeneous federation:

The divisions in Australian culture seem to be economic and religious with hardly any geographic base. Hence there also seems to be an Australian patriotism unobstructed by loyalties to states. Indeed, of all federations now in existence, Australia seems less in need of appeasing subordinate patriotisms than any other government. One wonders, indeed, why they bother with federalism in Australia.²⁰

In the context, it comes no surprise that the workings of the federation are more unitary than what the constitution suggests. Many national policies were put in place through circumventing the constitution. The ad hoc meetings between premiers and state ministers were formalised. A working system very similar to the one between the German Länder and the Bund emerged. Ministerial Councils established between state governments pursued standardisation around uniform national legislation. For example, the Ministers of Education both from the states and the Commonwealth sat together in the Australian Education Council which was set up to develop 'collective approaches to

¹⁸Winston Gregory McMinn (1994), *Nationalism and Federalism in Australia*, Melbourne: Oxford University Press, p.1.

¹⁹Brian Galligan (1989), "Federal Theory and Australian Federalism: A Political Science Perspective", in Galligan (ed.), *Australian Federalism*, Melbourne: Longman Chesire, pp. 43-5.

²⁰William H. Riker (1964), *Federalism; Origin, Operation, Significance*, Boston and Toronto: Little, Brown and Company, p.113.

education policy'.²¹ Joan Rydon calls this the joint effort of the Commonwealth and states in 'getting round the Constitution'.²²

Commonwealth governments have been able, by agreement with the states, by parallel legislation or by the establishment of joint authorities, to participate in projects and affect developments far outside the limited range of matters on which they have constitutional power to legislate, and have even established ministries in fields such as education and health which appear entirely matters for the state.²³

Australian political parties, as representatives of class interests, have been instrumental in bringing about nation-wide approaches to public policy concerns. The Australian Labour party is particularly critical of the federal structure which they see as incoherent and wasteful²⁴. Similar centralist tendencies exist on the right as well. The Liberal/National coalition also seeks national policies, but its concern has largely been the establishment of national standards and legislation to minimise the economic costs of federalism in terms of differing state regulations which interfere with the free movement of factors of production.²⁵ Even if its frame of reference is still a national one, the non-Labour coalition tends to follow a right-wing programme of small-government, privatisation and deregulation which is at odds with the Labour party's vision of national policies. As a result, the nationalisation of various public policies has not been a

²¹Painter quotes the Australian Education Council Charter from Andrew Spaul (1987), *A History of the Australian Education Council, 1936-1986*, Sydney: Allen and Unwin, p. 315, in Martin Painter (1998), *Collaborative Federalism: Economic Reform in Australia in the 1990s*, Melbourne: Cambridge University Press, p. 106.

²²Joan Rydon (1993), "The Australian Tradition of Federalism and Federation", in Michael Burgess and Alain-G. Gagnon (eds.), *Comparative Federalism and Federation; Competing Traditions and Future Directions*, Toronto: University of Toronto Press, p. 233

²³*Ibid.* p. 233.

²⁴Brian Galligan (1995), "Labor and the Australian Constitution", in Galligan, *A Federal Republic: Australia's Constitutional System of Government*, Melbourne: Cambridge University Press, pp. 91-109; also see, Andrew Parkin and Vernon Marshall (1994), "Federalism and the Australian Labour Party", in Campbell Sharman (ed.), *Parties and Federalism in Australia and Canada*, Canberra: Federalism Research Centre, The Australian National University.

controversial issue in itself, but the contents of such policies often have divided the Australian political landscape.

Australian politics has traditionally revolved around national issues with two political blocks facing one another. In this federation with a 'non-federal society', media and education have consequently become nation-wide policies despite state jurisdiction over these policy areas. For most Australians federalism is not a major concern; political issues are national and the constituent states of the Australian Commonwealth are largely seen as intermediary layers of public administration in the implementation of national policies.

2.6. Austria

Another federation with a 'non-federal' society is Austria. In the closing days of the Second World War, the Allied forces allowed the reinstitution of the 1920 Austrian Constitution with the extensive amendments which had been introduced in 1929. Austria's political future was, therefore, settled much earlier than Germany's due to a compromise between the Western Allies and the Soviets.

The new Austrian State created in 1945 became neutral, run by a permanent coalition of the Austrian People's Party (ÖVP) and the Austrian Social Democratic Party (SPÖ). This so-called *Konkordanzdemokratie* between the conservative-Catholic 'black' and left-wing 'red' subcultures or '*Lagers*' became the defining political cleavage of the new Austrian State. The Federal Constitutional Law created nine Länder, but failed to

²⁵Martin Painter (1998), *Collaborative Federalism: Economic Reform in Australia in the 1990s*,

create a 'federal society' to correspond to the federal demarcations leading an Austrian observer to suggest the label of a 'centralistic federation'²⁶. A particular example is in the field of education. Since the 1960s, the Bund has moved into the policy area of education, constitutionally under Länder jurisdiction, and has created a national educational policy. This move was carried out with Länder cooperation and public support. The move towards a nation-wide educational policy was implemented with the active participation of the Länder Governors' Conference (*Landeshauptleute-Konferenz*), an ad hoc extra-constitutional body which was instrumental in facilitating this process. Accordingly, each Land passed identical legislation based on national standards. Reinhard Rack labels this legislative process 'rank-xerox federalism'.²⁷

In the field of mass media, there was already a concentration of press and broadcasting in Vienna. The federal change in the centralistic direction confirms the conclusion put forward by John Fitzmaurice:

Of the nominal federations in the western world (Germany, Switzerland, USA, Canada, Australia), Austria is in fact the least genuinely federal and the most centralised.²⁸

Federal arrangements, however, have political implications when they overlap with partisan political differences. Vienna has been the stronghold of the red Lager, while most of the countryside has voted conservative. Six of the remaining eight

Melbourne: Cambridge University Press, pp.1-9.

²⁶ Pelinka bases his observation on the work of Ludwig Adamovitch and Bernd-Christian Funk (1985), *Österreichs Verfassungsrecht*, 3rd. edition, Vienna, pp. 122-129, cited in Anton Pelinka (1998), *Austria: Out of the Shadow of the Past*, Boulder Westview, p.39.

²⁷ Reinhard Rack (1995), "Federalism: Making the Community More Attractive to Europeans: The Austrian Point of View", in C. Lloyd Brown-John (ed.), *Federal-Type Solutions and European Integration*, Lanham, New York, London: University Press of America, p.400.

²⁸ John Fitzmaurice (1991), "Democratic Reform: Federalism and Direct Democracy", in Fitzmaurice, *Austrian Politics and Society Today: In Defence of Austria*, London: Macmillan, pp. 159.

Austrian Länder have had continuous ÖVP governments since 1945. While there is an anti-Vienna sentiment within these conservative Länder, these political issues are more about the relative strength of national parties in certain regions rather than a territorially divided Austrian society.

3. Concluding Remarks

The above examination of six prominent federal experiences in the industrialised world provides some further support for the theory of congruence. It also indicates the direction where further research might produce interesting broader conclusions concerning federalism and institutional change. The plausibility probe exposed strong indicators showing the processes of congruence at play in these six cases. The next step would be the construction of a comprehensive study based these provisional findings together with the results on Germany and Belgium. In this context, the workings of the four federations with federal societies -Belgium, Canada, Spain and Switzerland- would be contrasted with the workings of the four federations with non-federal societies -Germany, the United States, Australia and Austria. The plausibility probe looked at education and media only; an interesting addition might be the examination of other policy areas.

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