Federal Germany and Its Non-Federal Society: Emergence of an All-German Educational Policy in a System of Exclusive Provincial Jurisdiction

JAN ERK  University of Toronto

Introduction

In the last 50 years of the twentieth century, the German federal structure set up by the Basic Law in 1949 was subject to unitarist pressures. In due course, many public policies were centralized despite exclusive provincial jurisdiction in these policy areas. This article examines this process of change within the field of educational policy. In order to explain the “nationalization” of education, the inquiry expands and builds on William Livingston’s notion of “federal society.”

In the literature on federalism, Livingston’s federal society idea is often cited as a major example of sociological federalism. References are often to his 1956 book, Federalism and Constitutional Change (Oxford: Claredon) but Livingston had developed the idea of federal society earlier in an article in Political Science Quarterly in 1952: “Institutional 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” (1952: 84).

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Jan Erk, Department of Political Science, University of Toronto, Toronto, Ontario M5S 3G3; jan_erk@hotmail.com
Writing in response to the prevailing institutional/constitutional perspective in the study of federalism, for Livingston a federal society was one with territorially based diversity. But, unfortunately, he did not clearly lay out what he meant by diversity and, by extension, what it meant for a society to be socially federated or not. However, his society-based perspective led to a number of articles which expanded on the notion of federal society. For example, Charles D. 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: “...following Livingston, an asymmetrical federal government is one in which political institutions correspond to the real social ‘federalism’ beneath them” (1965: 869).

In 1971, 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” (1971: 34). According to Stein, religion, geography and economics might reinforce these territorially based ethno-linguistic differences, but it is ethno-linguistic patterns that are fundamental. The empirical examination carried out for this article seems to support this interpretation of federal society. The importance of ethno-linguistic factors, however, depends 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); another one is the increasing secularization of many societies and the subsequent decline of religion as a politically salient social cleavage (Martin, 1978; Mol, 1972).

Put in a broader context, Livingston’s arguments about federalism and federal society imply a society-centred 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, if the society is not federal and if federal institutions are in place, then the latter should change to reflect the characteristics of a “non-federal society” and become centralized. However, such society-centred macro-level perspectives have since been marginalized in the field of comparative politics as institutionalist approaches established their dominance (Koebble, 1995; North, 1990; Pontusson, 1995; Steinmo and Thelen, et al., 1992; Weaver and Rockman, 1993).

The institutionalist perspective tends to see institutions as an intermediate layer constraining and influencing politics with emphasis on the institutional arrangements that shape political strategies and distribute political power. Institutionalist logic suggests that actors would try to take advantage of the available channels for political activity and would be socialized gradually into the institutions as they form their preferences within rule-bound settings. The interests of these actors would come to be nested in prevailing institutional arrangements. That is to say, institutions
Abstract. William Livingston’s idea of “federal society” is one of the leading sociological approaches to federalism. This article applies Livingston’s approach in the opposite direction. It is argued that the unitary German societal structure, or the “non-federal” German society, has exerted centralist pressures on the federal system. In particular, the article examines the changes within the policy area of education. Despite explicit constitutional clauses that place education under the exclusive jurisdiction of the German Länder, an all-German educational policy has emerged. A process that started with harmonization and standardization has eventually led to the “nationalization” of education. This has largely come about through public demands for a Germany-wide public policy. Empirical research shows that political actors have differed over the contents of educational policy but have shared an all-German frame of reference.


would socialize political actors into the existing structure in such a way that institutional arrangements will be reproduced over time. However, this has not been the case in German educational policy. An institutionalist logic would expect the federal division of responsibilities of 1949 to lead to the development of substate interest group mobilization at the Länder level. However, the German federal system has not socialized the German nation into a federal society—German society has not changed, the institutions have.

This underlines the fact that perspectives are useful in determining which political actors would be in position to influence decision making in formative moments, yet have no means of explaining the direction of change. Jonas Pontusson, for example, believes that institutional change can be explained by broader structural variables: “to understand the impetus for change, we need to analyze the process whereby ‘extra-institutional’ forces reshape the interests of powerful actors” (1995: 142). Livingston’s notion of federal society is precisely one of these extra-institutional forces. Since the Federal Republic of Germany does not have a federal society, the federal system faced centralist pressures from its non-federal society, especially in demands for uniform national policies.

In ethno-linguistically homogeneous non-federal societies, 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 understanding that the “nation” is the unit of governance regardless of the institutional division of power, and that policies should correspond to this unit. 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.” 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 centralization. Where the “nation” is smaller than the unit defined by the political institutions there would be devolutionary pressures on the unitary institutions. The division of the national Belgian educational policy into linguistic halves is an example of the notion of “federal society” at work. The German case, by contrast, is of federal institutions and a non-federal society. Empirical evidence shows that, despite disagreements between the left and right over the contents of educational policy, political actors in the Federal Republic of Germany shared an all-German frame of reference. The following section demonstrates the unequivocal support public opinion has lent to the “nationalization” of education.

The Federal Republic of Germany

The federal structure of the Bonn Republic was designed by the Western Allies who were determined to prevent the re-emergence of a strong German state comprising all Germans after the Second World War. The Allies had already set up administrative institutions in their zones of occupation. This was followed by the demarcation of the occupation zones into Länder, most of them artificial creations for administrative expediency. The Allies, who were predisposed towards restructuring German politics through de-nazification and re-education, favoured a federal system designed to disperse power and prevent a centralization that could lead to resurgent German nationalism.

The Allied powers instructed the Länder Minister-Presidents of the western zones of occupation to put together a constitution for West Germany. The Minister-Presidents met in Koblenz July 8-10, 1948, but failed to come up with a plan acceptable to the Allies. Länder representatives were ready to put together a working arrangement for the western zones of occupation, but they were reluctant to draft a constitution for all of Germany, fearing this would permanently seal the East from the West. The Länder Minister-Presidents Conference formed a committee to study the Allied plans and a meeting was scheduled to take place in Herrenchiemsee between August 10 and 23, 1948. This parliamentary committee carried on its deliberations from September 1948 to May 1949 (during which the
Allies often intervened to make their points known). The draft constitution, called the Basic Law (Grundgesetz), was accepted on May 8, 1948, and upon its ratification by Land parliaments on May 23, 1949, came into force the following day.

The Basic Law establishing the new state instituted a very decentralized federal structure. It was based on a strict separation of powers. The levels of government were to have exclusive jurisdiction over the policy areas entrusted to them and function autonomously through their own financial means. For a few policy areas the constitution introduced a system of joint federal government (Bund)-Länder responsibility. With the exception of these few areas with concurrent powers, the system comprised two separate levels of government with Länder enjoying residual powers. This federal structure, however, was not to remain as intended by the Allies.

The Federal Republic gradually assumed unitary characteristics in the subsequent 50 years as the two separate levels of government merged in many areas. According to Article 79(iii) of the Basic Law, the federal character of the German state could not be changed by constitutional amendments. Centralizing tendencies exerted by the non-federal German society, therefore, manifested themselves through numerous minor steps towards nation-wide public policies rather than through a major battle for state reform. This pattern is especially evident in areas where the Länder constitutionally enjoy exclusive competences. As a result, federalism based on exclusive competences was slowly replaced by an interlocking system of functional federalism based on co-operation between levels of government and ad hoc committees (Scharpf and Reissert et al., 1976). The trend towards centralization led some observers to suggest the label of a “unitary federal state” (Hesse, 1962).

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 decentralization on the territories under their control in West Germany. Some of them are amalgamations of previous principalities and states, some are just arbitrary regional demarcations. The only one with a claim for distinctiveness, Bavaria, traces back to the Bavarian Kingdom under the House of Wittelsbach, but historically included the regions of Franconia, Swabia and the Palatinate. The Palatinate is now part of the Land Rhineland-Palatinate, and parts of Swabia are in the Land Baden-Württemberg. In addition, there was a massive influx of refugees from Sudetenland, Silesia and Bohemia into Bavaria after the Second World War. So 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 less to do with historical continuity than with the expediency of establishing port administrations for the Allies. In particular Bremen was solely created to provide the United
States, 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. The loss of the territories in eastern Europe and Soviet occupation in eastern Germany led to an influx of refugees that amounted to one fifth of the population in western Germany. In addition to the 12 million refugees from the East who poured into West Germany in the closing days 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 became purely administrative units rather than representations of any socio-cultural distinctiveness. In 1951, three Länder in the southwest 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.

The artificiality of their origins make the Länder somewhat strange federal entities. The Länder did not establish the federation through a compact among them; so the German federation was not a union of already existing political entities. None of the Länder represents ethno-linguistic diversity; neither are they products of devolutionary federalism. Different from the experiences of other federations with federal societies, the Länder have frequently joined forces to form “national” Germany-wide policies in areas where they have exclusive jurisdiction. Even when the Länder opposed the intervention of the federal government, they have acted together in voicing their demands. When they resisted federal intervention, the Länder have been a unified force. This pattern becomes understandable from Peter Katzenstein’s description of Germany as “a decentralized state and centralized society” (1987: 15), which in fact seems like an alternative phrasing for a federal state and a non-federal society. The following observation made by Hermann Brill shortly after the acceptance of the Basic Law epitomizes 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” (1950: 14).

This incongruence between decentralized political institutions of the Federal Republic of Germany and the unitary structure of the German society led to pressure for public policies for the whole country. Empirical examination shows the impact the non-federal German society had in defining public policies, in particular education, in all-German terms. Contrary to institutionalist perspectives, it was not the federal structure which moulded society into the system set up by the Basic Law; instead the federal structure gradually changed. The societal pressures towards centraliza-
tion were present from the very early days. In a public opinion poll conducted in 1952, 29 per cent of respondents declared that it was a “very good” idea to dissolve Länder and have one government in Bonn, 23 per cent thought this a “good” proposal, 29 per cent were indifferent or without an opinion, and 29 per cent were against the proposal (Noelle and Neumann, 1956: 280). In the following year, the percentage of those who strongly supported the dissolution had increased to 36 per cent, while 24 per cent thought it a good idea and those who opposed had decreased to 17 per cent (Noelle and Neumann, 1956: 280).

Demands for a more centralized political system were shared across the political spectrum. Immediately after the ratification of the new constitution, efforts to modify the institutional structure designed by the Allies were initiated. Since federalism was the foundation of the new political system according to Article 79(iii), it could not be changed even by constitutional amendment, though modification was possible through implementation and legal interpretation. In a decision in 1952, the Federal Constitutional Court (Bundesverfassungsgericht) ruled that, despite Art. 20(i) 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 equalization (Bundesverfassungsgericht, 1952: 131). Later in the same year, the Court detailed the way it interpreted German federalism and its aim to bring in the principle of “federal friendly behaviour” (bundesfreundliches Verhalten): “The federal principle corresponds to the constitutional duty of allegiance and understanding which the members of the federation give to one another as well as to the greater whole, and which the federation gives to the members in return” (1952: 315). In a number of subsequent decisions, the Court continued to develop the principles of “federal comity” (Bundestreue) and federal friendly behaviour, though conceding that these were unwritten extra-constitutional principles (1956: 140; 1957: 361). The effect was principles which favoured nationwide approaches:

In the federation, the federal government and the Länder have the common duty to establish and safeguard the basic legal order at all levels and sections of the overall state (Gesamtstaat). To the extent that the federal government cannot provide direct care to this end, but where co-operation between the Länder is assigned, every Land is responsible for this co-operation. This follows from the unwritten principle of the duty of federal friendly relations. (1959: 138)

It is interesting to note that these two principles often associated with postwar German federalism (co-operative federalism and federal comity) did not exist in the original federal structure under the Basic Law. Federal comity is an unwritten extra-constitutional moral principle which limits Land autonomy. Co-operative federalism is similarly without a clear con-
Stitutional base. It is an extension of the principle of federal friendly behaviour, an informal political principle which restricts Länder autonomy since it calls for concerted action. Co-operative federalism does not include a constitutional reallocation of competences but, instead, is based on a network of co-ordination, co-operation, joint responsibilities and federal financing which brought in the Bund. The notion of co-operative federalism was first introduced by reforms to the financial structure in the 1960s. Blair describes the functions of federal comity and co-operative federalism as follows:

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 (1981: 209).

In other words, co-operative 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. These two principles were not integral to the 1949 federal structure, but they have come to be seen as constitutional conventions guiding the federal structure of the Bonn Republic established by the Basic Law. Centralizing tendencies are often explained by using these principles, but a more correct interpretation would be to see co-operative federalism and federal comity as reflecting already existing centralizing tendencies.

Länder financial dependency on the Bund is frequently given as an explanation for the centralizing tendencies in German federalism, and accordingly, credited with the nationalization of public policies. But the Basic Law of 1949 provided the levels of government with their own finances. The Länder became dependent not through a federal system which made them constitutionally dependent on the federal government for financial resources, but through their own volition as they sought Bund involvement. The system of financial equalization (Finanzausgleich) between the Bund and Länder was introduced in 1955. Given the above, Länder financial dependency on the Bund is not a reliable explanation for the centralizing tendencies in German federalism.

The incongruence between the underlying social structure and the overarching political institutions better explains the changes over 50 years. In a non-federal society, nationwide policies were seen as the natural solution to all-German problems. In the absence of territorially based societal distinctiveness, diversity in the provision of public policies was seen as unnecessary and inefficient. Consequently there was an overall pressure to standardize, harmonize or, better put, to “nationalize” public policies. This does not necessarily mean that all political actors were in consensus over
the content of public policies, but that Germany and all German citizens were their frame of reference rather than their respective Land. Empirical evidence shows that political affiliation played no role in the choice of a nation-wide approach to public policy. Regardless of political affiliation and level of government, all German decision makers tended to view educational policy as a nation-wide concern.

**Education**

Article 30 of the *Basic Law* places education under exclusive Länder jurisdiction through the constitutional premise of Länder cultural sovereignty (*Kulturhoheit*). Against the historical background of the Reich Ministry of Science, Education and Public Education (*Reichsministerium für Wissenschaft, Erziehung und Volksbildung*), the Allies decided to place education under Länder control to prevent the reappearance of totalitarian nationalism and, in due course, to re-educate and de-nazify the Germans. However, educational decentralization was ultimately replaced with a nation-wide educational system which gradually developed through either collective Länder action or Bund-Länder co-operation.

As a result of the Stuttgart-Hohenheim meeting between West German education ministers in April 1948, the Standing Conference of Ministers of Culture (*Ständige Konferenz der Kultusminister oder Kultusministerkonferenz* [KMK]) was established in 1949 with a permanent secretariat in Bonn. Its resolutions and recommendations, though not legally binding on the Länder, require Land legislation to be put into practice. However, since decisions are based on the principle of unanimity, the decisions of the Standing Conference often 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” (*Kultusministerkonferenz, 1995: 1*). The aims stated in the revised charter are almost identical with the original 1949 charter, save for a section dropped in the 1955 version. Interestingly, this 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” (*Kultusministerkonferenz, 1949: 1*). It appears that in 1955, jurisdictional divisions were no longer a major concern for decision makers.

From the outset the aim seemed to be to find a way around the “inconvenience” of the federal division of responsibilities. 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 indicate a general belief in nationwide action on education. In 1949, the Hesse minister for education, Edwin Stein, evaluated 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” (Vogel, 1998: 93). Many years later, at a special meeting of KMK in 1988 to commemorate its fortieth anniversary, Stein’s views had hardly changed: “KMK had understood the need to co-ordinate the minimum of uniformity of educational systems with the federal constitutional structure, and to maintain Germany’s intellectual unity” (Führ, 1996: 38).

Bernard Vogel, who was the minister of culture for Rhineland-Palatinate between 1967 and 1976 and later the minister-president of the same Land, states that during the creation of the Standing Conference of KMK, there was, indeed, widespread support across the political spectrum not only for the Standing Conference but also for the establishment of a federal ministry for culture (Vogel, 1998: 93), and that: “the Standing Conference has brought a comparability of education systems in Germany to an extent that no other federal state can attain” (Vogel, 1998: 93).

In fact, the co-operation and co-ordination carried out through KMK has allowed a level of standardization 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, describes the co-operation among the culture ministers as:

connected to a minimum standard of unity enforced by the high level of intra-German mobility on the one hand, and the specific expectations from traditional “German Culture” which created solidarity for long periods in our history when Germany was not united as a nation-state. But, most importantly, 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 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. (1998: 22)

Maier continues by stating that: “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, almost in the same breath, the establishment of cultural unity and political homogeneity in the entire state” (1998: 23).

The first formal agreement of the Standing Conference of KMK, the Düsseldorf Agreement of 1955, aimed to standardize educational assessment, timing and duration of the study year, curricula and recognition of qualifications. The foremost aim of the agreement was to ease the problems of education for the many migrating from Land to Land (Hearnden, 1976: 69). A public opinion poll from 1953 indicated that 60 per cent of
the respondents saw the “school question” as the most important political issue under discussion (Noelle and Neumann, 1956: 223). A poll from the following year reported 69 per cent support for a uniform teaching scheme for the whole of West Germany as opposed to 15 per cent who want to maintain a differentiated system (Noelle and Neumann, 1956: 225).

Public demand for educational uniformity is a theme prevalent in the literature on German educational policy (Tiburtius, 1959: 73), and the issue appears to have dominated public life, especially in the early years of the Federal Republic. A saying from those days summarizes the relationship that was seen to exist between educational federalism and geographic mobility: “Father moves, son flunks” (Friedeburg, 1989: 319). According to Heckel and Avenarius: “Together with the stabilization of the cultural sovereignty of the Länder, at least since 1949, public and press, political parties, cultural organizations and professional associations have expressed their views about the promotion of efforts in order to overcome the divisions [in the school system]” (1986: 16). The same source described these divisions in the school system as the “school mess” (Schulwirrwarr) and credited public displeasure with the educational divisions as the core pressure which forced the minister-presidents to seek standardization of the system (1986: 16). The Düsseldorf agreement, the first comprehensive attempt at educational standardization in West Germany, introduced measures which brought a basic level of uniformity to the German education system. In a report released in 1955 after the ratification of the agreement, the president of KMK, Willy Dehnkamp remarked:

A reverse step could hardly have been expected, so at least a change in the allocation of responsibilities in this field required discussion, which is something more than necessary. Better co-operation between the Bund and Länder is in the interest of the German youth, German science and research, the German culture and the German nation. (Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland, 1955: 12)

The Düsseldorf Agreement was in effect for 10 years, and in 1964 it was replaced with the Hamburg Agreement that continued the process of standardization. Through these successive agreements, KMK managed to establish national standardization in the education system:

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 standardization in living conditions, with subsequent unitary tendencies in the school system. (Heckel and Avenarius et al., 1986: 17)

In 1953, the Länder ministers of culture and the federal Ministry of Interior (Bundesinnenministerium) established a Special Committee on Education (Deutscher Ausschuß für das Erziehungs- und Bildungswesen) to make recommendations for educational reform. In its advisory report, the Committee suggested an overhaul of the entire system, stating that: “The
educational structure must contribute to the intellectual unity of the nation in the basic experience, exercise and insights; and it must strongly support the establishment of a broad and common ground for the consciousness of this unity” (Deutscher Ausschuss für das Erziehungs- und Bildungwesen, 1959: 16). 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 standardization of German education. Most important of these is the aforementioned 1959 report which stated the reasons 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 a unified education that is common for all school types. This could not be achieved only by a binding outer structure through the organization of one educational establishment and one aptitude standard. (Deutscher Ausschuss für das Erziehungs- und Bildungwesen, 1959: 2)

In 1965, the German Educational Council (Deutscher Bildungsrat) was set up with similar advisory responsibilities as the earlier Special Committee on Education. From 1965 to 1975, it published 50 opinion reports and 18 recommendations, and the 1970 Structural Plan for the Educational System (Strukturplan für das Bildungswesen). Another nation-wide body in the field of education is the Council for the Sciences (Wissenschaftsrat) created by a state administrative treaty between the federal government and the Länder in 1957. Its aims were mainly advisory but its recommendations have been very influential. Its first 10-year report mentions the need to see education and upbringing from primary school to university as one complex whole, stresses the pressing need for uniformity, and outlines the work the Council has carried out to this end (Wissenschaftsrat, 1968). A public opinion survey in the 1960s showed widespread acceptance of the necessity for reforms in education—64 per cent of respondents declared unqualified support for the educational reforms proposed by the Council for Sciences (Noelle and Neumann, 1967: 358).

An important event within the context of German educational policy was Georg Picht’s 1964 article “The German Educational Catastrophe,” which brought the issue to the centre of public debate. It became one of the most influential arguments of the time and was widely quoted in policy circles. In this article Picht pointed to the problem of the so-called “school chaos” and the need for central planning, and was very direct about the solution: “We need a federal Ministry of Culture and a central administration of culture. Therefore, we need an amendment to the Basic Law” (first published in Christ und Welt; it also appears in Picht, 1964: 45) Picht also argued that, since the problem was immediate, the Länder should make
every effort to seek solutions until a constitutional amendment was made. 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 co-operating with one another and with the Bund in establishing a national education policy. The Picht article and the so-called school chaos were debated in many public hearings. The political response came from the ranks of the Länder as they introduced numerous initiatives for further standardization. For example, a member of the Baden-Württemberg Ministry of Culture made the following comments concerning the April 1964 Baden-Württemberg Law for the Standardization and Ordering of the School System: “[The Law] should not only give a firm and durable foundation to the school system of the Land, but also contribute to achieve the unity of school systems in the Länder of the Federal Republic” (Hochstetter, 1972: 13). Baden-Württemberg is one of the most powerful German Länder, with sufficient resources to take independent action, but instead of protecting its exclusive jurisdictions from outside encroachment, it, too, enthusiastically participated in the building of a nation-wide educational policy.

In 1959, the Länder and the Bund had signed the Königsten state agreement on scientific research which effectively brought the Bund into the exclusive Länder jurisdiction on education. The federal Ministry for Scientific Research was created in 1962; this was followed by agreements in 1964 and 1968 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 Bund-Länder responsibility. The grand coalition of the Christian Democrat Union (CDU)/Christian Social Union (CSU)-Social Democratic Party (SPD) had already proposed bringing educational planning under joint Bund-Länder responsibility. However, this was opposed by the Free Democratic Party (FDP), not because the constitutionally entrenched competences of the Länder were violated, but because the reforms were not going far enough. The FDP opposition, in fact, attacked the joint responsibility proposal as a “small solution” (kleine Lösung) to the issue of education:

Our criticism is directed at the fact that the Bund is not given sufficient competences for an urgently needed reform in the educational system which would allow our youth to have a secure future in international competition and, thereby, remove a trouble from our state. (Quoted from the speech of FDP representative Mishnik at the Bundesrat, see Poeppelt, 1978: 76)

A public opinion poll from 1972 revealed 50 per cent support for a constitutional amendment that would give the federal government full authority over the school system and education, while 34 per cent of the respondents declared they were in favour of Bund-Länder co-operation that would bring a solution to the questions of educational policy (Noelle and Neumann, 1974: 171). The proposal for a constitutional amendment
on joint responsibility and the positive public reaction to co-operation in education eventually opened up the gates for direct Bund involvement. 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 transformed into the 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 seen as an offensive pre-emption since the constitutional amendments had brought the federal government into the field of education and the Länder welcomed a national body to co-ordinate 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 joint educational planning, the debate on constitutional competencies in the educational system will lose considerable significance if the Federal Government and the Länder can agree on an educational reform which guarantees the individual the right to learning and teaching and which ensures society a productive and efficient educational system; the flexibility of federalism will reveal itself, in the end, as a force for the good. (Report of the Federal Government on Education, 1970: 5)

Notably, the above introduction to the 1970 Education Report of the Ministry of Education and Science is subtitled “Educational Policy as an All-State Task.” It is noteworthy that Hans Leussink was the former chairman of the Council for the Sciences and had no party affiliation. This non-partisan choice demonstrated the importance given to a national education. The new ministry was not only the culmination of the process towards centralization, but it actively pursued further integration. In the following passage from the 1970 Report, the authors appeared 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. (Report of the Federal Government on Education, 1970: 224)

In 1970, the Bund-Länder Commission on Educational Reform and Advancement of Research (Bund-Länder-Kommission für Bildungsplanung und Forschungsförderung-[BLK]) was created. In many ways the aims of this new body were similar to those of the Standing Conference of KMK, but there was one important difference. BLK was not set up by the Länder to co-ordinate educational policies but it included the federal government as a partner. Arthur Gunlicks describes the position of the Commission as follows: “Generally, there seemed to be a consensus...all parties seemed to agree on a need to co-ordinate Land policies. In addition,
the federal government seemed to believe that it had a responsibility to create greater uniformity of opportunities and living conditions across the nation” (1989: 9). In a speech to 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! [sic] The creation of the Bund-Länder Commission is an event of great political significance and hopefully it is the beginning of a new era in the development of the educational policy of our country. (Quoted in Poeppelt, 1978: 3-4)

Drafting a unified university education system through BLK was aided by the 1972 decision of the federal Constitutional Court that a nationwide approach to student placement was necessary: “It is the joint responsibility of the Bund and the 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” (Bundesverfassungsgericht; 1972: 304) Within this context BLK introduced many innovations for bilateral Bund-Land relations for higher education, publishing almost 2,000 proposals in 20 years and carrying out countless pilot schemes in various areas of the educational system. Regardless of the failure of its ambitious 1973 Comprehensive Education Plan (Bildungsgesamtplan), measures introduced by BLK helped establish nationalization of education.

In 1970, a working group was created by Chancellor Willy Brandt and Länder minister-presidents to draft a uniform policy on education and training, whose recommendations 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 and there appeared to be widespread support for the initiative (Denninger and Becker et al., 1984: v). The outstanding question, however, was the constitutional clause that still placed education under the exclusive jurisdiction of the Länder.”5 German frustration with the institutional parameters of the federal system bequeathed by the Allies is probably best exemplified by Helga Schuhardt’s (FDP) calls for more federal involvement: “The discrepancy between factual necessity and constitutional possibility in the reorganization of education is simply unbearable” (1978: 124).

Within the context of this debate, the federal government released its controversial report on the structural problems of education 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 Germany, and recommended 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 nationwide educational system left Germans at a disadvantage:

Those first in line to be affected from [educational policy] decisions—pupils, trainees, students, parents and teachers—rightfully expect that in a federal state, as a prerequisite for the freedom of movement, mobility and equality of opportunity in the educational and occupational system, a minimum degree of necessary uniformity in the educational system should also be guaranteed. (Der Bundesminister für Bildung und Wissenschaft, 1978: 5)

According to the report, the close relationship between the school system and industry in Germany made a nationwide comprehensive educational policy necessary. It argued that a constitutional amendment to introduce federal competence would lead to a better balance between the occupational and educational systems, and that the differences among the educational systems of the Länder hindered efficient education 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 to allow the “necessary uniformity of the educational system.”

A year before German reunification, the Standing Conference of KMK carried out another round of reforms, but the German public was still not satisfied. In the meantime, unanticipated changes within the communist bloc made German reunification a possibility in 1989. The subsequent process of reunification in 1990, particularly in the area of education, is 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. This was yet another violation of the spirit of the constitution, but conveniently everyone chose to ignore an Allied-imposed constitutional clause that seemed to create unnecessary and inefficient diversity. The following point is an example of the sentiment which associates educational diversity with inefficiency: “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” (Baumert and Goldschmidt, 1980: 1046).

In fact, the process of standardizing East German education with that of the West preceded official reunification. The Standing Conference of KMK had its 251st plenary meeting on December 6 and 7, 1990, with representatives of all Länder present, including the five new East German Länder. The following year, on February 21 and 22, KMK had its 252nd plenary meeting at Stuttgart-Hohenheim where the first KMK meeting had been held in 1948. Symbolically, this meeting also produced a Stuttgart-Hohenheim Memorandum on Education, Science, and Cultural Issues in Reunified Germany to commemorate the first meeting that had produced
the first Stuttgart-Hohenheim Memorandum in 1948 (*Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland*, 1995). KMK followed the new Hohenheim Memorandum with an extensive process of reorganization of East German education, while the new Länder also became members of BLK. During July 1990, the Council of the Sciences evaluated the higher education and research organizations of East Germany and made suggestions as the new Länder joined as members. Following the recommendations, the educational structures of the East German Länder were changed in order to correspond to the standardized national educational system in the West. It is interesting to note that this was done while the East German Länder were also being granted the principle of cultural sovereignty, that is, the right of legal supremacy over their educational systems, under Article 30 of the *Basic Law*.

Since reunification, educational federalism and Länder cultural sovereignty have rarely become controversial issues and all actors involved seem to share a belief in the necessity of a nationwide educational system. The importance attributed to education, especially to universities and other higher education institutions, seems to have pushed 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 higher education are therefore of considerable importance for the overall state (*Gesamtstaat*). (Mönikes and Farber et al., 1997: 9)

Länder pressures for further reforms and standardization continued. A similar initiative to Baden-Württemberg’s activism in bringing about nationwide uniformity in German education was undertaken by another powerful German Land, North Rhine-Westphalia. A report commissioned by the minister-president of North Rhine-Westphalia (and later president of the Federal Republic), Johannes Rau, renewed calls for the reform of education. This 1995 report entitled “Future of Education—Schools of the Future” dealt with the common themes of harmonization and efficiency in German national education (*Ministerpräsidenten des Landes Nordrhein-Westfalen/Bildungskommission Nordrhein-Westfalen*, 1995).

For students of comparative federalism, it is interesting to note that despite exclusive provincial jurisdiction in cultural affairs, the “nationalization” of education has been a fairly smooth process. Literature on educational policy in Germany and official documents do not include attempts to defend nationwide action. In fact, all political actors seem to believe in the necessity of nationwide educational policies, but differ over the con-
tent. German decision makers, educators and academics seldom feel obliged to give reasons for educational standardization; an all-German educational policy is seen as a natural response to national concerns. Writing for a non-German audience, Hellmut Becker displayed a rare attempt to justify the nationalization 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 organized on a supra-regional basis. (1978: 276)

A 1994 report by the Max Planck Institute for Education Research interpreted the pattern of constitutional changes in education through a similar perspective: “These constitutional amendments symbolize, in a certain way, the provisional conclusion of a process which started from the principle of cultural sovereignty of the Länder in the 1950s to our present system of co-operative cultural federalism” (Baumert and Benkmann et al., 1994: 81). This approach was shared by German political parties as well. A well-known scholar of German education, Christoph Führ, summed up the prevailing attitudes towards the nationalization of education in the following terms: “The leading political powers of all the big parties were convinced that the uniformity and comprehensibility of educational systems should be stronger than before, and that the Bund should be given participatory rights in educational policy” (Führ, 1996: 38).

An overview of political party positions demonstrates that there were indeed important differences concerning the contents of educational policy, yet all parties shared a nationwide approach to tackling the educational issues they deem necessary. For example, a CDU report on education from 1993 summarized that party’s position in the following terms:

Federalism and the cultural sovereignty of the Länder is the indispensable premise for a 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 to ensure even levels in the results of different operations of education…. School results are the steps and marking stones on the path towards uniformity. Therefore, all perspectives on the results and demands for all Germany should be in harmony. (Christlich-Demokratische Union, 1993: 484)

The SPD differs from the Christian union parties on the contents of educational policy, and specifically objects to the three-tiered traditional educational system that divides students into separate streams of secondary education based on their grades. But at the same time, SPD believes in a nationwide approach to use education as a tool for social emancipation (Sozialdemokratische Partei Deutschlands, 1993). The political party most committed to a nationwide uniform educational system is the FDP. As early as 1950, FDP declared its views on educational federalism: “To pre-
pare the unity of the educational system for the future state territory, the individual Länder should adjust their available organizational structures with one another for a uniform federal regulation” (from the FDP 1950 Basic Points on Cultural Policy, quoted in Poeppelt, 1978: 41). Forty years later the views of FDP had hardly changed:

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 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. (Frei Demokratische Partei, 1993: 501)

Support for nationwide policies is not confined to the political parties, but spans across the whole of Germany. Empirical research covering 50 years of educational policy in the Federal Republic of Germany found no challenge to the perceived need for a nationwide education in Germany, including the Länder, political parties, teacher unions, parent associations, industry and trade unions. It has to be reiterated, however, that there were many disagreements concerning the contents of an all-German policy.

Conclusion

As the above analysis demonstrates, German educational policy increasingly acquired a national character, despite explicit constitutional clauses that placed education under exclusive Länder jurisdiction. This process started with the harmonization and standardization of Länder education policies as a response to a unified German social structure that did not follow the Länder provincial demarcations. An institutionalist logic would suggest that once in place, institutions would have socialized 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. The Basic Law and the accompanying decentralized federal system failed to create a German “federal society.” Co-operation among the Länder eventually led to the involvement of the federal government in educational policy, thereby transforming substate educational policy into a national one. At the same time, limits to centralization were set by Article 79(iii) of the Basic Law which stipulates that the federal character of the German Republic cannot be altered. As a result, the German Länder, the federal government and German political parties found means to bypass this clause.

Notes

1 The gradual devolution of educational policy to constituent francophone and Flemish communities has been a pattern in the consecutive state reforms which federalized Belgium. For further information on Belgian educational policy, see OESE (Doorlichting

2 Similar patterns of sub-state collaboration towards standardized national policies can be found in other federations with non-federal societies such as Australia and Austria. Similar uniformity is almost impossible in countries such as Switzerland, Belgium, Spain and Canada, which have federal societies in the form of territorially based ethno-linguistic diversity.

3 “Co-operative federalism” was first introduced in the report of the Troeger Com-mission, set up by the Federal and Länder governments to propose reforms to the financial structure of the federal system. The chair of the Commission, Troeger, was the former finance minister of the Land Hesse and the vice-president of the Bundesbank at the time. The recommendations of the Commission for joint Bund-Länder tasks were adopted by the Christian Democrat-Social Democrat grand coalition in 1966.

4 The Basic Law originally established a separate financial system (Trennsystem) for individual Länder and the Bund through Article 109(1). Starting with the 1955 reforms, however, this system of separate finances was gradually replaced by a mixed system (Mischsystem) of financial equalization. Accordingly, income, corporate and value added taxes were shared horizontally among the Länder, and vertically between the Länder and the Bund, in a way that channeled resources to poorer Länder. For further information on financial equalization, see Mackenstein and Jeffery, 1999; Voigt, 1989; Exler, 1992; Färber, 1992).

5 An article titled “Planning of Higher Education and the Basic Law” from that period provides an example of how explicit the discussion on bypassing the Basic Law had become. Ulrich Karpen discusses the need to change the institutional structure in order to bring about nationwide educational policies, but he is also aware of the constitutional limits to such reforms, especially the constitutional clause on the federal character of the German State, which cannot be amended: “How far could centralization, unitarization, and coordination really be further pursued without violating Article 79(iii) of the Basic Law which establishes an absolute guarantee for the federal state?” (Karpen, 1976: 25).

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