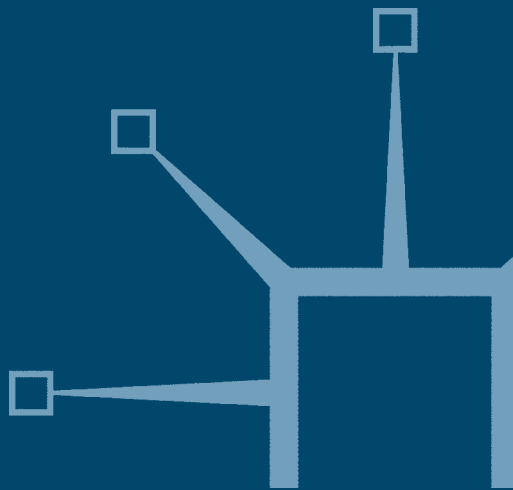


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Federalism and Regionalism in Western Europe

A Comparative and Thematic Analysis

Wilfried Swenden



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This book has its roots in 2000, when I took up a job as a post-doctoral fellow at the University of Leuven in Belgium. As part of the job I was given the opportunity to teach a course on comparative federalism and regionalism in the University's Master in European Politics and Policy programme. Because of the content of the programme, the course had to focus on federalism and regionalism in Western Europe. It struck me that despite the wealth of books and articles on comparative federalism, few authors have put on the lenses of the *comparative federalist* for systematically comparing the federal or regionalized countries of Western Europe. Nonetheless, the need for such an analysis exists. In recent years the regional tiers of countries like Belgium and Spain have increased substantially in power. Furthermore, a long-standing federation such as Germany has been contemplating a profound reform of its federal structure. Many studies have looked at the interplay between the EU (European) and regional dimensions. However, it still makes sense to write a monograph which takes the *domestic* interplay between the centre and the regions as the main focus of its analysis, without losing sight of the constraints and opportunities that the EU raises for the proliferation of regional autonomy.

Teaching was the incentive for writing this book, but to deliver on the promise I needed time to write and a good library to consult the relevant material. I was fortunate to spend the academic year 2002–3 as a visiting scholar at the Minda de Gunzberg Centre for European Studies at Harvard University. Finding sources was not normally a problem there (in fact being sufficiently selective was the more difficult task). I should thank the Centre for its hospitality and the Flemish Fund of Scientific Research for supporting my stay in Cambridge/Boston. Most of this book was written in 2004, when I returned to Belgium. In the later part of that year I moved to Scotland to take up a position as a lecturer in Politics at the University of Edinburgh. In this sense, the federal environments of the USA and Belgium and the proximity of the Scottish Parliament worked as continuous stimuli to get on with the job.

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I dedicate this book to those who I left behind in Belgium, in particular to my father Robert Swenden and to my two 'godchildren' Josefin and Nelson who see rather less of their '*nonkel* (uncle) *Fried*' than they deserve.

Edinburgh
15 August 2005

Abbreviations

AC	Autonomous Community
ACC	Austrian Constitutional Court
ARD	Average Regional Deviation
BBC	British Broadcasting Corporation
BCC	Belgian Constitutional Court
BCR	Brussels Capital Region
BEL	Belgium
BNG	Blocque Nacionalista Galego
CDC	Convergència Democràtica de Catalunya
CDU	Christlich-Demokratische Union
CIRES	Centro de Estudios de la Realidad Social
CIS	Centro de Investigaciones Sociológicas
CiU	Convergència i Unió
COCOF	Commission communautaire française
CSU	Christlich-Soziale Union
EA	Eusko Alkartasuna
ECJ	European Court of Justice
ECMI	European Centre for Minority Issues
EEA	European Economic Area
EH	Euskal Herritarrok
EMU	Economic and Monetary Union
ERC	Esquerra Republicana de Catalunya
ERR	Equal Regional Representation
ESF	European Structural Funds
ESP	Spain
ESRC	Economic and Social Research Council
ETA	Euskadi ta Askatasuna (Basque Homeland and Freedom)
EZFF	Europäisches Zentrum für Föderalismusforschung
FCI	Fondo de Compensación Interterritorial (Inter-regional Compensation Fund)
FDF	Front Démocratique des Francophones
FDP	Freie Demokratische Partei
FDT	Federal Direct Taxes
FPÖ	Freiheitliche Partei Österreichs
GCC	German Constitutional Court (Bundesverfassungsgericht)
GDR	German Democratic Republic
GER	Germany
GNI	Gross National Income

GSA	Government of Scotland Act
GWA	Government of Wales Act
HB	Herri Batasuna
IGR	Intergovernmental Relations
ISPO	Institute of Social and Political Opinion Research
JMC	Joint Ministerial Committee
KMK	<i>Kultusministerkonferenz</i>
LOAPA	<i>Ley Orgánica para la Armonización del Proceso Autonómico</i> (Organic Law for the Harmonization of the Autonomy Process)
LOFCA	Ley Orgánica de Financiación de las Comunidades Autónomas (Organic Law on the Financing of the Autonomous Communities)
MEU	monetary and economic union (Belgium)
MLG	Multilevel Governance
MP	Member of Parliament
MSP	Member of the Scottish Parliament
NVA	Nieuwe Vlaamse Alliantie
OECD	Organisation for Economic Co-operation and Development
ÖST	Austria
ÖVP	Österreichische Volkspartei
PDS	Partei des Demokratischen Sozialismus
PIE	Participación en Ingresos del Estado
PIT	Personal Income Tax
PM	Prime Minister
PNV	Partido Nacionalista Vasco
PP	Partido Popular
PR	Proportional Representation
PRR	Proportional Regional Representation
PSC	Partit dels Socialistes de Catalunya
PSE	Partido Socialiste de Euskadi
PSOE	Partido Socialista Obrero Español
QMV	Qualified Majority Voting
RDI	Regional Deviation Index
SC	Swiss Constitution
SCB	Scottish Candidates' Board
SCC	Spanish Constitutional Court
SML	Special Majority Law (Belgium)
SML-CA	Special Majority Law on the Organization and Functioning of the Court of Arbitration
SPD	Sozialdemokratische Partei Deutschlands
SPÖ	Sozialistische Partei Österreichs
SSAS	Scottish Social Attitudes Survey
SUI	Switzerland
SVP	Südtiroler Volkspartei
SWP	State-wide Parties

UCD	Unión de Centro Democrático
UK	United Kingdom
VAT	Value Added Tax
VB	Vlaams Blok/Vlaams Belang
VFI	vertical fiscal imbalance
WRR	Weighted Regional Representation

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Introduction

Federalism and regionalism in Western Europe

Federalism and regionalism are on the rise. Three major developments have sparked a growing interest in federal and regional arrangements.

First, the dominant economic ideology in the Western world emphasizes the virtues of a competitive, deregulatory and decentralized economic framework. Until the 1970s, the prevailing economic discourse stressed the need for a strong centre, capable of redistributing and collecting considerable sources of income. Keynesian 'demand-side' economic policies were suggested in the event of an economic downturn. In the last three decades, Keynesian philosophies have lost much of their appeal. In long-standing federations, such as the USA and Australia, monetary economists have propagated 'market-preserving' philosophies instead (Weingast 1995). Monetary economists argue that decentralized fiscal policies provide stronger market signals and strengthen the accountability of public policies.

Second, in Central and Eastern Europe, but also in Asia, the collapse of authoritarian single party regimes unleashed long-suppressed feelings of minority nationalism. In a number of these now fledgling democracies, for example, Russia, Bosnia-Herzegovina and Indonesia, a federal structure has been perceived as a necessary institutional device for preserving the integrity of the state (Kymlicka 2001). The emergence of these 'holding-together federations' (Linz and Stepan 1996) has called for a reassessment of comparative federal studies. The latter were frequently concerned with federations of the 'coming-together type' of which the USA has served as the most prominent example (Stepan 2001). The rise of new federal state structures pressed comparative researchers to reassess the relevance of the traditional federations such as the USA, and Switzerland as the yardstick against which emerging federal states should be measured.

Third, perhaps nowhere else has federalism become a more hotly debated topic than in Europe. The process of European integration gave birth to a political and economic structure which cannot be typified as a state, but by

now has outgrown the status of a classic international organization. The proposals for a European constitutional treaty and the pooling of sovereignty in state-sensitive areas such as monetary policy, transnational justice and policing warrant the study of the European Union (EU) as a federal 'arrangement'. Comparisons with full-fledged federations are no longer the province of 'EU-topians' (Nicolaidis and Howse 2002) but have crept into the research agenda of comparativists who do not necessarily share the conviction that Europe *should* be governed as a federation (Hix 1999; Hooghe and Marks 2001; Nicolaidis and Howse 2001; McKay 2001; Kelemen 2000, 2004; Swenden 2004a; Delaney and Smith 2005). Yet, unlike the predictions of some, the process of European integration has not rendered the significance of regionalist or national peculiarities obsolete. Although transborder communication and trade may have weakened the state as the sole or strongest framework of reference for territorial identification, in some EU member-states loyalties did not necessarily shift to the European arena. Instead, for minority nationalities in Spain (Catalonia, Basque Country, Galicia), Belgium (Flanders and Wallonia) or the UK (Scotland and Wales) the weakening of the state provided an opportunity structure in which their regional identities could be strengthened and a call for larger autonomy within the state could be phrased. The processes of globalization and Europeanization as well as the resurgence of the regional level in the EU and elsewhere express two sides of the same coin (aptly expressed by the term *glocalization*).

This book seeks to provide a taxonomy and analysis of central-regional interaction patterns in a number of Western European federal or regionalized states (a more detailed description of what is meant by federal and regionalized states is provided in Chapter 1). It is meant to serve as a useful synthesis for scholars who engage with federalism or regionalism on a regular basis, but also as a book that is sufficiently comprehensive for upper-level undergraduate or postgraduate students in the social sciences. The focus of this study is limited in two respects.

First, the book does not explicitly consider the impact of 'Europeanization' on the multilayered structure of a number of West European (EU member-) states. The international movement of capital and services and the process of Europeanization (the policies and politics of the EU) affect the position of all West European regions. They even influence the politics of regions which are not located in EU member-states, such as the Swiss cantons. In recent years, the positioning of the regions in the international and European arenas has already been studied extensively by scholars of EU integration and comparative regional studies (in particular Jeffery 1997, 2000; Hooghe 1996; Hooghe and Marks 2001; Börzel 2002; Bourne 2003). This book focuses on the *domestic* pattern of intergovernmental relations instead. This is not to deny the opportunities – as well as the (regulatory) constraints – which European integration raises for the proliferation of regional autonomy *within* the EU member-states. Yet, in contrast with the impact of EU integration on

the national and regional levels, a systematic overview of central-regional dynamics in Western Europe through the lenses of comparative federalism and regionalism is still largely missing (for exceptions, see Keating 1998a, 2001; Loughlin 2001). This book seeks to fill this gap. A study of the comparative role which the *Länder*, Communities, Regions (which hereafter I shall generally refer to as *regions*) in the *domestic* intergovernmental framework are playing is still useful. Even today, the *central* and regional governments of the states that form part of this study retain substantial legislative and fiscal clout. For instance, the tax-raising and spending capacity of the central and regional governments by far exceeds the comparable capacity of the EU, and the same applies to the size of the administrative apparatus which these governments typically control.

Second, in this study I do not focus on all West European states with an important regional or decentralized component of government. It does provide a thematic comparison of four federal (Austria, Belgium, Germany and Switzerland) and two *quasi*-federal states (Spain and the United Kingdom). With the exception of Switzerland, these are all member-states of the EU. By selecting, Austria, Belgium, Germany and Switzerland I withhold four West European states with strongly developed regional tiers of government. The group of selected states comprises a number of mononational (Austria, Germany but also Switzerland) and multinational states (Belgium and Spain, and more recently also the UK). Critics may argue that this group-variance (the multinational vs. the mononational) does not justify their inclusion into one comparative framework. However, although intergovernmental relations in multinational federations may be more conflict laden, some of the concerns which mono- and multinational federations must deal with are similar. Despite the specificity of certain issues that must be dealt with in a multinational federation (e.g. problems related to multilingualism, minority nationalism reflected by the presence of ethnoregionalist parties), both types of federal states must decide on how to divide competencies or to distribute fiscal resources. Multinationalism may be an important variable for explaining why the process of decision-making and its outcomes are different, but many of the issues themselves are similar.

With regard to the selection of case studies, the inclusion of Austria, Belgium, Germany and Switzerland as 'federal' countries is obvious (although Austria and Belgium do not possess all the characteristics that we will attribute to a federal state). In contrast, finding the cut-off point between what is a quasi-federal, 'regionalized' or a devolved state on the one hand and a (unitary) 'decentralized' state on the other is more difficult. For reasons that are described in somewhat greater detail in Chapter 1, I excluded France and Italy from the analysis. In contrast, I opted to include the UK as a case study. Although the regionalization of the UK is of more recent vintage (1997) and is limited in territorial scope (Scotland, Wales and Northern Ireland), the relevance of devolved competencies (particularly

with regard to Scotland) is high. Of the regions in the UK, I primarily focused on Scotland and almost completely dropped the Northern Irish case. This is a consequence of the specific character of devolution in Northern Ireland and – in particular – the manifold suspension of devolution there since its first implementation in 1999.

Structure of the book

The purpose of this book is to sketch a ‘comparative and thematic analysis’ of federalism and regionalism in Western Europe. Therefore, each of the following chapters will focus on one specific theme or aspect and treat it from a comparative angle. Depending on the theme that will be discussed, the attention may shift to one or a particular group of cases (regions, states).

In Chapter 1 I will seek to bring some conceptual clarity in the terms of federalism, federation, confederation and the more recently developed ‘framework’ of multilevel governance (MLG). I will also clarify what I mean by ‘a regionalized state’ and how it can be distinguished from other forms of decentralization. I do not aspire to exhaust all existing definitions of federalism, but will seek to provide a working definition, which in my view retains the most frequently found aspects of the most frequently cited definitions. Readers should then know what the adjectives federal, regional or regionalized mean when they reemerge in the various chapters of the book.

In Chapter 2, I first focus on the origins of the federal or regionalized states. Why some states are federal and others regionalized. Why some states were governed as unitary decentralized states before they became regionalized or federal and what triggered that change. What the historic or ‘artificial’ roots of the regions in the states that are part of this comparative study are. I will challenge the assumption that federations are formed only to ensure their protection from an external aggressor or to engage in territorial aggrandizement (Riker 1964, 1975).

In Chapter 3, I take a closer look at how federal or central constitutions spell out federal and/or regional competencies. A first section analyses the mechanisms of distributing competencies between the centre and the regions and their consequences for the required level of cooperation between the centre and the regions. Two dimensions are considered. First, the extent to which the distribution of *legislative* competencies between the centre and the regions already builds in a strong need to central-regional cooperation. Second, the extent to which *legislative* and *implementing* authority in identical policy fields attributed to different or identical levels of government. A second section refers to asymmetric federalism. In particular, the regions of multinational states do not all receive the same degree of autonomy. The third and final section looks at the modes in which the constitutional rules dividing central and/or regional competences can be

amended. Changing these rules can be the result of explicit constitutional change or of judicial review by a constitutional court.

The fourth chapter analyses the political economy of federalism and the theory and practice of fiscal federalism. I seek to discern patterns of commonality and differentiation in the assignment of major macroeconomic functions (stabilization, redistributive, allocation) between the centre and the regions. For each of our cases, I identify the degree of regional tax-raising and spending autonomy. When regions are dependent from central tax revenues for funding a large share of their expenditure programmes but are involved in deciding on the structure of these taxes at the central level, cooperation is inevitably higher than when both levels are fiscally self-reliant. The chapter also reviews and compares mechanisms of fiscal equalization, the contribution of the regions therein and the conditionality of central grants.

The fifth chapter discusses the relationship between federalism and the party system. Can we measure the decentralization of a federal arrangement by measuring the decentralization of political parties, as Riker asserts (Riker 1964, 1975). If so, then we expect a strong correlation between the structure of the party system, the territorial organization of the parties and the overall territorial structure of the state (Riker 1964, 1975). The chapter maps the regional variations in the party system, discusses the organizational character of the non-state-wide parties as well as the interaction process between state-wide and non-state-wide parties in the pre- and postelectoral arenas.

Chapter 6 turns to intergovernmental relations and public policy-making. It first discusses and compares the channels of interaction between the central and regional levels of government. Arguably, we expect to find more of such channels in federal or regionalized states with a strongly cooperative design. Using an actor-centered approach to federalism, we then analyse how these mechanisms can prevent or facilitate policy change. A final section of the chapter briefly elaborates on the scope for and presence of policy differentiation between the regions of the state.

The last, and in some respects, most 'spicy' chapter looks at the potential contribution of federalism or devolution for holding together the nature of our cases. I analyse under what conditions a federal arrangement can contribute to appease multiethnic tensions, but also when it is not likely to help much. The chapter discusses the merits of federalism or devolution for forging 'dual identities'. The chapter briefly reviews some alternative mechanisms of conflict management, that is, consociationalism and electoral engineering. The chapter makes clear that, in some cases, several of these mechanisms may coincide. Hence, the contribution of federalism to conflict management cannot be studied in isolation from these complementary approaches to conflict resolution.

1

Comparative Federalism and Regionalism in Western Europe: a Conceptual Overview

1. Federalism and federation

A comparative study on federalism and regionalism in Western Europe cannot bypass the thorny issue of defining both terms. I shall take it as the starting point of my analysis. As is the case for many general political concepts such as democracy, globalization, or legitimacy, scholars have attributed different meanings to federalism and regionalism. In this chapter, I do not seek to impose my own definition, but shall look for a common denominator derived from a set of several authoritative definitions. Subsequently I will seek to apply them in a consistent way throughout this book so that readers have no doubt as to what is meant whenever 'federal' or 'regionalized' are used as adjectives. I shall also clarify in what sense federalism and federation are different from 'multilevel governance', and how federal (as an adjective) is used differently here from its use by an influential group of (political) economists in their comparative studies of fiscal federalism.

Federalism, unlike federation, is in the first place an ideological or normative concept. It reflects a way of living which combines a degree of 'self' and 'shared' rule (Elazar 1987: 5). Defined in such broad terms, many attributes of political life, even daily life, can be considered as *federal* (King 1982: 20). Political systems in which citizens share in the governance of a common system, but retain a certain degree of autonomy within any type of subsystem are federal. Federalism reflects 'unity in diversity' and as such it has been used as a *desirable* principle of *governance* for many political systems, including the EU (Burgess 2000).

Defined accordingly, federalism is a very broad concept with a strong normative connotation but also with a very limited *analytical* value. It is difficult to conceive of any contemporary *democracy* which does not engrain some sort of federalism. Two examples make this clear. For instance, the Scandinavian countries with their strongly developed local tiers of government should qualify as federal. Or consider the following example. In his early writings the Dutch-American political scientist Arend Lijphart

developed the concept of *consociationalism*. Consociationalism describes a mode of governance that has enabled plural societies to survive, despite the presence of deep-seated linguistic, ethnic or religious cleavages (Lijphart 1968). In Lijphart's view the survival of consociational democracies, such as Belgium, the Netherlands and Switzerland, rested upon a number of institutional attributes. In general, they combined a form of *power-sharing* between representatives of the significant segments (religions, ethnicities, language groups) which compound the state with a form of *segmental autonomy*. Hence, each of the segments has some freedom to take certain decisions without interference from the others. The 'Good Friday Agreement', which created a post-devolution institutional settlement for Northern Ireland, is one of the most recent examples of a similar power-sharing consociational settlement. Yet, if federalism is simply defined as a combination of self-rule and shared-rule then all consociational regimes should be perceived as *federal* as they institutionalize a combination of both principles. Most scholars of comparative politics would disagree with such an observation – including Arend Lijphart (Lijphart 1979). In Chapter 7, I will indeed clarify that not all federal states are consociational, just as not all consociational regimes are federal. Consociational regimes can be unitary (at some point in their history, the Netherlands or South Africa were consociational); federal regimes may not be consociational (for instance, the USA federation).

When thinking of a federal state, comparativists usually keep specific institutional attributes in mind. These are generally missing from a normative interpretative framework of federalism. To sharpen the analytical value of our comparative analysis, from this point forward, I shall use the adjective 'federal' to refer to a *set of institutional characteristics* which turn a state into a *federation*. Hence, when speaking of a federal centre, or a federal state, I mean that the center has all the attributes of a centre in a federation, or more generally that the state has all the attributes that would comply with the features of a federation. But the problem does not stop here. Scholars of comparative federalism disagree on the institutional requirements of a federation. Let me review some of the authoritative definitions.

In his influential book on federalism, Daniel J. Elazar defines a federation as a 'a polity compounded of strong constituent entities and a strong general government, each possessing powers delegated to it by the people and empowered to deal directly with the citizenry in the exercise of those powers' (Elazar 1987: 7). Elazar's definition implies that, in a federation, the federal and regional levels of government should have a *direct* link with the people. Consequently, representatives at the regional levels can act without the authorization of representatives at the federal level or vice versa. Conversely, representatives in the federal echelon can take binding decisions for which they do not require the approval of the regions first. However, Elazar's definition does not clarify whether or not the constituent entities must be territorial in character. He does not specify the minimum set of

powers which the constituent or general governments must possess to make them sufficiently 'strong'. All in all, a state should only comply with a limited number of requirements in order to qualify as federal. This helps to explain why of all the comparable scholars, Elazar identified the largest number of federations in the world.

The opposite is true for Kenneth C. Wheare whose *Federal Government* remains one of the most influential works on federalism to date, although nearly six decades have elapsed since its first publication (Wheare 1946). For Kenneth Wheare, a federation is a political system which applies the 'federal principle'. By the federal principle, he means 'the method of dividing powers so that the general and regional governments are each within a sphere co-ordinate and independent' (Wheare 1963: 10). Specifying the constituent governments as *regional* presupposes a clear spatial or *territorial* circumscription of these entities. At first sight, the federal principle is rather general in character too, but Kenneth Wheare interprets the requirement of coordinate and independent spheres of government in a rather strict and legalistic way. For instance, he concedes that the USA, which he identifies as the prototype of a modern federation did not fully embody the federal principle until 1913. This was so because, until then, US senators were (formally) not directly elected, but selected by the regional legislatures. Since *all* US central bills require the consent of the US Senate, the central government became partially dependent upon the consent of the regions in its entire law-making capacity. Consequently, in strict terms, a part of the national legislature could only operate through the state legislatures, and hence the criterion of central independence was not fully realized. Therefore, so Wheare acknowledges, the criterion for federal government can only be whether or not the federal principle is *dominant* in it.

In Wheare's view, the federal principle is dominant in the organization of the American, but also Swiss, Australian and even Canadian political systems, but it is too weak for considering Germany, Austria or India as federations. This is so because in Germany and Austria, the method of dividing powers results in a predominant role of the central government in law-making, but of the regional governments in administering, including a majority of the centrally approved bills. Thus, *powers* in both countries are mostly *shared* between both levels of government instead of separated. By separating law-making from implementation, a division of *functions* rather than a division of *powers* is realized. This specific method of carving out different functions for both levels of government 'programmes' the centre and the regions to intensive cooperation. It creates a form of *functional* or *administrative* federalism (*Vollzugsföderalismus*) which violates Wheare's understanding of the *independence* requirement. Indeed, Germany (and to a lesser extent also Austria and Switzerland) have been defined as '*joint decision* federations' (Scharpf 1994). The functional method of dividing functions produces the opposite effect in these states: federal-regional *interdependence*.

Kenneth Wheare is not alone in dismissing the federal character of Germany. Prominent German political scientists such as Heidrun Abromeit and Klaus Von Beyme share his conviction, but on different grounds (Abromeit 1992; Von Beyme 1984). Echoing his argument for not considering the US as fully federal prior to 1913, Kenneth Wheare considered the composition of the German second chamber (Bundesrat or Federal Council) by members of the *regional* governments as an even stronger impediment to the independence of the *federal* government (Wheare 1963: 26). Whether or not the members of the German second chamber have actually used their influence to advance regional interests in central law-making is of secondary importance to him. By comparison, in the view of Abromeit and Von Beyme, not the composition of the second chamber as such is the problem, but rather its 'political use'. They argue that for regional executive leaders with a seat in the second chamber, *regional administrative* interests have been made subordinate to *federal party* interests. As a result the second chamber has turned into an important vehicle of federal government support (if the political majorities are congruent in the central lower and upper chambers) or obstruction (whenever the political majorities are incongruent). As a result, Germany should be understood as a 'concealed unitary state' (Abromeit) rather than as a *joint-decision* federation.

I dismiss Kenneth Wheare's opinion according to which states that follow the 'joint-decision' mode of dispersing public authority among central and regional governments cannot be considered as federations. Wheare's assessment derives from taking the method of dividing powers as envisaged in the US constitution as the foundation of his federal principle. By comparison, Heidrun Abromeit and Klaus Von Beyme derive their conclusions from observing the daily nature of German intergovernmental relations rather than of Germany's federal structure. A more indepth empirical analysis of German intergovernmental relations is needed to discuss the validity of their claims, a point to which I shall return in Chapter 6.

Daniel Elazar and Kenneth Wheare identify federations as political systems which provide a specific method of distributing powers between two tiers of government. They list the direct relationship of both tiers to their respective citizens as a further requirement of federation. However, both authors remain silent on several characteristics that featured more prominently in the analysis of other scholars. Ronald L. Watts's definition of a federation is a good case in point (Watts 1996; for an analysis that has much in common with Watts, see also Duchacek 1970: 207).

Roland L. Watts specifies as common structural features of a federal political system the presence of

- (1) *two orders* of government each acting *directly* on their citizens; (2) a formal *constitutional distribution* of legislative and executive authority and the allocation of revenue sources between the two orders of government

ensuring *some areas of genuine autonomy* for each order; (3) provision for the designated representatives of distinct *regional* views within the federal policy-making institutions, usually provided by the particular form of the federal second chamber [Following Watts and Smiley we call this a mechanism of *intra-state federalism*; Watts and Smiley 1985]; (4) *a supreme written constitution* not unilaterally amendable and requiring the consent of a significant proportion of the constituent units; (5) *an umpire* (in the forms of courts or provision for referendums) to rule on disputes between governments; (6) processes and institutions to *facilitate intergovernmental collaboration* for those areas where governmental responsibilities are shared or inevitably overlap. (Watts 1996: 7; italics added)

Roland Watts provides a more concrete definition of a federation, but he still leaves us with considerable room for interpretation. For instance, observers may disagree on which and how many 'legislative, executive and fiscal resources' each order of government should possess in order to have 'genuine' autonomy. Generally, I concur with Watts's list of characteristics, but they require qualification in three respects.

First, the entities that compound the lower order of government should be predominantly though not necessarily exclusively *territorial* in character. Territoriality is only implicitly implied by Watts's third characteristic. Adding it as a requirement allows us to distinguish federations from some of the consociational polities which allocate autonomy to minority groups such as religious or language communities who live dispersed throughout a territory (Lijphart 1979).

Second, the central and regional orders of government *should* have a *democratic* state structure. The federal and regional legislators must be directly elected in a free and open election process. Surprisingly, many scholars of federalism leave out democracy as a prerequisite of federation. Yet, the notion of 'self-rule' must imply that citizens ought to have a right to elect their public representatives in accordance with their individual political preferences. Consequently, differently coloured governments should be allowed to form at the federal level and in each of the regions. Therefore, the former Soviet Union, Czechoslovakia, Yugoslavia, the United Arab Emirates or contemporary Pakistan cannot be conceived as federations proper.

Third, federations do not normally allow for the *unilateral* secession of one or more subentities. If a constitution were to contain a secession clause, the secession of one region should be subject to the consent of the central government and a majority of the regions wishing to remain in the federation. In fact, only the constitution of the Soviet Union (SU) contained an explicit secession clause. Yet, the SU was not only a nonfederal entity, because it lacked the features of a democracy, but at the height of its powers the SU would have almost certainly used violence to stop such a unilateral secession from happening (Sunstein 1991). In some federations, the jurisprudence of

the Constitutional or Supreme Court made clear that the states or regions cannot secede unilaterally. For instance, after the end of the Civil War, the US Supreme Court proclaimed that the US constitution 'looks to an indestructible union, composed of indestructible states' (Wheare 1963: 86). More recently, in a highly controversial ruling, the Canadian Supreme Court ruled that Quebec has a right to secede, but only when that secession is a negotiated one, that is, only after it has secured the agreement of the central government and the other provinces (Thomson 1999). Although lacking all the attributes of a federation, the Spanish Constitutional Court would most likely consider a unilateral move of the Basque Country to secede from Spain as a clear violation of Article 2 of the Spanish constitution. When political pressure builds up, a centre may well be tempted to negotiate on the terms of secession. However, on paper at least, the centre is too weak when a centre faces a set of regions which have the option to leave the federation unilaterally.

If we apply the above criteria to the states of Western Europe we end up with three countries that are fully federal and three countries which comply with *most* of these criteria. The classification of Germany and Switzerland as federal is beyond doubt. Belgium is also a federation. True, the Belgian regions (regions and communities) are not directly involved in amending the federal constitution or in changing the rules that distribute competencies between the centre and the regions. Although the federal second chamber must give its consent to such changes, it is not an effective springboard of community and regional interests. However, constitutional amendments that alter the distribution of competencies between the centre and the regions must be taken with the consent of the two major language groups. Language groups strongly overlap with the two major Belgian communities (Flemish and French Community) and regions (Flemish and Walloon Regions). In this sense one can make a case that the major regions of the Belgian federation have a strong input in changing the structure of the Belgian federation. In contrast, Austria is not fully federal. For instance, the Austrian federal second chamber is relatively weak as is the input of the regions in central decisions that affect their interests. Similarly, the political systems of Spain and the UK possess several attributes of a federation, but also lack some. For instance, Spain does not have strongly institutionalized mechanisms of 'intra-state federalism'. The Spanish Senate does not really function as a territorial chamber and there are few formalized interministerial conferences that produce binding decisions on the central and regional governments. In the UK, Scotland, Wales (and Northern Ireland) suffer from a lack of guaranteed input in amending the central parliamentary acts which determine their levels of autonomy. The British devolution settlements are not enshrined in a constitutional document, but in parliamentary laws ('Acts') which *formally speaking* can be amended or repealed at the sole discretion of the central parliament. In the absence of a supreme written

constitution, there is no genuine constitutional court to watch over the compliance of Westminster and regional law with the central parliamentary Acts specifying devolution. Later, I will argue that a more flexible, less formalistic interpretation of these arrangements warrants the treatment of Spain and the UK within the family of federal or regionalized states in Western Europe. Table 1.1 lists all nine characteristics of a federation, and applies them to six West European countries.

Table 1.1 Standard characteristics of a federation applied to six West European States

	Belgium	Switzerland	Spain	Germany	Austria	UK
(1) Two orders of government, direct effect	√	√	√	√	√	Asymmetry (Sc, Wales, NI)
(2) Assignment of 'genuine autonomy' in constitutional way	√	√	√	√	√	Asymmetry no solid constitutional basis of devolution
(3) Intrastate federalism (second chamber)	Sufficiently powerful but weak territorial connection	√	Weak in powers and weak territorial connection	√	Weak in powers	Weak in powers and weak territorial connection
(4) Supreme written constitution only to be amended with consent of both orders of government	Supreme Constitution but no <i>explicit</i> involvement of regions in amendment	√	Weak regional input in amendment	√	Weak regional input in amendment	No supreme constitution, weak regional input in amending parliamentary acts
(5) Umpire	√	Supreme Court and the people	√	√	√	Privy Council but no real constitutional court
(6) Mechanisms for intergovernmental relations	√	√	Weak	√	√	√
(7) Territoriality	Dominant (Communities are partially based on personality principle)	√	√	√	√	√
(8) Democracy	√	√	√	√	√	√
(9) No unilateral secession	√	√	√	√	√	√

Note: √ indicates presence of characteristic(s) listed in the left column.

2. Confederalism, regionalism and regionalized states

Scholars of comparative federalism have distinguished between various forms of governance that may embody some elements of federalism, without resulting in the formation of a federation (unions, constitutionally decentralized unions, federacies, associated states, condominiums, leagues, joint functional authorities; see Elazar 1987: 38–64; and Watts 1996: 8–9 for examples). A full discussion of all these terms is not needed here, but the distinction between a federation and a *confederation*, on the one hand, and a federation and a *regionally devolved state* (or a *regionalized state*), on the other, is useful.

Compared with a federation, a confederation provides for a stronger position of the compounded entities. First, the entities that form a confederal arrangement retain their character as *sovereign states*. Second, in contrast with federal structures, confederations do not rule out the unilateral exit or secession of one or several of the federated entities. Third, confederal centres do not act directly upon the people, but prescribe the consent of the political institutions of the confederal entities first (for instance the member-state legislatures or their populations). Finally, decisions of the centre require the consent of *all* the states. Hence, the principle of unanimity fully applies (Croisat 1992).

It is sometimes argued that the EU provides a good contemporary example of a confederal structure. The member-states of the EU act as sovereign states and are recognized as such in international organizations such as the United Nations, NATO or the OECD. The EU operates on the basis of a collection of treaties, and in principle member-states could decide to leave the EU. Treaty amendments require the consent of all the member-states by procedures of their choice (parliamentary consent, referendum, etc.). In highly sensitive policy areas, such as foreign policy or taxation, EU decision-making still requires the consent of all. However, in other aspects the EU has already surpassed the status of a confederation. Most common policy decisions are now taken by Qualified Majority Voting in the Council. The doctrines of *supremacy* and *direct effect* of EU law were established relatively early on in the process of European integration. While EU primary and secondary legislation (treaties, directives or framework laws) require further action by the member-state parliaments, this is not the case for EU decisions (a different type of EU law).

The EU is not a federation, but it is already more than a confederation. Therefore, the best-known examples of confederal structures are historical: the Swiss confederation prior to 1789 and again between 1815 and 1845; the United Provinces of the Netherlands between 1579 and 1795; the German Bund between 1815 and 1866; and the USA from 1781 until 1789, arguably even until 1865, as the southern states did not fully embrace US statehood until the civil war had ended (see Forsyth 1981: 60–72). The long-term

viability of confederal structures can be questioned. The historic examples demonstrate that confederations are likely to fall apart (Austria–Germany), to develop into federal states (USA, Switzerland and Germany which emerged from the North German Bund) or even into unitary decentralized states (the Netherlands).

Confederal centres are weaker in relation to the member-states of a confederation than federal centres in relation to the regions of a federation. However, federal centres are weaker in relation to the regions of a federation than the centres of a *regionalized state* in relation to their regions. I will refer to regionalized states as states that exemplify some form of ‘regional devolution’ (Keating 1998a: 113). Regional devolution is the result of a process of ‘*regionalism*’, a term that is couched in even more ambiguous terms than federalism. Regionalism refers to a *process* which leads territorial subunits within or across existing sovereign states to increase their influence. That process may have a socioeconomic, political or cultural driving force or may be a combination of all these factors. As such regionalism is in part a bottom-up process, but the consent of the centre is needed to increase the levels of regional autonomy.

Ultimately, the centre may be willing to recognize a greater role for the regions if that can safeguard or expand its political support across the state. Strong forms of regionalism may produce a *regionalized state* (or transform the latter into a full-fledged federation). Regionalized states have strongly developed local or regional tiers of government with directly elected councils. Unlike the regions of a federation, the regions in a regionalized state remain subordinate to the central government. The centre can increase, decrease or even suspend or withdraw the regional levels of autonomy without requiring the consent of the regions. In addition the scope of the devolved powers (but in this regard Scotland is an exception) is not as extensive as is the case in a federation. Spain is such a regionalized state, and in most of the characteristics that were listed above already approximates to a full-fledged federation. In Spain, the central government has negotiated Statutes of Autonomy with each of the regions (Autonomous Communities). These statutes cannot be unilaterally repealed, although they are bound by constitutional principles. Changing the constitution as such does not require explicit regional consent. The UK is yet another example of such a *regionalized state*. Successful regionalization efforts thus far only affect about 15 per cent of the population, that is, UK citizens who live in Scotland, Wales or Northern Ireland. *In principle*, the British Parliament could expand or reduce the autonomy of Scotland, Wales or Northern Ireland without their *explicit* consent (In reality, it is assumed that at least Scotland and Wales would not lose all of their recently gained autonomy without the consent of the people who live in both regions).

Regions of a regionalized state stand in a weaker position relative to the centre than regions in a federal state. However, they are in a stronger

position than the subnational entities in a *unitary decentralized state*. Like *regionalized states*, the subnational entities owe their strength to the centre. Most likely these subnational entities also have directly elected councils and executive bodies. However, unlike the regions in a regionalized state, they have fewer legislative, administrative and/or fiscal powers. Compared with regionalized states, the 'making' of regional boundaries is also more likely to be the result of top-down regional planning than of bottom-up popular demand. Admittedly, there is no real cut-off point between both groups and, in Western Europe alone, the number of unitary decentralized states is still quite broad, comprising three different groups of countries. At least two of them are moving in the direction of a regionalized state, therefore I shall take them as the starting point of this overview.

The first group consists of Italy and France. At present, the Italian regions are about to achieve the same level of regional autonomy as the Spanish autonomous regions in the 1980s. Shortly after the Second World War, 5 'special' regions were recognized with specific cultural or geographic features. The regions of Trentino-South Tyrol, Aoste and Friuli-Venezia-Giulia contain respectively German-, French- and Slovenian-speaking minorities. They received a 'statute of autonomy' which conferred some fiscal, socio-economic and most importantly cultural autonomy upon them. The geographically isolated island regions of Sicily and Sardinia received some form of autonomy as well, focused more on socioeconomic matters (Palermo 2005: 184–5). A further 15 'ordinary' regions did not come into operation until the 1970s. Their autonomy did not increase significantly until the late 1990s. None of these regions has clear historical roots. Their borders were in fact 'created' in the 1930s for statistical purposes. The collapse of communism in 1989 sent shockwaves through the Italian party system. In some respects it also reawakened the so-called Northern Question. GDP per head of the population was almost twice as high in the Northwest and Northeast of Italy as in the South (Gold 2003: 66). The Lega Nord tapped into the feelings of discontent that emerged from these large socioeconomic divergences. It emerged as an important political force in the North. It called for more Northern autonomy (provocatively even for the secession of Padania, a fictitious state which encompasses the regions to the north of the Po river). In this way, the North would be able to keep a larger share of national wealth for itself and to stop financing 'pork barrel' projects which exclusively benefited the South.

Federalism or 'devolution' has been on the agenda since the mid-1990s. At this stage, all regions have been offered a statute of autonomy (but in July 2004, only two ordinary regions had effectively enacted one). The regions have directly elected presidents and assemblies. Some forums of intergovernmental relations have been set up to incorporate the leading regional figures into central decisions which affect their interests (such as the allocation of EU Structural Funds). However, most of these mechanisms are ad hoc and

generate non-binding decisions. The Italian Senate does not operate as a territorial chamber. Furthermore, the levels of regional autonomy remain relatively limited, both in policy and in fiscal terms. It remains unclear in which policy domains the regions have the final say. The Italian Constitutional Court has played a significant role in clarifying that matter (Palermo 2005: 188). Since the so-called Bassanini laws have been implemented (1999), central parliament cannot simply overturn regional laws. A referendum in 2001 put Italy on course for further devolution, possibly even federalism (Amoretti 2002, 2004). However, disagreements on the nature of devolution (should all regions receive the same set of powers) and widespread resistance to devolution among one of the central government's coalition partners (the right-wing but also 'pro-centralist' *Alleanza Nazionale*) slowed down or even reversed the process of devolution. When this book went to press, the Italian government was introducing legislation that would 'undo' some of the reforms which the Italian population had agreed to in 2001. In this sense, it makes sense not (yet) to include Italy in this comparative study, that is, until more clarification is given on the distribution of competencies, the autonomy of the regions and their participation in intergovernmental channels. The possibility for each region to negotiate a statute of autonomy with the centre is in fact very much inspired by the Spanish example. At least in the medium long term this may give rise to 'a highly differentiated, asymmetrical regional system' (Palermo 2005: 193).

Next to Italy, the French regional levels of government have strengthened considerably in France since François Mitterrand enacted his decentralization reforms in 1982. In 1991 regional autonomy was increased in Corsica and has continued to expand there in the wake of small-scale nationalist violence (Loughlin and Seiler 2001: 196–7). Yet, the political autonomy of the 22 French regions is constrained in several respects. For instance, a centrally appointed prefect (governor) coordinates central administrative powers and supervises the regionally elected bodies in the exercise of their devolved powers (Keating 1998a: 113). In terms of the scope of their powers, regions remain the 'weaker cousins' of the 96 departments and more than 36,000 local governments. Regions only have some responsibility in economic development, transport, secondary education, tourism, training and culture. Most regions employ less than one hundred full-time salaried staff. Consequently, they rely on the assistance of employees at the departmental or local levels. Their budgets (which only consist of grants) are dwarfed by the budgets of the departmental councils, despite the fact that they cater for larger population groups. For instance, in 1995, the budget of the Nord department was twice the budget of the Nord Pas de Calais region. This is so despite the fact that the region catered for nearly four million inhabitants, and the department only for two and a half million (Cole 2005: 122–3). Departments have a history that goes back to 1790. Their political structure is supervised by centrally appointed prefects. Departments are governed by

councils with an (indirectly) elected basis. Departments exemplify a form of 'functional decentralization', seeking to uphold France's Jacobin administrative philosophy of 'a single and indivisible Republic'. If we leave aside Corsica and Brittany, all of the French regions have strong artificial roots; they are central bureaucratic creatures. In 2003–2004, a constitutional reform finally recognized the regions as one of four levels of local authority. The same reform also enabled the regions and departments to bid for additional functions. The central parliament would be responsible for decentralizing these functions (most likely transport infrastructure, such as airports). After a period of five years it would assess whether their decentralization should be made permanent. However, the constitution does not tolerate wide-scale asymmetry (if a function is decentralized, it ought to be decentralized to all similar types of subnational government). In July 2003, the voters of Corsica were offered the possibility of merging their departmental structures (Haute Corse and Corse-Sud) into a single regional unit. The Corisican voters narrowly rejected it (Cole 2005: 129).

The second group of unitary decentralized states is made up of the Scandinavian countries (but it excludes the special status of Greenland in relation to Denmark). The Scandinavian countries have a tradition of unusually strong local government. If we set aside the Swiss municipalities, Scandinavian local governments are stronger in administrative and fiscal capacity than their counterparts in all the other West European countries. Therefore, many analysts of fiscal federalism lumped the Scandinavian countries together with the federal states, because their local governments absorb such high shares of total public expenditure (Ter-Minassian 1997; Fossati and Panella 1999; Wellisch 2000). However, it would be wrong to consider these states as federal for three reasons. First, a considerable amount of local government tasks relate to the administrative implementation of central government welfare legislation. Municipalities have a limited input in shaping that legislation. Second, the activities of local government outputs are more often subject to central oversight. Third, the size and number of municipalities can be adjusted with relative ease for reasons of cost-efficiency or urban planning. For instance, the number of Swedish municipalities was reduced from approximately 2,500 in the 1950s to 289 in 2001. Although this may have improved the long-term viability of the localities, such a reform also illustrates the difference between the constitutional position of a region in a federal state and that of a municipality in a decentralized unitary state (Lindström 2001: 319–42). Changing the borders of a region in a federal state, or merging existing regions cannot normally be accomplished without some sort of regional consent. Creating the Swiss Jura canton or merging the German Länder of Berlin and Brandenburg required the consent of the affected regions (only with success in the first case).

The final group of countries is the easiest to classify. It consists of countries such as Greece, Luxembourg or Portugal (excluding Madeira and the Azores)

with respectively weak or no regional tiers of government at all (Loughlin 2001).

3. Multilevel governance

In the previous section, I identified three major groups of states on the basis of the institutional strength of the regions therein: federal states, regionalized states and unitary decentralized states. Some may dispute the criteria that were used to delineate these categories, but at least readers should know what distinguishes them. The absence of clear, universally agreed cut-off points, in particular between regionalized and unitary decentralized states, is due to the frequent understanding of regionalism as a *continuum* and not as a taxonomy. In this regard the more recently developed term of multilevel governance (MLG) can be used as an umbrella concept in which all forms of decentralization find their place.

Two of the authors who popularized the term, Liesbet Hooghe and Gary Marks, defined MLG as the 'dispersion of authoritative decision-making across multiple territorial levels' (Hooghe and Marks 2001: xi). Initially, the concept of MLG was developed to provide a better understanding of the EU, a political system which until the 1990s was primarily interpreted through the contrasting lenses of intergovernmentalism and (neo-)functionalism (Rosamond 2000). MLG provided a middle way between both theories. It acknowledges the central position of national governments in European integration, but also argues that 'authority and policy-making are shared across multiple levels of government – subnational, national and supranational' (Hooghe and Marks 2001: 2). Collective European decision-making has weakened individual state autonomy, because some decisions no longer prescribe unanimity voting but nonetheless enforce common rules across the EU. Furthermore, MLG theorists make a strong claim that subnational interests are not necessarily mediated through national governments, but may find direct access to the European policy arena. Based on their analysis in *Multi-Level Governance and European Integration*, Liesbet Hooghe and Gary Marks seem to distinguish MLG from a federal stateformat. They point at the lack of a formalized supreme constitutional framework which specifies the legal ends (central competencies) of integration, and the absence of EU statehood warranting the legitimate use of violence. Echoing the confederal traits of the EU, they argue that 'national governments in the member-states have greater powers of self-determination than constituent units in any existing federal state, and while the territorial units within a federal regime tend to have similar subnational political systems, the domestic political systems of the member states vary greatly' (Hooghe and Marks 2001: 37).

However, in their more recent work, Hooghe and Marks have broadened the concept of MLG to include *any* type of political system that provides for multiple territorial tiers of government (Hooghe and Marks 2003).

Federations then simply become a specific species of MLG, a different brand of MLG from the one that characterizes the governance of the EU.

As they see it, federations form part of a type of MLG ('Type I MLG') that is characterized by four major characteristics: (1) a limited number of territorial jurisdictions (central, intermediate or regional and local); (2) the long-term stability of these jurisdictions, as territorial boundaries cannot be easily adjusted in light of emerging functional desires; (3) the replication of comparable institutional structures at each level, reflecting some form of balance between an executive, legislature and judiciary; and (4) the non-intersection of territorial memberships, that is, the smaller units are neatly contained within the borders of the larger ones. The authors contend that these characteristics are not exclusively confined to federations, but could be used to understand policy-making in regionalized or decentralized unitary states as well.

The distinguishing element between this and a second type of MLG ('Type II MLG') relates to whether public policy coordination takes place within traditional, hierarchical territorial structures, or rather in flexible, innovative networks with an ad hoc and functional character. Such networks are more frequently based on voluntary individual membership, although they could also bring together municipalities or regions which share a concern to respond to specific needs, such as a more efficient provision of public utilities like gas or electricity (Hooghe and Marks 2003).

The division of MLG along two types broadens our understanding of public policy-making beyond the traditional framework of the state. However, there are two difficulties in relying on MLG instead of a more 'traditional' federal-regionalized-unitary decentralized framework. First, as federations are fully contained within MLG Type I, there is insufficient clarification as to how different degrees of regional institutional strength should be operationalized (but see the useful Appendix 2 in Hooghe and Marks 2001: 191–209 for some guidelines on how this could be done). Second, and arguably of greater importance, federal-type structures can also display many of the attributes of the so-called MLG Type II forms of governance. A federal centre or the regions of a federation can stimulate the creation of more functionally oriented associations. For instance, in Switzerland each of the 26 cantons (regions) has substantial policy and fiscal autonomy. Yet, the smallest cantons in particular have been forced to cooperate so that certain utilities can be provided in a more cost-effective way without having to rely on the support of the federal government. This has led to the formation of functional, ad hoc cooperative networks with a more informal and fluid character. These networks exist in parallel to the more widespread intergovernmental structures that we find in most federal states. Frey and Eichenberger introduced the concept of Functional Overlapping Jurisdictions (FOCJ) to denote such functional cooperation areas that cut across traditional territorial boundaries of the state (Frey and Eichenberger 2001).

The spread of MLG Type II may vary from one federation to another, but also fluctuates from one region within a federal state to another. We are likely to find more of MLG Type II in federations that kept a 'competitive federal design' than in federations that have sought to establish harmonized policy standards across the federation. In the former, the central level can be rolled back more easily, or, as I will discuss in the chapter on public policy-making, the regional governments may have had more veto powers in the centre to prevent the centre from playing a more active role in providing public goods. In sum, even when seeking to analyse 'MLG Type II', federalism becomes an important independent variable, the varieties of which can help us to broaden our understanding of public policy-making in federal and non-federal states alike.

4. Conclusion

In this chapter I sought to clarify some key concepts in comparative federal studies. In essence, federalism is a normative concept which entails a combination of self- and shared rule. In this sense, federalism is of little analytical value.

When I use the concept of a 'federal' state it is meant to reflect a political structure which does not only embody federalism as a philosophy, but also complies with nine specific institutional features. Perceived accordingly, a federal state is always a federation.

Next to defining federalism and federation, I identified the difference between a confederation, federation, regionalized and unitary decentralized state. As stated in that order, these political systems range from possessing the weakest to the strongest political centres. In a confederation, the component entities retain full sovereignty as states and the centre is so weak that it cannot act without the consent of all the states. In regionalized and unitary decentralized states, the regions are in a much weaker position. They owe their autonomy to the centre. The centre can repeal that autonomy and put itself in a position of hierarchical control whenever it enters a conflict of interest with one or several of the regions.

A vague consensus exists on how to define a federation, but the cut-off point between a regionalized and a unitary decentralized state remains unclear. This is so because the level of decentralization for both groups of states is often positioned on a continuum. Their regions are weaker than in a federation, but more so in a unitary decentralized than in a regionalized state.

In a regionalized state, regional government emerges as the result of bottom-up calls for more autonomy. Such demands may have their roots in socioeconomic developments (such as the call for more regional autonomy for the North of Italy). Alternatively, a call for regionalism may be fueled by minority nationalism. Devolution for Wales and Scotland, and also for the

Spanish minority nations (the Basque Country, Galicia and Catalonia) are a good case in point. In Spain, at least, the other regions, which lacked strong historic roots, quickly demanded similar levels of autonomy. In this sense, regionalism spilled over from the minority nations to the non-historic regions. By comparison, in a unitary decentralized state, regions are created more often as the result of top-down planning. This is the case for most of the French and Italian regions or the Scandinavian municipalities.

In some cases, regionalism and 'top-down' decentralization may be combined within the framework of a single state. For instance, Scotland, Wales (and Northern Ireland) have turned the UK into a regionalized state. However, the proposed (and so far failed) 'regionalization' of England is the result of top-down planning. Similarly, with the exception of Brittany and Corsica, the French regions have weak historical roots and lack sufficient powers to fight against the more strongly embedded departments. Unlike in Britain, Brittany has not more autonomy than the other regions. In Italy, South Tyrol exemplifies a form of minority nationalism, and the special regions have specific historical or cultural reasons that qualify for regional autonomy. Yet, resistance to a form of asymmetric devolution is high, particularly among the Southern regions which need the support of the North for their economic survival.

The regions of a federation possess genuine policy autonomy that is constitutionally embedded. A federal constitution cannot be amended unilaterally by the centre. Although the regions in a regionalized or unitary decentralized state do not possess that degree of autonomy, their level of autonomy *exceeds* that of a region in a unitary decentralized state. More often the regions in a unitary decentralized state experience competition from other subnational tiers of government such as provinces, departments or even local governments. For instance, in France, the regions are weaker in fiscal, legislative and administrative capacity than the departments. The departments often serve to extend central political power into the periphery. In Italy too, regions experience some competition from the provinces and the local governments, which they do not yet control.

The overview above clarifies why the inclusion of Austria, Belgium, Germany Spain and Switzerland as federal or regionalized states into this comparative study makes perfect sense. The regionalization of the UK is only confined to a small part of its territory.¹ However, the scope of the legislative and executive autonomy that was granted to Scotland (less so to Wales) is so extensive that the UK deserves to be included in the analysis. Although discussions are ongoing on extending the legislative, fiscal and administrative powers of the Italian regions, the level of decentralization has reached that of the Spanish regions in the 1980s. Therefore, I have not (yet) included Italy in the comparative analysis.

2

The Origins of Federalism and Regionalism in Western Europe

1. Introduction

Before analysing the contemporary structure and dynamics of federalism and regionalism in Western Europe in a thematic way, I provide a brief socio-historical analysis of the origins of federalism and regionalism in Western Europe. Three questions will be addressed here.

First, why in the process of European state formation did some Western European states adopt a federal character, whereas others turned into unitary nation-states? Second, taking a look at more recent history, why did attempts to create homogeneous state-nations succeed in some states (France) but fail in others (Belgium, Spain)? Or, put differently, why did Belgium, Spain and the United Kingdom survive as unitary states for that long, and what triggered their recent transformation into federal or regionalized states? Third, does the contemporary shape of most regions have a long-standing legacy? Conversely, which regions of Western Europe's federal or regionalized states have a strongly artificial character? In the following analysis these questions will be addressed in brief for each of the case studies although not necessarily in that order.

In order to answer each of the above three questions I rely on the important contribution of Stein Rokkan. His efforts to draw a conceptual map of Western Europe provide the best theoretical background against which they can be addressed (Rokkan et al. 1987; Flora, Kuhnle and Urwin 1999). In contrast, comparative federalists have too often extrapolated the motives which underpinned the formation of the US federation to the emergence of federations elsewhere (Riker, 1964, 1975; Stepan 2001 for a critique of Riker; McKay 2004 for a defence of Riker).¹

2. Centre-periphery relations and the process of state formation

In order to understand contemporary centre-periphery relations in Western Europe, Stein Rokkan invites us to go back to the Roman Empire, which at

the height of its power combined the attributes of a leading military-administrative, cultural and economic Leviathan. The Western Empire dissolved as a military power in the fifth century, but its cultural (the spread of Christianity) and socio-economic legacy (a relatively dense urban and communications network in the heart of Europe) lived on.

Contemporary center-periphery relations are the fruit of three important processes that followed upon the demise of the Roman Empire: *feudalization*, *vernacularization* and *state-building* (Rokkan et al. 1987: 55).

Feudalization implied *parochialization*. The control of agriculture shifted into the hands of feudal lords, most outspokenly in areas that formed the original core of the Roman Empire (i.e. contemporary Germany and northern Italy). *Vernacularization* refers to the diminishing influence of Latin and Greek as standard languages of elite communication and their replacement by local languages. The common use of the alphabetic script facilitated the spread of local languages. The great expansion of vernacular languages set in with the Reformation and the invention of printing techniques. The Reformation also altered the relationship between culture or religion and the corresponding military-administrative order. As Stein Rokkan and his collaborators pointed out 'the distinctiveness of each territorial culture [was strengthened by] integrating the priesthood into the administrative machinery of the state and by restricting priests to the confines of the given vernacular' (Rokkan et al. 1987: 58).

Europe did not embark upon a process of *state building* until the late Middle Ages. The first states did *not* emerge at the centre of the old Roman Empire. The heartland of the Empire comprised an extensive network of citystates, which in economic and military terms were each other's equal. In the absence of a clear territorial core, state aggrandizement could not be accomplished easily. Furthermore, many city states were swamped with Catholic cathedrals and monasteries and did not fall prey to the effects of the Reformation. In contrast, state building occurred more smoothly at the edges of the Empire, in particular on the coastal plains to the west and the north, as well as in France, England, Scandinavia and Spain. The peripheries in each of these states could be subjected more easily to the dominance of a central core. A second wave of state building brought similar efforts to fruition in the Habsburg Empire, Sweden and Prussia. Their expansion fostered the rise of so-called *buffer states* which separated the long-fragmented core of 'city and petty states' (Rokkan et al. 1987: 58), from the consolidated state structures. The best-known examples of such buffer states are the Swiss and Dutch confederations. Similar efforts to create a Lothoringian-Burgundian buffer state failed, as the French successfully absorbed its territory.

The buffer states should be distinguished from two different types of *peripheries* which Rokkan et al. identified as *interface peripheries* and *external peripheries*. Interface peripheries are those 'which are caught in the cross-fire between

dominant centers and were never fully integrated in either bloc' (Rokkan et al. 1987: 60). Some of the best-known examples in Western Europe are Belgium, Luxembourg, Lorraine and Alsace (the playing field between France and Germany for much of the nineteenth and twentieth century), the Bernese Jura (the specific identity of this French-speaking Catholic part of Switzerland led to the formation of a separate Swiss canton in the twentieth century) and the Alte Adige or South Tyrol. The last was a long-time part of the Habsburg Empire (thus comprised of a majority of German speakers), but it was seceded to Italy after World War I. Each of these *interface peripheries* is still located within the reach of the old borders of the Roman Empire. They should be distinguished from the *external peripheries* which are located outside these borders. One of the best-known examples of such an external periphery is the current Swedish minority who lives in Finland.

The process of *state building* was not necessarily accompanied by that of *nation building*. The roots of *nationalism* coincide with the rise of the Reformation, because the latter, as indicated above, renounced the a-territorial character of religion and fused the secular (territorial administration) with the religious element. State churches spread religion in the vernacular. As a result, territorial and cultural borders were meant to coincide to the largest possible extent. In what remained a catholic part of Europe, nationalism was initially propagated only in the territories that bordered Counter-Reformation Europe, and only on an extensive scale after the French Revolution had taken place. In the nineteenth century, nationalism became a dominant ideology that was instrumental for binding the growing middle and lower classes into the body politic and for mobilizing their support for ambitious projects such as industrialization at home and wide-scale colonialism abroad (Gellner for an analysis). As each 'nation' was now entitled to its own 'state', the core areas of the European trade belt would seek to engage in state building long after the peripheral areas had done so.

In the following section I turn to state and nation building in the European core first (Germany). Subsequently, I discuss the same processes in the West European periphery (Spain, the United Kingdom and Austria) and in two relevant *interface peripheries* (Switzerland and Belgium).

2.1 State and nation building in the European core: Germany

Germany: the origins of a federal nation-state

The misfit between nation and territory was nowhere stronger than in the central core of Western Europe, particularly the territory in which Germany would arise. Here, German was widely used as a language, but the absence of a strong regional Leviathan prevented the formation of a linguistically homogeneous nation-state. Nationalism preceded state formation. The formation of a Germanic state did not seem realistic until the nineteenth century, when Prussia had established itself as a regional agrarian power with state-building ambitions.

Prussia's state ambitions were helped by the outcome of the Napoleonic Wars. These wars instilled a need to territorial defragmentation and led to the disappearance of about half the German political units. When a German customs union was formed in 1815, following Napoleon's defeat, 'only' 39 or about half the German political units were left intact (Rokkan et al. 1987: 118; Umbach 2002). Simultaneously, Prussia extended its territory by controlling additional areas in the east and west of the confederation. By 1866, the Prussians had won the battle against the Habsburgs for controlling German-speaking Europe. They assumed the lead role in the North-German Bund from which the Habsburgs were excluded. The defeat of France in the Franco-Prussian War four years later paved the way for the formation of a German state under Prussian leadership in 1871.

Prussia could not forge the formation of a German state which encompassed all of Western Europe's German-speakers. The exclusion not only of Austria-Hungary but also of the German-speakers who live in Switzerland proves this point. Conversely, the war against France resulted in the annexation of French-speaking territory (Lorraine), and Prussia itself comprised significant Danish- and Polish-speaking minorities.

The military, political and demographic leadership of Prussia in the new German state was beyond doubt. Prussia comprised 61.9 per cent of the German population. The 17 smallest regions taken together made up only 1 per cent. Prussia represented two-thirds of the German surface. Despite this Prussian hegemony, Chancellor Bismarck could not impose a unitary state structure. By 1870, the number of territorial units that made up the German state had been further reduced to 25. However, the allegiance of the catholic south to Germany could not be taken for granted. In 1871, Bavaria with 10.6 per cent of the population was by far the second most important unit of the state. Therefore, Germany retained some form of (non-democratic) federalism. Most legislation was centralized but important legislative competencies including the authorization for raising most taxes, policing, education and even aspects of defence politics (the provision of army contingents, except naval power) remained under regional control. In addition, each of the 25 regions was represented in the Bundesrat, the federal second chamber. It was at the time more powerful than the national lower house, the Reichstag. In the second chamber, the Prussian demographic preponderance did not translate into a majority of seats. The Prussian delegation made up only 17 of the 58 seats. However, since the Prussian delegation was led by Otto von Bismarck, who also presided over the Bundesrat's meetings and served as German Chancellor, Prussia dominated the centre.

The shape of the German territorial units, as well as the nature of German federalism changed substantially after both World Wars. After World War I, the number and borders of Germany's regions was changed once more. For instance, Thuringia was formed by merging seven regions. Germany had no grip on its external borders (this was a decision of the Allied Powers as agreed

upon in the Treaty of Versailles), but it controlled the shape of its internal borders. Internal boundary adjudication was largely imposed by the centre. For instance, the citizens of the regions that were to form Thuringia were not consulted on the proposed merger of their territories. Although Germany democratized, it was not a federal state. The centre became too powerful. The tax-raising capacity of the centre surpassed that of the regions. Defence powers were entirely centralized and the second chamber (Reichsrat) only retained a suspensory veto-power. The now democratically elected Reichstag became the most important legislative chamber. The participation of the regions in central law-making with an impact on regional policy-making had become too weak according to the criteria that were specified in Chapter 1. The Nazification of Germany resulted in the abolition of the second chamber and the transfer of all remaining legislative and administrative powers of the regions to the centre.

Despite the legacy of a fairly 'centralized period', West Germany adopted once more a federal structure after World War II. Compared with the Weimar Republic, the regions gained substantial powers, particularly in co-determining federal legislation through the federal second chamber. However, not all the members of the Parliamentary Council, the constituent assembly in charge of drafting the federal constitution, were supportive of federalism (Niklaß 1998). In many respects the Allied powers strongly influenced the shape of the post-war German federation. Unlike in the Weimar period, their influence was felt more strongly in determining the territorial borders of the regions than in outlining the structure of the German federation.

New regions were created in the British, French and American occupation zones. The hegemonic position of Prussia was ended by carving several regions out of its territory. From 25 regions that made up the German state in 1870, only the city states of Hamburg and Bremen, as well as Bavaria and Württemberg, continued to exist, albeit not necessarily in an identical form. In the American occupation zone, Hesse and Baden emerged alongside Württemberg-Baden and Württemberg. The last three regions merged into Baden-Württemberg, following a referendum in 1951. In the French occupation zone, Rhineland-Palatinate was formed from territory that previously belonged to Prussia, Bavaria and Hesse. Saarland opted to join the German federation in 1957, as it had been under the control of France until then. In the British Occupation Zone, North-Rhine Westphalia, Lower-Saxony and Schleswig-Holstein were carved out of formerly Prussian territory (Conradt 1996). West Berlin obtained a special statute and did not gain the full status of a region until unification (1990) when it merged with East Berlin and became the federal capital.

In the Soviet-occupied zone (GDR) Brandenburg, Mecklenburg, Saxony, Saxony-Anhalt and Thuringia were created. Only a third of these regions had long-standing roots as a kingdom (albeit not in its current shape). The

administrative division of Eastern Germany into these five regions was abolished after 1952, that is, when the GDR was governed under communist centralized rule. However, the boundaries of these regions were used for the 'federalization' of Eastern Germany after unification.

Leaving aside the regions which were located in the Soviet zone, regional elections took place before the first West German federal elections in 1949. As a result, some form of regional allegiance existed. However, the intensity of these feelings was relatively weak. Most of these regions had an artificial character, the Weimar Republic left a centralist legacy and West Germany faced the influx of ten million German-speaking refugees from Eastern Europe. They felt little allegiance to the region in which they settled.

Arguably, if we leave aside the influence of the Bavarian and some of the Christian Democratic delegates in the Parliamentary Council, the re-emergence of a federal state format occurred on the insistence of the Allied Powers. They perceived federalism as a suitable means to *deconcentrate* or disperse political power. In contrast, representatives from the German left took a hostile (Communists) or reluctant (Social-Democrats) attitude towards federalism. Too much decentralization would hinder macroeconomic coordination and weaken redistributive politics. Labourers across West Germany should be united for a common goal (advance labour interests and nationalize production factors), instead of being divided on territorial lines, so the Communists argued. Federalism was out of touch with the prevailing attitudes among the West German public on the matter. Carlo Schmid, a prominent SPD-member of the Parliamentary Council, is known to have said that 'while federalism is used the world-over to unite what was previously separated it is used in our case to segregate what was already united' (Schmid cited in Golay 1958: 27).

Yet, while the Allied Powers may have been successful in pushing through federalism, they had relatively little influence on the structure of the German federation. Because the domestic support for federalism was at best lukewarm, West German federalism was relatively centralized from the outset, more so than what the Allied Powers had in mind. The rules dividing central-regional competencies strongly reflect the domestic experience with federalism in the Bismarck era. Legislative powers were concentrated at the federal level. Regional (legislative) autonomy was largely confined to education, policing and regional economic development. Conversely, regional governments were charged with implementing most federal legislation. Via the federal second chamber, they could veto more than a third (eventually even 60 per cent) of federal law-making. After unification the five defunct Eastern regions were re-established and included in the West German federal structure. As it stands, the regional borders are now strongly entrenched and cannot be changed without the consent of the people who live in those regions that would be affected by proposed boundary changes. Table 2.1 lists all the 16 German regions or Länder.

Table 2.1 Overview of German regions (Länder)

Federal Capital	West (former West Germany)		East (former GDR)
	City regions	Other regions	
Berlin (city region) – until 1990 divided in East and West Berlin	Bremen Hamburg	Baden-Württemberg Bavaria Hesse Lower Saxony North Rhine-Westphalia Rhineland-Palatinate Saarland Schleswig-Holstein	Brandenburg Mecklenburg-West Pomerania Saxony Saxony-Anhalt Thuringia

2.2 State and nation building in the West European periphery: Spain, the United Kingdom and Austria

The partial failure of Spanish nation building

France, Spain and the United Kingdom emerged as states long before Germany and Italy. Yet, in Germany and Italy nationalism formed a catalyst for state building. In France, Spain and the United Kingdom a state structure was in place long before nationalist ideologies reached their heyday. Yet, in each country, nation building required that a clear territorial centre successfully established its authority over an area that spanned several linguistic or religious peripheries.

France was much more successful in the process of 'state-nation building' (Linz 1997), that is, the creation of a 'nation' that would overlap with the pre-existing state structure, than Spain or the United Kingdom. France remains a relatively centralized state. The notion of a 'single indivisible Republic' that was espoused in the French Revolution still finds resonance among many of the contemporary French policy-makers and the public at large. The French centre used several instruments to achieve the objective of state-nation building. For instance, education was universally provided in French, and many young Frenchmen were called upon to serve their country in World War I (this served the Frenchification of Brittany well, particularly since it was bordering the frontlines). The civil service was also standardized and acquired an entirely French-speaking character. The process of nation building occurred relatively late in time. In the 1870s, local identities still overtook national identity and in large parts of the country a standardized French language was not yet spoken (Keating 1998a: 20).

Comparable efforts of cultural homogenization were made in Spain. Initially, the monarchical state format weakened the need to build Spain on the notion of popular sovereignty. Spain did not require the same degree of cultural uniformity as the republican French state (Keating 1998a: 21). The Spanish state arose in 1469 from the personal union between the crowns of

Castile and Aragon. The lands of Aragon comprised Catalonia, Valencia and the Balearic Islands (Moreno 2001: 39). The lands of Leon, as well as the three Basque provinces of Guipuzcoa, Alava and Biscay, lived under Castilian rule. The process of early Spanish state formation was driven by the desire of Christian rulers to defeat the Moors (the so-called *Reconquista*), but the defeated often retained certain rights (*fueros*). Even under Habsburg rule, the internal kingdoms, principalities and lordly estates were allowed to keep their languages, regional institutions and laws (Moreno 2001: 42). For instance, the three Basque Provinces could raise their own taxes. Catalonia received a special status within the Kingdom of Aragon, and was exempted from certain forms of taxation (Keating 1998a: 19).

The Napoleonic invasion of Spain in 1808 fostered a stronger 'Spanish' identity and accelerated the Spanish 'state-building' process. After Napoleon's defeat a more cohesive national political and administrative system was put into place. Between 1823 and 1857, a uniform system of local government was imposed, the Civil Guard was created, a ministerial system of government and a uniform system of secondary education were adopted and a dense railway network was constructed (Heywood 1995: 14). Yet, because the special recognition of the Basque and Castilian provinces had such a long-standing history, the cultural homogenization of Spain was much more burdensome than that of France. The economic superiority of Catalonia and the Basque Country and the centre's interest in overseas imperialism rather than domestic state-nation building contributed to these difficulties (Rokkan et al. 1987: 72). Furthermore, the two main dissenting regions (Catalonia and the Basque Country) and Galicia are marked by the presence of a regional language which exists alongside Castilian (Spanish). The spread of printed media increased the possible channels in which their discontent could be voiced, for instance in local newspapers, using the vernacular.

The conservative and Catholic reactionists who opposed the liberal state building process came to be known as Carlists. The struggles between liberals and Carlists provoked three civil wars between 1833 and 1875 (Moreno 2001: 46–7). Carlist support was strongest in the Basque Country, but it was also considerable in Catalonia. The relatively high economic growth of the 'Catalan' and 'Basque' economies boosted minority nationalism. The economic successes of these regions stood in sharp contrast to the achievements of the ruling political classes in Madrid, whose political behaviour was often – correctly – perceived as corrupt and discriminatory. Even so, the social background of the Basque and Catalan nationalists was different in two major respects (Diez-Medrano 1995).

First, Catalan nationalism was primarily advanced by the successful local bourgeoisie. They reacted against the influence of the Castilian political and administrative elites and the presence of Andalucian landowners in their economic affairs. Catalan nationalists long stressed the peculiar position of

medieval Catalonia within the Crown of Aragon, and its de facto constitutional status fell little short of complete sovereignty (Keating 2001b: 43). In their view, the historic unity of Castile and Aragon should be seen as a contract between equals, not as the recognition of Castilian dominance. In contrast, Basque nationalism was agrarian, traditionalist, strongly linked to conservative Catholicism and more lower-class driven (Carr 1981: 62–70). Basque nationalists reacted against the industrial and central banking elites, and the industrialization of the Basque Country which drove thousands of non-Basque speakers into its territory. Basque national traditions are based more strongly on oral legend. Sabino Arana, the founder of the Basque National Party (PNV), played a crucial role in framing a ‘common Basque historiography’. The *fueral* history of the Basque Provinces is continuously emphasized and sometimes even falsely portrayed as a tradition of full sovereignty. *Fueros* were not granted by the Spanish state, but existed as original rights, so the Basque nationalists argue. In this sense, the calls for independence have always been stronger among Basque than Catalan nationalists.

Second, traditionally, Basque nationalism was more ‘inward-looking’ and ethnically framed than Catalan nationalism. Arana for instance emphasized the ‘racial’ traits of Basque national identity (Heywood 1995: 22). In part, this was so because the Basque language could not be easily played out as a mobilizing element. In contrast with most citizens who live in Catalonia, most citizens who live in the Basque Country do not speak Euskera, a non-Indo-European language (Heywood 1995: 22). In this sense, ‘Basque nationalism’ is more ‘ethnic’ or less ‘civic’ than Catalan nationalism (Keating 2001a). However, to define Basque nationality on the basis of racial superiority today would serve as a source of public embarrassment. Hence, contemporary Basque nationalists seek to portray themselves as relatively open and liberal (hence as more civic) as well (Keating 2001b: 45–6). The different forms of minority nationalism generate different consequences in terms of their compatibility with the Spanish state. Catalan nationalism is less exclusivist and intense than Basque nationalism and can be reconciled more easily with the continued existence of the Spanish state. In contrast, Basque nationalists have more openly supported secession and its radical protagonists have turned to violence (ETA) to achieve their political objectives.

The partial democratization of pre-Franco Spain visualized the support for regional autonomy in Catalonia. For instance, in the elections of 1908, the ‘Solidaritat Catalan’, a party which assembles Catalan nationalist interests obtained 31 of the 34 Catalan seats in the national parliament. Claims for self-government were honoured in the short-lived democratic Second Republic (1931–39) when the Catalan Generalitat (regional government) was restored. A proposal for Basque regional autonomy that gained the support of Navarra and each of the three Basque Provinces was never approved

by the Spanish national parliament because the Basque country had not explicitly endorsed the Second Republic's founding act.

Next to Catalonia and the Basque Country, Galicia is considered as the third 'historic' Spanish region. Yet, of all three regions, it has the most weakly developed sense of political nationalism. This is so, despite the widely diffused knowledge of Galician, a language in its own right with similarities to Portuguese, traditional Celtic languages and Castilian. Unlike Catalonia and the Basque Country, Galicia retained its traditional character as a predominantly agrarian and strongly Catholic region. The rapid industrialization of the Basque Country provoked a nationalist response among the rural Basque population who felt threatened in their identity. Although the industrialization of Catalonia was controlled by Catalan elites, it also fed nationalism insofar as it was contrasted with the administrative and political tutelage of the Castilian centre and sparked an influx of non-Catalan speaking labourers. Being protected from such socio-economic shocks, Galicians continued their traditional way of living. A socio-economically weaker region, Galicia has been partially made dependent on central fiscal support. The same applies to some of the other regions, which, although they had no separate language, shared the experience of some form of historic self-rule. Yet, as these regions were relatively poor as well, they too depended on the centre for jobs in the army and civil administration. As a result, its working forces more easily internalized the political and social norms of the centre (Moreno 2001: 52–3).

During Franco's authoritarian rule (1939–75), regionalism gained ground as a legitimate force of democratic resistance against the dictator's assimilationist and unitary policies. Therefore, the claims of the Catalan and Basque minority nationalists were favourably looked upon when Spain embraced democracy. In the face of ETA violence, the drafters of a democratic constitution were forced to respond to the forces of minority nationalism. The Basque Country, Galicia and Catalonia were recognized as historic regions and received some form of regional autonomy and a bilaterally negotiated regional statute. Navarra, which did not join the Basque Country, was given a special constitutional status as well. These 4 regions exist alongside 13 'ordinary' regions without the status of 'historical' regions. This said, not all of these 13 regions are 'a-historical'. Andalusia for instance had a strong regional identity long before Spain democratized. Navarra had been an independent kingdom. The geographic isolation of the Canary Islands and the Balearics resulted in some form of regional identity as well. However, León, which had been a kingdom in its own right, was subsumed in a new region with the name of Castilla y León. Regions such as La Rioja, Cantabria or Murcia had no tradition of self-rule (Heywood 1995: 143). By now, Spain has acquired almost all the features of a federal state. In time the non-historic Communities have expanded their autonomy as well. They did not necessarily do this at the same pace, so that initially one could distinguish between

Table 2.2 Overview of the Spanish regions (Autonomous Communities) and their constitutional route to regional autonomy

Historic communities and special provision	Fast-track regions	Intermediary-track regions	Slow-track regions
Basque Country	Andalucia	Canary Islands	Aragon
Catalonia		Valencia	Asturias
Galicia			Balearic Islands
Navarra (<i>fueros</i>)			Cantabria
			Castilla-La-Mancha
			Castilla-y-León
			Extremadura
			La Rioja
			Madrid
			Murcia

'fast-track', 'intermediary-track' and 'slow-track' regions (see Chapter 3). Meanwhile the powers that were initially conferred upon the historic Communities have increased as well. However, the formal input of the regions in shaping or amending the rules that frame their autonomy is limited. In this sense, Spain still does not fulfil the criteria that were listed in Chapter 1. Table 2.2 lists all 17 Autonomous Communities (regions) of Spain and classifies them on the basis of their distinct political status.

The United Kingdom: the persistent strength of minority nationalism

Like Spain, the United Kingdom unified under the pressure of an administrative, economic and military centre, England. Yet, Britain developed as a *union state* binding together three territorial units. Therefore, the peculiarities of Scotland and Wales always found some form of political recognition, and efforts to homogenize the UK were never as strong as in France or pre-democratic Spain.

The United Kingdom was formed out of three major unions: an Anglo-Welsh (1536), an Anglo-Scottish (1707) and an Anglo-Irish (1800) (Rokkan et al. 1987: 156–63). The failure of the Anglo-Irish union led to the separation of 26 Catholic counties and the formation in 1922 of a separate Irish state. The subjugation of Wales to England was in fact accomplished as early as 1284, when the English crown enacted the Statute of Wales. English dynastic rivalries and England's preoccupation with France stopped the crown from exercising direct authority in Wales. The Welsh origins of the Tudor monarchy helped to forge an act of union. Similarly, dynastic marriage brought the Scottish and English crowns together. The seeds of the Anglo-Scottish Act of Union should be traced to 1603, when the King of Scotland inherited

the English crown and moved his residence to the South (Rokkan et al. 1987: 158).

In practice, Wales and Scotland were left with significant autonomy. Until the second half of the nineteenth century there was no clear policy of Anglicizing the Welsh-speaking parts of Wales. Scotland retained a different educational and legal system, a separate (Presbyterian) Church of Scotland and a different system of local government (Keating 2001a: 200–1). These practices were allowed to continue after the union was formed, so that a British identity could develop alongside a Welsh or Scottish identity. Wales and Scotland not only gained representation in the UK Parliament, but they also received a disproportionately high share of seats there.

However, the dominance of England was felt more clearly from the nineteenth century onwards. Colonialism and large-scale industrialization efforts necessitated a stronger sense of Britishness as a result of which England's hegemonic influence became more obvious in the Scottish and Welsh peripheries. For instance, English became the unmistakable language of education, administration and commerce, contributing to a rapid decline of Welsh- and Gaelic-speakers. Scottish and Welsh nationalism thrived in part on the intensity of Catholic nationalism in Ireland where British, Protestant rule was heavily contested. The efforts of the then Liberal Prime Minister Gladstone to grant home rule (devolution) to Ireland inspired some radical forces in Scotland to argue for similar concessions. Scotland did not receive home rule, but in 1885 Scottish demands for better representation in the centre were honoured with the creation of a Scottish Office and a Secretary of State for Scotland. Wales did not receive similar concessions until the 1960s (Loughlin 2001: 38). The secession of Ireland from the union dealt a blow to the Scottish and Welsh nationalists. The main British parties removed Home Rule (devolution) from the political agenda. The struggle for Scottish autonomy would continue under the political leadership of the Scottish National Party (founded between 1928 and 1934).

Unlike in Catalonia or the Basque Country, language has never been a remarkable element in forging Scottish identity. The use of Gaelic is confined to the western Highlands and the Scottish islands. Scots, a Germanic language that is closely linked to English, is still used in some poetry and literature, but is certainly not widely spoken. The proliferation of mass education in English, as well as diglossia, that is, the confinement of their use 'to the "kitchen", but not in the parlour' (Val Lorwin) has contributed to this process (Keating 1998a: 26). Today, the number of Scots who know Gaelic is estimated at no more than 80,000. Consequently, Scottish identity is linked more closely with certain elements that predate the Act of Union such as a different legal or church system. Furthermore, it is argued that support for Scottish nationalism strongly correlates with the supposed costs or benefits which the region stands to gain from the union in terms of economy, welfare, policy outputs and accountability.

Welsh nationalism has a stronger connection with language, despite the low share of Welsh citizens who claim to speak Welsh fluently or very well. At present the share of self-reported Welsh-speakers is no higher than 16 per cent (Keating, Loughlin and Deschouwer 2003: 162). At the beginning of the nineteenth century almost the entire indigenous population of Wales knew how to speak Welsh and even in the 1901 census half the Welsh population reported to speak it (Madgwick and Rawkins 1982: 67). As in Catalonia and the Basque Country, the make-up of the regional population (and with it the share of citizens who speak the regional language) has been strongly affected by immigration patterns. Wales rapidly industrialized in the nineteenth century. The exploitation of coal fields in the south and north-east sparked a dramatic immigration of English, Irish and foreign (Italian, Polish, Caribbean, ...) workers. In turn, the contraction of the Welsh economy during the Great Depression forced Welsh workers to emigrate to England or abroad. Apart from the Welsh language, Welsh identity is also marked by a different religious culture. More than England, Wales has a tradition of religious nonconformity, leading for instance to the direct election of pastors by their chapel congregations and a strong emphasis on egalitarianism and social justice (Keating, Loughlin and Deschouwer 2003: 164–5). Despite the presence of a regional language and some specific religious traditions, Welsh nationalism is less diffused than Scottish nationalism. Welsh society is too ‘cosmopolitan’ in outlook. It contains a substantial group of Anglo-Welsh (born in Wales) and English-speaking immigrants (born in England), each with specific geographic strongholds. Furthermore, the lower socio-economic strata of the population are as mixed in composition as the local elites. They comprise Welsh-speaking rural workers and Anglo-Welsh descendants from immigrant workers. The latter have always been less interested in preserving Welsh culture than in advancing their socio-economic status. Therefore, many Welsh Labour leaders (such as Neil Kinnock) were not keen on devolution when it was first put to a referendum in 1979.

Until the late twentieth century, the British centre could neglect the forces of Scottish and Welsh nationalism. UK governments (including Labour governments) repeatedly stressed the advantages that Scotland and Wales gained from being part of the UK. Both regions received higher per capita welfare payments than England. The general elections of 1974 produced significant wins for two ethno-regionalist parties: Plaid Cymru (Wales) and the Scottish National Party (Scotland). By then, class issues alone could no longer bind all the Scottish and Welsh voters to the traditional state-wide parties. As a result of these elections, a minority Labour government came to rely on the support of the SNP and the Liberal-Democrats. Both parties insisted on some form of devolution, but Labour backbenchers, including those who represented Wales and Scotland, mildly opposed it (Bogdanor 1999). Devolution would hinder macroeconomic policy coordination, so they argued. Ultimately the government endorsed a proposal that would

have led to a directly elected Scottish parliament with legislative powers and to a Welsh assembly with a right of enacting secondary legislation (administrative acts) in a number of centrally defined competence areas. In order to appease the rebellious government backbenchers, a clause was inserted into the devolution package, which required its approval in a referendum by 40 per cent of the registered Scottish and Welsh voters. In March 1979 nearly 80 per cent of the voters in Wales defeated the devolution package, but a slim majority of the Scottish voters endorsed it. Since the latter represented only about a third of the Scottish registered vote, the required majority for implementing Scottish devolution was not reached. The defeat of Labour in national elections by a Conservative landslide in the same year kept devolution off the agenda until 1997.

Labour discovered the political 'capital' of devolution when it continued to outperform the Conservatives in Scotland and Wales (and when the Conservatives, particularly under the neo-liberal policies of Margaret Thatcher, came to be seen as an English party). Welfare state retrenchment and the introduction of a highly regressive poll tax were at odds with the prevailing egalitarian and more left-wing leaning views of the Scottish electorate (McEwen 2002). The popular support for Scottish and Welsh nationalism increased the more the 'material benefits' of 'Britishness' decreased. Labour realized that the Scottish and Welsh vote could help it to obtain a UK parliamentary majority, but only so if the party more full-heartedly embraced devolution. Otherwise the ethno-regionalist parties may be the strongest beneficiaries of such feelings of discontent. A mildly nationalist discourse would no longer conflict with Labour policy and ideology. The devolution package which Labour put to a Scottish and Welsh vote in 1999, that is, two years after it had regained national power, is strikingly similar to its ancestor of 1979: legislative devolution for Scotland (this time round accompanied by some limited tax autonomy) and a more limited form of administrative autonomy for Wales.

Finally, Irish minority nationalism was a more acute force to be reckoned with. Following the partition of Ireland, the six counties that remained under British control (Ulster or Northern Ireland) received a form of self-government (Northern Ireland). A Northern Irish legislative assembly and executive operated between 1920 and 1972, that is, well before the first referendums on devolution for Scotland and Wales took place. Northern Irish autonomy resulted in a severe oppression of the Catholic minority there. The Northern Irish Protestants gained an absolute majority in the regional parliament. To that purpose, they engaged in electoral gerrymandering (i.e. the redrawing of electoral districts so as to maximize the election of Protestant delegates). They also changed the electoral system for parliamentary elections from proportional representation into first past the post, and they gave the more affluent (and thus more likely Protestant) electors more than one vote. Consequently, Protestants monopolized political power and controlled most

of the local public mandates (teachers, policemen, justice). In their policies (e.g. housing) they discriminated against the Catholic minority (Tonge 2001). Increasing violence by Catholic (IRA) and Protestant (Ulster Freedom Fighters or Ulster Volunteer Force) paramilitary organizations forced the UK centre to step in. In 1972, it suspended the autonomy of Northern Ireland and transferred the devolved powers back to the UK centre. A Secretary for Northern Ireland came to represent Northern Irish interests in London.

Northern Irish 'home rule' was restored for a brief period between 1999 and 2002, based on the so-called 'Good Friday Agreement' (1998). Unlike the previous experience with self-rule, a complex system of consociational power-sharing was set up which made the executive and certain legislative decisions independent of cross-community support. In parallel, transnational institutions were created which involve various affected parties in scrutinizing Northern Irish devolution. Apart from Ireland and Britain, these include not only Scotland and Wales but also the Channel Islands and the Isle of Man. Disagreements on the Catholic resolve to decommissioning (the handing-in of weapons that belonged to paramilitary groups such as the IRA), as well as a polarization of views on both sides of the political spectrum, have complicated governing by common accord. In 2003, the Northern Irish autonomy had been suspended for a third time. The long-term views on the appropriate governance of Northern Ireland remain significantly different among members of both religious communities. For instance, survey results report that approximately 87 per cent of the Protestant citizens want Northern Ireland to stay in the UK compared with only 22 per cent of the Catholic respondents. Almost half of the Catholics prefer a united Ireland instead. Only 3 per cent of the Catholic and 1 per cent of the Protestant respondents see the future of Northern Ireland as an independent state (Tonge 2001: 636). Table 2.3 lists the different regions of the United Kingdom of Great Britain and Northern Ireland.

Failed state building: Austria as the rump state of an empire

Austria is the rump state of the long-disappeared Habsburg Empire. The Habsburg Empire was built as a frontier empire to protect the Christians against the invading Turks. In this sense, the state-building process of the Habsburg Empire was reminiscent of that of Spain (where the *Reconquista* against the Muslims played an equally important driving force in unification). However, the internal dynamics of this process were very different. In Spain, Catalonia was adjacent to the central European trade belt. Therefore it was also economically superior to the administrative and military centre of Madrid. In contrast, the heartland of the Habsburg Empire was too far removed from this tradebelt. Thus, Austria (Vienna) could establish itself more easily as the political, cultural, economic and military centre. In ethno-cultural terms, the Empire covered a vastly heterogeneous area and was largely kept together by a common interest of keeping the Ottoman Empire at bay (Rokkan et al. 1987: 82).

Table 2.3 The regions of the United Kingdom and their constitutional status

United Kingdom*			
Rest of the United Kingdom	Great Britain		
Northern Ireland	Scotland	Wales	England: Greater London + eight proposed regions

* The Isle of Man and the Channel Islands are in a special relationship with the United Kingdom. The Isle of Man is not part of the UK, although it is a so-called 'dependency of the British crown'. Foreign and defence policy are the responsibility of the British government; some laws emanating from the UK Parliament also pertain to the Isle of Man (generally laws on shipping or air transport and communications, but normally not on taxation, social security and the judiciary). The Isle of Man has its own parliament (House of Keys) and executive council. Similar arrangements apply to the Channel Islands (these are divided into two bailiwicks, Guernsey and Jersey, each with their own legislature and executive council) and to the remaining British colonies.

The Austrians assumed a dominant position in the Habsburg Empire. Therefore, the various regions that would make up Austria in its format after World War I were already united under a single monarchy and uniform administrative system long before state building led to similar outcomes in the rest of the Empire. The policies pursued by Chancellor Metternich in the lead-up to the 1848 revolution strengthened the grip of the central administration. More liberal policies that were put in place after 1848 increased the independence of the judiciary and the freedom of commerce, but dispensed with federalism altogether.

Austria and Hungary formed a monarchical union and federalism re-emerged after the Empire had lost its power struggle for a lead position in Germanic Europe against Prussia in 1866 (Bullmann 2001: 121). In the union as a whole, the centre was made responsible for defence and foreign policy. Other than this the Austrian and Hungarian parts of the double monarchy organized politics more or less as they saw fit. In Austria, the powers of the regions increased again, but in the Hungarian part the dominant Magyars devised relatively few minority protecting devices and created their own centralized state. The far-stretched autonomy that was granted to Hungary sparked demands for similar concessions to the other ethnic and religious groups. Ultimately, the double monarchy dissolved in 1918 into a number of ethnically more homogeneous states. However, Austria itself retained a federal structure, despite the now relative homogeneous character of its population.

The Austrian federation comprises the German-speaking crown *states* of the former Habsburg Empire. Hence, Austria is a culturally homogeneous state. Yet, some of the Austrian regions have a history that goes back to the Middle Ages (in particular Carinthia, Styria and Austria, which was later divided into Lower Austria and Upper Austria). The regions of Vienna and Burgenland were the only ones to be created after the double monarchy dissolved. Burgenland was made up of the German-speakers who populated former Hungarian territory (Bullmann 2001: 121). Austria's constitution of the first republic (1920) also served as the basis for its constitution that emerged after World War II (1948). In contrast with Germany, the borders of the Austrian *Länder* were left unchanged. Austria has retained a more centralized character than its German cousin. This is in part a reflection of the strong centralization that occurred in the nineteenth century. For instance, the federal second chamber, the Bundesrat, has a weak input in influencing federal legislation although the institutional need to bring on board the regions at that level is high as the regions carry responsibility for implementing a large number of federal bills.

The centralization of Austrian federalism has been made possible because unlike in the United Kingdom or Spain (and as we will discuss also Belgium and Switzerland) there is no strong feeling of regional distinctiveness (Erk 2004). Where it already exists, it is primarily confined to the four western-most (and mountainous) Austrian regions (Vorarlberg, Carinthia, Upper Austria and Tyrol). In 1964, these four regions submitted a joint request to the federal government in which they sought the devolution of additional powers. A constitutional amendment with that effect was approved in 1974 (Luther 1986: 162). In particular Vorarlberg has played a lead role in advancing more regional autonomy. At one point, it even filed for recognition as a region with a special status. Since Vorarlberg has a more conservative orientation than the other regions, the quest for additional regional powers has been particularly strong when Social Democrats controlled the federal government. More recently, all Austrian regions have been successful in increasing their input in EU decisions that affect their regional competencies (Kovziridce 2002). In 2004, a constitutional convention sought to invigorate the position of the regions in the Austrian federal model (see Chapter 6).

Table 2.4 lists all nine Austrian regions. There is no form of constitutional asymmetry. Therefore, all nine regions are listed in two columns, in alphabetical order.

Table 2.4 Contemporary Austria and its regions

Burgenland	Tyrol
Carinthia	Upper Austria
Lower Austria	Vorarlberg
Salzburg	Vienna
Styria	

2.3 State building in the *interface peripheries*:

Belgium and Switzerland

Belgium: from a unitary francophone to a federal multilingual state

Arguably, of the West European states that still exist today, Belgium has been the most problematic case in terms of state-nation building. The territory that came to be known as Belgium was once a part of Burgundy, the Spanish and Austrian Habsburgs, France and the Netherlands. In 1830, it emerged as the seceded neutral, southern, Catholic and more industrialized part of the United Kingdom of the Netherlands. In this sense, the historic roots of Belgium are very different from that of the other interface periphery, Switzerland.

The Franco-German language border cross-cuts Belgium (the roots of which go back to the Roman Empire). Hence, at the time of independence, the population of Belgium could be clearly divided between a majority group of Flemish-speakers (a Dutch dialect) and a minority group of French-speakers. The Flemish live concentrated in the North, the French-speakers in the South. Although it had been a powerful region in the Middle Ages, the present-day borders of Flanders correspond only in part with its historical borders. Much of its contemporary territory once belonged to the Duchy of Brabant or the Episcopate of Liege. The same observation applies to Wallonia. In this sense, the two main regions of the contemporary Belgian federation are relatively recent constructs.

Although in 1830 a majority of the Belgian population spoke Flemish, the political, military, socio-economic and cultural elite was French-speaking. In addition, Flemish had a negative connotation. It was associated with the Protestant Dutch Republic which at that time was controlled by King Willem I, at best an enlightened despot. These values contrast with the predominantly Catholic nature of Belgium but also with the liberal ideas that inspired part of the bourgeoisie. The latter were obviously derived from the French Revolution. Thus, they were written down in French (Wils 1992; Witte, Craeybeckx and Meynen 2000).

Pursuing the state-nation policies of its southern neighbour, the Belgian elites imposed French as the only public language. One nineteenth-century Belgian Prime Minister is known to have said that 'either Belgium shall be Latin or Belgium shall not be'. Brussels, a relatively small and predominantly Flemish-speaking city, quickly developed into a more sizeable French-speaking administrative urban knot, modelled after Paris.

The *Frenchification* of Belgium was not to the liking of the lower clergy, who kept a stronger foothold in the more Catholic Flemish part of the country than in French-speaking Wallonia. Their claims were supported by the gradually expanding Flemish middle classes, who were exposed more directly to the discriminatory practices of the Belgian administration than the Flemish peasants or labourers. Unlike the latter, middle-class people would normally receive a basic level of education. Commerce would bring

them in touch with civil servants and the like, all of whom provide their services exclusively in French. Dutch-speaking people who pursued a career in the civil service also had to bear the extra costs of learning a non-native language, a requirement with which their French-speaking colleagues did not have to comply.

In the second half of the nineteenth century, a 'Flemish Movement' emerged. It sought the recognition of Dutch as an official language alongside French in legislation, the courts and education. Initially, its aim was to turn Flanders or Belgium into a bilingual area. Gradually that objective shifted to making Flanders monolingual. This shift was explained in part by the reluctance of the French-speakers to accept a bilingual solution for Belgium as a whole as this would put the Dutch-speakers into a strategic advantage. The latter had been more willing to learn French than the other way around and bilingualism would thus mean that citizens of Dutch-speaking origin would stand a better chance of getting the most attractive jobs in administration.

The recognition of Dutch as an official language alongside French has been a long process that started in the 1880s and reached its heyday in the 1930s, although formal rules (particularly with regard to the language laws in and around Brussels) were not always observed. Three major factors increased the process of linguistic emancipation. First of all, the gradual democratization of Belgium provided the Flemish demographic majority with a meaningful springboard to strike back. Demographic weight translated into political weight. Second, increasing educational standards as well as a more widespread offering of education contributed to a standardization of the dialects that were spoken in Flanders. This has made Flemish entirely compatible with the Dutch language in all but accent. Third, except for a relatively small elite group of French-speakers, the gradual imposition of the Dutch language in Flanders has come at a relatively low cost. The share of French-speakers who live there has been relatively low from the outset. Apart from Brussels – which took on a predominantly French-speaking character in a relatively short time span – no immigration from French-speakers into Flanders has taken place. As long as Wallonia outperformed Flanders in economic terms, Flemish immigrants flocked to the Walloon centres of industry and quickly adapted the French language. Three elements certainly slowed down the process of Dutch linguistic emancipation, despite the facilitating elements that I have just enumerated.

First, and linked with the previous point, until the 1960s, the Flemish part of Belgium was economically weaker than Wallonia, one of continental Europe's early industrialized regions. This changed when the coal and steel industries of Wallonia went into a severe economic crisis and Flanders – like Bavaria in Southern Germany – shed its agricultural past and welcomed a group of multinational companies in and around the port city of Antwerp. Consequently, Flanders could use its economic strength as a vehicle for strengthening language rights. This occurred in the 1960s, when the

Flemish GRP per head of the population surpassed that of Wallonia for the first time (Hooghe 2004).

Second, in World War I, a majority of the Belgian front-line soldiers was Dutch-speaking, but more often than not they received their orders from French-speaking officers. When Flemish complaints after the war did not lead or led too slowly to increasing the role of Dutch in the army or public life, the share of Flemish militants who questioned the legitimacy of Belgium increased. Later, the Nazi's tapped into these feelings of Flemish discontent. During the occupation period, they offered collaborating Dutch-speakers nice career prospects in the Belgian civil service at the expense of their French-speaking colleagues. The repression that followed after World War II was severe for those people who had sold their soul to Nazism, and thus also for those who did so primarily with a linguistic cause in mind. The war also rendered the quest for Flemish autonomy illegitimate, making federalism or devolution a non-issue until the 1960s. As a result, public opinion in Flanders and Belgium polarized. Many of the Flemish citizens who had actively collaborated with the Nazi's would find even less legitimacy in the Belgian state. A hard core (some of whom ended up in the *Volksunie* and *Vlaams Blok*, two Flemish Nationalist parties) considered federalism as a springboard to confederalism or even an independent Flanders.

Finally, federalism requires a clear demarcation of territorial areas. In Belgium territoriality generally coincides with linguistic homogeneity, but in order to push through this principle a solution had to be found for linguistically mixed zones, in particular, Brussels and its surrounding areas. When Belgium became independent in 1830, Brussels was still a relatively small and predominantly Flemish-speaking city. By 1960 the city had grown in population by more than 600 per cent. Because it had played the role of Belgium's leading political and administrative centre since 1830, Brussels had developed into a predominantly French-speaking enclave located in Flanders. In 1963 an 'agreement' was reached on the bilingual status of Brussels, but also on the Flemish character of the surrounding municipalities. However, it was agreed that French-speakers should be entitled to some services in French in a few of these municipalities (see Chapter 7).

The demarcation of linguistic zones paved the way for devolving powers to the regions and communities. Thus the linguistic zones were a monolingual French-speaking Wallonia, a monolingual Dutch-speaking Flanders, a bilingual Brussels Capital Region and a tiny German-speaking Community. The latter is located in the East of Belgium on territory that was acquired from Germany after World War I. Belgian federalism is unique in that it combines a strictly territorial with a partially non-territorial form of federalism. The territorial component refers to the devolution of socio-economic powers to three regions (Flanders, Wallonia and Brussels). The non-territorial component relates to the devolution of cultural and educational competencies to three linguistic communities (Dutch-, French- and German-speaking).

Brussels is thus the playing field of two communities; it is not a community of its own. The German-speaking community is not a region: regional competencies within its territory are taken care of by the Walloon Region. The number of Dutch-speakers who live in Brussels is relatively small, both as a share of the total inhabitants of Brussels and as a share of the total group of Dutch-speakers in Belgium. Therefore, the Flemish Region and Community have merged their governments and parliaments into one governmental structure (labelled the Flemish Community). A French Community that is separate from a Walloon Region and a Brussels Capital Region continue to exist. This is so because the French-speaking inhabitants of Brussels constitute a larger share of the French-speaking group of Belgians (roughly 18 per cent) and do not generally identify as Walloons. Table 2.5 summarizes the complex Belgian state structure. In the next chapter, I will elaborate in more detail on the various linkages that exist between community and regional structures.

Table 2.5 The Belgian Regions and Communities

Communities	Regions
Flemish Community	
French Community ('Communauté Bruxelles-Wallonie')	Brussels Capital Region
German-speaking Community	Walloon Region

Switzerland: Western Europe's only 'coming-together federation'

Switzerland is Western Europe's other main interface peripheral state. Unlike the present-day regions of Belgium, the eldest Swiss cantons have a much longer history of prolonged independence. If we consider that the borders of the German regions have repeatedly changed, Switzerland is the only West European example of a centripetal or 'coming-together' federation. Swiss cantons have gradually joined forces, first in a confederal alliance and subsequently in a federal state structure. The deep historical roots of the cantons, many with different religious and/or linguistic backgrounds have prevented a unitary structure from arising. The mountains served as a protective barrier against the crushing military powers of the surrounding empires. Therefore, a confederal defensive alliance was sufficiently strong to protect the Swiss against outside aggression, until the French controlled Switzerland after the French Revolution took place.

The roots of contemporary Switzerland go back to 1291 when 3 forest, pastoral and German-speaking communities (Uri, Schwyz and Unterwalden) formed a confederal defensive alliance against the Habsburgs. In the fourteenth century, 5 further communities with a more urban character

(amongst which were Bern and Zürich) joined the alliance. This conjunction between urban and agrarian centres set the Swiss confederal arrangement apart from the Hanseatic League which never forged the same connection (Forsyth 1981: 21). Shortly after the alliance held off the Habsburgs in the battle of Sempach (1386), it entered a phase of offensive expansion, leading to a union of 13 cantons at the time of the French Revolution.

The first major test for this expanded confederation came with the Old Zürich War, as Zürich (with the support of the Habsburgs) sought to violate the terms of the alliance, but was brought in line again by the other cantons. Protestantism brought the second major challenge. Seven cantons remained Catholic, two were divided and four became Protestant. The Protestant cantons constituted a numeric minority, but in economic and demographic terms they dominated the confederation. However, internal compromise prevailed and an external policy of neutrality was pursued. The founding of the Helvetic Society in 1761 is testimony to the development of an embryonic Swiss national identity (Forsyth 1981: 24).

During the period of French rule a unitary and French-speaking regime was imposed upon Switzerland, modelled after the administrative structure of France. The cantons continued to exist as sheer administrative departments of France. When the Swiss retook the destiny of their own land in 1815, they quickly restored the previous confederal state-order. Six predominantly non-German speaking 'subject territories' received full recognition as cantons, in compliance with the former French policy of treating all cantons (departments) as equals. Full cantonal status was accorded to a further three French-speaking allies, including Geneva. Hence, it was not until 1815 that Switzerland became a multilingual confederation in the true sense of the word. The cantons offered each other mutual assistance in the event of a military threat. Confederal decisions required the common consent of a conference of cantonal delegates, but a central legislature, let alone executive, was missing. Thus, the Swiss confederation still fell short of genuine statehood.

The revolution which swept through France in July 1830 sent liberal shockwaves through the confederation, and with it a desire to turn Switzerland into a more centralized democracy. The liberal ideas found sway in the more Protestant, urbanized (and generally also more German-speaking) Swiss cantons. In political terms, the pro-liberal reformers were known as Radicals, those who sought to uphold the traditional privileges of the Catholic Church as Conservatives. Tensions between liberal Protestants and Catholic conservatives escalated in 1845 when seven Catholic cantons formed the Sonderbund. The Sonderbund war that followed in 1847 pitted these Catholic cantons against the Protestants. After 26 days of warfare in which a hundred casualties were made the Protestants won this battle. A more centralized federal constitutional order emerged (Forsyth 1981: 29). A written constitution established a multilevelled, partially democratic polity

in which many of the traditional instruments of local policy input were retained or extrapolated to the federal level. The constitution was put to a nation-wide vote and accepted in two-thirds of the cantons. That the federal constitution was not subject to unanimous cantonal consent (in fact the cantons that lost the Sonderbund war all voted against) testifies that Switzerland had surpassed the confederal order already.

Switzerland is a state-nation and not a nation-state insofar as a sense of Swiss nationhood only developed after a Swiss federal order was established. However, it is not a 'plurinational' or multinational state either because its religious or language communities cannot be conceived as 'minority nations' within the Swiss state. The previous paragraph also made clear that for long in Switzerland religion has had a more polarizing effect than language. The ebbing of the religious cleavage is linked to various factors. Next to the overall secularization of Western Europe, the Swiss state has accepted 'religious diversity', for instance, by recognizing Land churches or Catholic schools. The federal constitution also explicitly recognizes full freedom of religion, but couples it with a cantonal obligation to establish confessionally neutral schools (which may exist alongside Catholic schools – Linder 1998: 20). In this sense, the constitution established the state's religious neutrality but simultaneously guaranteed the protection of the Catholic minority. The same principle applies to linguistic diversity. German, French, Italian and Romansch are recognized as national languages. The first three also receive recognition as official (working) languages of the Swiss federal centre. However, the cantons are guaranteed linguistic autonomy. Unlike the French-speaking elite who governed Belgium in its first century, Swiss federal elites have not sought to push through German as the sole language of administration, commerce and education. Instead, cantons were allowed to protect the language that is most widely spoken within their borders (see Chapter 7 for a discussion).

Finally, the cross-cutting nature of Switzerland's linguistic, religious and socio-economic cleavages which do not intersect with cantonal borders has contributed to an appeased climate of policy-making. German-speaking cantons are more Protestant and slightly more affluent than the Catholic cantons of the Suisse Romande (French, Italian or Romansch-speaking cantons). Yet, some predominantly French-speaking cantons are also predominantly Protestant; some German-speaking cantons are small and agrarian, and no Swiss canton is more industrialized and urbanized than the German-speaking canton of Zürich. Thus, respect for cantonal traditions, including their linguistic, economic, cultural and religious profile has fostered the formation of a Swiss national identity which embraces diversity as one of its core values (Linder 1998: 18–27).

Table 2.6 lists all 26 Swiss cantons in alphabetical order, but distinguishes between 20 'full' and 6 'half-cantons'. The dates in between brackets refer to the year in which a canton became a full member of the Swiss confederation.

Table 2.6 Switzerland and its regions

Full Cantons		Half Cantons
Aargau (1803)	Schwyz (1291)	Appenzel-Inner Rhoden (1513)
Bern (1353)	Solothurn (1481)	Appenzel-Outer-Rhoden (1513)
Fribourg (1481)	Saint Gallen (1803)	Basel-City (1501)
Jura (1978)	Thurgau (1803)	Basel-Land (1501)
Geneva (1815)	Ticino (1803)	Obwalden (1291)
Glarus (1352)	Uri (1291)	Nidwalden (1291)
Graubünden (1815)	Valais (1815)	
Lucerne (1332)	Vaud (1815)	
Neuchâtel (1815)	Zürich (1351)	
Schaffhausen (1501)	Zug (1352)	

Source: Linder 1999: 155; Davies 1996: 1256.

The difference between half and full cantons is explained in greater detail in the next chapter; the relatively recent formation of the Swiss Jura canton is discussed in Chapter 7.

3. Conclusion

In this chapter, I provided a brief overview of the origins of the federal or regionalized states that are part of this comparative study. It sought to provide answers to three questions.

First, why, in the process of European state and nation building, did some of the Western European states that are covered in this book adopt a federal character, and why did others adopt a unitary state structure instead? The analysis made clear that only Switzerland emerged as a centripetal federation, in a sense that several cantons gradually came together to form a confederal union. Later, the confederation transformed into a full-fledged federation. In part, this coming together process was an effort to keep surrounding enemies, particularly the Habsburg Empire, at a distance. The hegemony of Prussia allowed it to control most of the German-speaking area of the West European core, but not without a price. Prussia could not unite the entire German-speaking area, and it also had to accept some form of federalism. The federal nature of Germany was required to respect the religious diversity of the country and to ensure that the southern regions (Bavaria) would not side with Austria-Hungary. The Austrian federation emerged as the rump state of the Hapsburg Empire. Although the double monarchy had been internally fragmented and decentralized, decentralization as such was not significant within the main components of the double monarchy. In this sense, from the outset Austria and Germany emerged as relatively centralized federations.

When it emerged as a buffer state between France, Prussia and the Netherlands, Belgium tried to copy the state-nation efforts of its southern neighbour France. The French-speaking elite sought to create an 'indivisible nation' inspired by some of the French republican ideals. Like France, the Spanish state emerged relatively early, and in its initial format accepted some of the peculiarities of the minority nations (Catalonia, the Basque regions). The coming together of Castilia and Aragon is at the root of the Spanish state-building process. However, nineteenth-century nation building subjected these minority nations to the homogenizing efforts of the Castilian-speaking political and military elite. Finally, Britain emerged as a union between three nations, in which England nonetheless dominated. For long, Scotland and Wales were allowed some form of special recognition. It was not until nationalism reached its peak in the nineteenth and twentieth centuries that the Scottish and Welsh felt the pressure of a nation-building process in which England dominated the union.

Second, taking a look at more recent history why did attempts to create homogeneous state-nations succeed in some states (France) but fail in others (Belgium, Spain)? Or, put differently, why did Belgium, Spain and the UK survive as unitary states for that long, and what triggered their recent transformation into federal or regionalized states? In part, the federal or regionalized character of these states reflects failed efforts of homogeneous state-nation building that were inspired by the French model. Yet, each of these countries only adopted a federal or regionalized character after World War II, mostly even after 1975. In this sense, their regionalization coincides with the erosion of traditional state boundaries which results from increasing transnational economic cooperation. Furthermore, the spread of mass communication has facilitated the promotion of local as well as world languages.

Belgium was originally conceived as a French-speaking unitary state. Such a state structure was imposed upon a predominantly Flemish-speaking population. The democratization of Belgium, as well as the shift of the economic centre from Wallonia to Flanders, set the stage for Belgium's slow transformation from a unitary state into a complex federal one, with three language communities and three regions. In Spain, the political and administrative core did not coincide with the centres of economic gravity. The latter often displayed regional languages and could invoke some historical rights of self-autonomy. These regionalist forces were strong enough to survive more than a century of administrative centralization and authoritarianism. When Spain democratized, the historic regions regained a degree of self-autonomy which has increased and spilled over to other regions since. Finally, the UK operated as a union state in which Wales and particularly Scotland and (Northern) Ireland always found some form of territorial recognition. The secession of Ireland dealt a blow to the Scottish nationalists who sought home rule for their territory as well. Home rule to Scotland and Wales

was not granted until 1997, when a central Labour government came to realize that devolution was needed to sustain its future electoral performance in both regions. By then, vast majorities of the Scottish and Welsh electorates had displayed widespread discontent with almost two decades of British conservative neo-liberal policies. Granting devolution was a means to channel that discontent and to prevent some of the ethno-regionalist parties from running away with it.

Finally, does the contemporary shape of most regions have a long-standing legacy? Only the Swiss cantons, some Spanish regions (Catalonia, the Basque Country and Galicia, but also for instance Andalucia), several, but not all of the Austrian regions, England, Wales, Scotland and a few of the contemporary German regions have a long-standing history as political entities. Flanders had existed as a powerful West European region, but its historical boundaries changed, whereas Wallonia is a more recent political construction. The same observation applies to some of the non-historical Spanish regions. Their boundaries were often imposed from above when first seeking to decentralize or deconcentrate some central administrative services. Often they were elevated to regional status as part of a more ambitious devolution scheme. Yet, once these regional structures are in place, they often develop regional allegiances of their own. Regional identities are malleable, just as state-wide identities. Newly emergent regional political classes and opinion leaders can play an important role in this process (see Chapter 7).

3

The Centre and the Regions: the Constitutional Approach

1. Introduction

In the introductory chapter federations were identified as states with a written constitution which specifies the legislative and executive authority of the federal and regional orders of government. Constitutional provisions ensure that the interests of the regions are not overlooked when rules dividing competence are changed. Federations also have mechanisms to resolve disputes on the allocation of federal or regional competences. Thus, federal constitutions specify how competencies are distributed, amended and adjudicated. This chapter seeks to illustrate the huge variation in these characteristics which our country cases display.

In the first part of the chapter, I elaborate on the distinction between dual and organic federalism. Although presented as two distinct categories, I will argue that dual and organic federalism should be seen as two outliers on a continuum. I will operationalize this continuum by considering to what extent the constitutional *method of distributing legislative and executive competencies* 'programmes' the centre and the regions to cooperation or maximizes their independence. The more that distribution builds in a need to cooperate, the more a federation tends towards the organic end of that continuum and vice versa.

In the second part of the chapter, I touch upon a different constitutional aspect of federalism, namely, the notion of constitutional asymmetry. Constitutional asymmetry arises when not all the regions of a federation or a regionalized state receive identical sets of legislative, executive or fiscal powers and where these different 'statuses' of autonomy find explicit constitutional recognition. Belgium, Spain and the UK feature such elements of asymmetry.

The final part of the chapter considers the 'flexibility' of federal or decentralized arrangements. Changing the sections of a constitution that deal with the distribution of central and/or regional powers can be the fruit of two distinct processes. Either the constitution is amended formally. Usually

such changes occur on the initiative of the central legislature, but they may require the consent of a wider group of actors. Or, the distribution of central-regional competencies changes as the result of judicial review by a constitutional court or supreme court. This raises two main questions which will be dealt with in turn. First, which has been the most important method for explaining changes in the distribution of competencies between the centre and the regions? Second, if such changes are the fruit of formal constitutional change, is there any (formal) input of the regions in this process? Alternatively, if *de facto* constitutional change is mainly the product of judicial review, what has been the input of the regions in determining the composition of the court that decides on such issues and has the court's jurisprudence strengthened or weakened the role of the regions in the political process?

2. Dual, cooperative and organic federalism

Dual federalism denotes a method of dividing powers which neatly separates legislative and executive functions between the central and regional levels of government, and ideally turns each level into 'watertight compartments'. Dual federations are the opposite from organic federations which have a strongly inbuilt tendency to federal-regional cooperation.

The term 'organic federalism' is not as widely used as the term 'cooperative' federalism. I borrow it from the Australian constitutional scholar Geoffrey Sawer, but I do not use it in an identical sense. Geoffrey Sawer defines 'organic federalism' as 'federalism in which the *centre* has such extensive powers, and gives such a strong lead to regions in the most important areas of their individual as well as their cooperative activities that the political taxonomist may hesitate to describe the result as federal at all' (Sawer 1969: 104). In the view of Geoffrey Sawer, organic federalism in the extreme almost equals *centralization*. In my understanding organic federalism in the extreme equals almost complete federal-regional *interdependence*. Just as the different parts of a body cannot function in isolation from each other, federal and regional entities that are embedded in an organic federal structure are mutually dependent.

Dual and organic federalism are two *theoretical* outliers on a continuum. In practice, federal states fall between both of these extremes. They are *more or less cooperative* in character. Thus, organic federalism describes a situation of maximum joint federal-regional cooperation or interdependence. Dual federalism equals a state of maximum federal-regional independence. In a federation that is 100 per cent dual, all functions can be neatly separated between the federal and regional levels of government. In a federation that is 100 per cent organic, the regions can take *hardly* any decisions without the involvement of the federal government and vice versa. I specify *hardly any* instead of *no decisions*, because if the regions could not take a single decision

without the involvement of the centre or vice versa we would not have a federal structure of government any more.¹ The closer a federal constitution approaches the organic end of the continuum, the more 'cooperative' it is. The closer a federal constitution nears the dual end of the continuum, the less cooperative it is.

By understanding cooperative federalism as a continuum we avoid some conceptual confusion that arises from the literature on comparative federalism. For instance, US scholars would consider contemporary American federalism as cooperative, whereas Austrian or German scholars who study US federalism would consider it as competitive or dual (see Walker 1995; Sturm 1997). We could simply argue that US federalism remains less cooperative than German federalism, despite the fact that it has grown more cooperative in time.

The next step is to 'operationalize' the cooperative continuum. What determines whether, by constitutional design, one federation is more cooperative than another? In this chapter, I propose two strongly related but analytically distinct dimensions. The first dimension relates to the *method* of assigning legislative competencies. Does the constitution, when assigning legislative competencies to one level of government leave discretion for residual legislative action by the other level? Here, I will introduce concepts such as concurrent and framework laws that are widely used in the literature: the broader the scope for concurrent legislative action, the stronger the degree of cooperation. The second dimension considers the relationship between legislation and implementation. Where both of these tasks are assigned to different levels of government, cooperation is the logical outcome. In this case, federalism is more organized on the basis of a separation of functions than on a separation of powers. In the next section, I will elaborate on both of these dimensions.

2.1. Dimension 1: assignment of legislative competencies

General concepts

Constitutional analyses of federalism refer to a number of terms or concepts that are not unambiguously interpreted. I shall first explain a few technical terms (though alternative definitions may have emerged), and subsequently apply them to our case studies.

Federal constitutions that provide for a large number of *concurrent* legislative powers have an inbuilt tendency to cooperation. Federal constitutions that only specify *exclusive* federal and/or *exclusive* regional legislative powers tend to be closer to the dual end of the continuum. This is particularly so if the character of one or both of those lists is long and detailed. *Concurrency* should be contrasted with exclusiveness, as the central and regional governments can act side by side in a given policy field.

Concurrent legislative powers come under many forms and guises. Concurrent powers can be listed *explicitly* or *implicitly* in the constitution. By

explicitly enumerating concurrent powers, a constitution clarifies that the federal *and* regional levels of government are authorized to operate in a particular policy field. Typically, the actions of one level of government take precedence over that of another level whenever norms that stem from different levels of government in a concurrent policy field contradict each other. Thus, concurrency implies a certain degree of hierarchy. In most cases the will of the central government prevails ('federal paramourcy'; Watts 1996). However, where concurrent powers are listed explicitly, actions of the hierarchically superior government may require that certain constitutional criteria are met first.

Sometimes the way in which a constitution is phrased may lead to the emergence of a number of concurrent legislative powers, although these are *not* explicitly listed as such in the constitution. This may be the case if the constitution (only) lists a number of competencies in which the centre *may* legislate. By implication, the regions are authorized to legislate in the same fields so long as the centre has not entered these domains. The opposite could also occur. The constitution may authorize the regions to legislate in a specific domain and allow the central government to do the same so long as the regions have not taken up their right to legislate. Once the central or the regional governments decide to legislate the same hierarchical principle as above applies. The implicitly concurrent character can apply to the entire catalogue of legislative competencies. Therefore, the conditionality requirement which separates concurrent from exclusive legislative powers in constitutions that explicitly list the former (such as the German constitution) is generally missing from constitutions that do not formally distinguish between exclusive and non-exclusive legislative powers (such as the US constitution).

Framework legislation assumes a particular position within the group of concurrent legislative powers. Framework bills determine the legislative frame within which another tier of government is allowed to operate. Framework legislation may be subject to conditions, preventing the level of government that is 'setting the frame' from hollowing out the residual legislative competencies of the other level. The more detailed a framework law, the less scope for supplementary legislative action. When the centre sets the frame, regions should be allowed to tailor centrally prescribed policy regulations to their own specific needs. If they live up to their name, framework laws result in legislative cooperation between the central and the regional levels of government.

The final notion that requires clarification is that of the *residual powers*. Residual legislative powers are those powers that are not explicitly listed in the constitution. Usually a 'residual power clause' clarifies the level to which they belong. There is a clear connection between the origins of a federation and the allocation of the residual powers. For instance, if a federation emerged as the result of a 'coming together' of previously autonomous

entities, the constituent assembly is likely to determine the powers of the newly established federal centre. Consequently, the residual powers remain under regional control. Where regionalization occurred as the result of devolving legislative powers to newly established or empowered regions, the opposite is more likely. As I will demonstrate below, the reality is often more complex.

In the following paragraphs, I will apply the above insights to our case studies. The section pays attention to the methods of allocating federal/regional competencies, but it does not yet analyse *which* powers are assigned to *which level* of government and *why*. These questions will be answered in Chapter 4.

Applying general concepts to our case studies

Switzerland, Germany and Austria. Reflecting the coming-together nature of Swiss federalism, Article 3 of the Swiss constitution stipulates that the cantons remain sovereign, 'to the extent that the federal constitution has not limited their sovereignty and exercise all those rights, which have not been transferred to federal power'. Hence, the residual power clause benefits the regions. Yet, the Swiss constitution lists federal alongside cantonal legislative responsibilities (cf. Title 3, Chapter 2).

When carving out federal and cantonal legislative competencies, we find that the Swiss cantons are left with only a limited number of areas in which they have *full* legislative autonomy (e.g. policing and education up to the level of university education are prominent examples). More than half of the constitutionally assigned policy spheres give a de facto *legislative* monopoly to the centre (Wälti 1996: 120–1). In addition, in a large number of policy spheres (e.g. agriculture, electricity, infrastructure and trade policy, civil and penal law) legislative powers are genuinely *shared* between the federal and cantonal levels. The sharing of powers does not imply that the federal level sets a federal frame within which the cantons may enact supplementary legislation. Rather it means that the centre and the cantons each regulate different aspects of a policy.

Although they have not emerged as centripetal federations, the German and Austrian constitutions also assign the residual powers to the regions. Article 70 of the German Basic Law stipulates that the 'the regions have the right to legislate insofar as this constitution does not confer legislative power on the federation'. Similarly, Article 15 of the Austrian constitution mentions that 'in so far as a matter is not expressly assigned by the federal constitution to the federation for legislation or also execution it remains within the regions' autonomous sphere of competence'.

German federal legislative powers are divided into two categories: *exclusive* and *concurrent* legislative powers. In the former, the regions can only legislate insofar as a specific federal law authorizes them to do so. In the latter, the

regions can legislate, 'as long as and to the extent that the federal legislator does not do so' (federal paramountcy). Federal norms prevail in the case of conflicting federal and regional legislation in the concurrent field. In this sense, the principle *Bundesrecht bricht Landesrecht* ('federal law breaks regional law') applies. However, federal actions must contribute to establishing 'equal living conditions' or to preserving legal and economic unity. The list of exclusive legislative powers comprises 11 subject headings. The list of concurrent legislative powers is much longer. At present it lists 27 policy domains. In practice, the federal legislator has had little difficulty in entering all of these concurrent legislative areas. Usually it justified its actions by stating that they contribute to the constitutionally required goal of realizing a 'uniformity of living conditions'. The German Constitutional Court (GCC) has mostly endorsed that point of view whenever federal concurrent laws became the subject of judicial litigation (Blair 1981; Blair and Cullen 1999). However, in a recent case the GCC denied the federal government a right to regulate certain aspects of health care policy for elderly people, despite the fact that the federal government invoked its actions by listing the 'uniformity of living conditions clause' (Kramer 2005: 176).

Next to general concurrent powers, the German Basic Law (constitution) authorizes the federal government to introduce *framework bills* in seven subject areas. Framework bills only contain detailed provisions in exceptional cases. Framework and general concurrent bills have emerged in areas that previously belonged to the exclusive legislative domain of the regions. In this sense, their more frequent occurrence illustrates the centralization of the German federation, at least in the period between 1949 and 1990. Since 1969, the constitution has made further reference to 'joint-decision-making tasks'. These 'tasks' refer to a set of programmes which authorize the federation to coordinate policy areas that previously fell under exclusive regional control (e.g. coastal planning, construction of university hospitals). Regions remain involved in the overall planning of these programmes, including part of their financing and their full implementation.

The Austrian constitution has some aspects in common with its German counterpart, but in legislative terms it is an even more 'centralized' federation. The Austrian constitution makes reference to a large number of federal legislative powers. Unlike the German Basic Law, the Austrian constitution does not explicitly mention the concurrent nature of these powers. The list of exclusive federal legislative responsibilities is more extensive and detailed than the comparable list in the German constitution. Twenty-four subject areas are within the exclusive legislative remit of the centre; six areas are designated as federal 'framework bills'. The latter leave the regions with a very limited scope of discretion. They merely provide the regions with an opportunity to set 'implementing laws' for federal legislation. Finally, a long and detailed article carves out federal and regional responsibilities in the field of education. Education is a competence matter which, unlike the position

in most other federations, is primarily federal in character. The residual powers are allocated to the regions, but other than that the constitution does not explicitly list in which areas the regions may legislate. Sometimes, it does this indirectly by specifying to what extent certain regional policy areas are subject to federal legislative intrusion. For instance, Article 15 mentions that in cultural matters (theatres, cinemas, public shows and performances) the federal level retains legislative responsibility for securing the public safety of such events, prohibits regional intervention into 'technical operation, building police, and fire police considerations' and in participating in the initial stage of the granting of licences as stipulated by such federal legislation. Consequently, the regions are responsible for other aspects of cultural policy (they decide on the content of cultural policy, for instance, by determining which companies to subsidize).

Belgium, Spain and the United Kingdom. In line with the centrifugal character of Belgian federalism, Belgian policy-makers have kept the residual powers federal. The 1992–93 constitutional rewrite (which formally turned Belgium into a 'federal state') opened up the possibility of devolving the residual powers to the regions. Such a move requires adopting a constitutional article which lists the exclusive legislative powers of the centre first. Thus far, no such article has been endorsed (and no attempt has been made to draft one). This illustrates the lack of agreement on where the Belgian state is heading and on which powers should be kept under federal control.

The Belgian constitution does not list the powers of the regions and communities in great detail. The constitution lists the core community competences (Arts 127–9), but it does not even touch upon the competencies of the regions. However, this does not mean that the Belgian constitution (broadly defined) lacks a regional and community competence catalogue. Rather, community and regional competencies are listed in 'laws adopted by a special majority, of the type listed in Article 4 of the constitution'. Such 'special majority laws' can only be approved with a two-third federal parliamentary majority, comprising a majority among the Dutch *and* the French-speaking MPs in *both* chambers of parliament (House and the Senate). The Belgian Constitutional Court can annul any federal or regional law which violates the competence dividing rules that are specified in these 'special majority laws'. Therefore, these special majority laws should be considered as a *de facto* part of the federal constitution. Perceived accordingly, the Belgian constitution leaves us with a very long and detailed description of community and regional legislative competencies.

The Belgian constitution does not explicitly list any concurrent legislative powers. One exception pertains to federal income tax legislation, a concurrent power with federal paramountcy (Alen 1995). Leaving aside this particular example, Belgian federalism does *not* prescribe a hierarchy between federal and regional legislative norms. Federal and regional laws stand on an equal

footing and are subject only to the federal constitution and the special majority laws. In this sense, Belgium tends strongly towards the dual end of the continuum. However, as I will discuss in greater detail in Chapter 6, the levels of required interregional or federal-regional cooperation are larger than is often assumed. The special majority laws frequently assign only *aspects* of a legislative policy field as regional (for instance, agriculture but not food quality control). By implication, the federal government retains control over adjacent aspects. This necessitates intergovernmental contact if coherent policy-making is the objective (Poirier 2002).

Nowhere is the method of distributing legislative competencies between the centre and the regions more complicated and ambiguous than in Spain. Such complexity stems in part from the lack of agreement on where the Spanish state should be heading: a federal, a regionalized or unitary decentralized state? No constitutional article expresses this ambiguity more clearly than Article 2: 'The Constitution is based on the indissoluble unity of the Spanish Nation, common and indivisible country of all Spaniards *and* recognises the right to autonomy of the nationalities and regions of which it is comprised and solidarity amongst them.' The constitutional division of central-regional competencies was bound to create considerable confusion. Franciso Rubio Llorente, who as secretary of the Spanish Parliament (Cortes) took part in the drafting process of the constitution, described it as 'the most serious of the many problems the constitution had to resolve' (Rubio Llorente 1988b: 263). The matter could not be postponed to a later date: whilst the drafters were negotiating a Spanish constitution, the Basque separatist movement ETA committed several terrorist attacks. The constitutional drafters feared that not offering any concessions to the nationalists would lead to more widespread violence (Rubio Llorente 1988b: 264).

The Spanish constitution contains a double catalogue of competencies: unlike the Belgian constitution, it enumerates the competences of the centre ('the state' in the wording of the Spanish document) and the regions. Article 149 of the Spanish constitution lists no less than 32 areas of legislative competence in which the centre remains *exclusively* responsible. In this sense, the condition for allocating the residual powers to the regions that is absent from the Belgian constitution is present in the Spanish text. Matters which do not belong to the state shall belong to the regions by virtue of their *specific statute*. Regional autonomy stems from two sources. Next to a minimum set of regional powers (Article 148 constitution), each of the regions also has a 'Statute of Autonomy'. The Statutes of Autonomy must contain, amongst others, 'the competencies assumed within the framework of the [central] constitution and the bases for the transfer of the corresponding services to them' (Article 147.2d).

Article 148 lists 22 subject headings in which the regions *may* (thus does not a priori have to) assume responsibilities. De facto, many of these

competencies are not exclusive, but shared, since the Statutes of Autonomy have left the central parliament with some room for working out framework legislation in these matters. Arguably, the Spanish centre has retained a stronger input than just setting the legislative frame for some of these policies. The veto powers which the regions can employ in the centre are too weak to prevent this from happening. Conversely, the regions frequently implement central legislation as they see fit, placing them on a collision course with the centre (Börzel 2002: 94).

Article 148 does not rule out the expansion of the regional list of competences *beyond* the number that is already enumerated in that article. In fact, by amendment of their Statutes (a process that always involves double, possibly triple, consent: the national and regional parliaments as well as the affected regional electorate), regions can enter competence areas which the constitution assigns as 'exclusively central' (Article 149). Regions have not developed along the same path of autonomy and have not each assumed the same set of legislative competencies (either drawn from the list of 'potentially' regional powers or from the list of ceded exclusive central powers). In sum, the constitution at best provides a framework within which the regions can organize their competencies but will face the competition of the central state. Sometimes, such competition occurs in areas in which the constitution *may* be considered as regional but in practice ends up being shared. Sometimes, competition emerges in competence spheres which the constitution assigns as exclusively central. This ambiguity leads to a large number of 'concurrent legislative' areas without explicitly determining who prevails in a situation of conflict. As I will discuss in section 4, the Spanish Constitutional Court has played an important role in clarifying these matters. However, ambiguity is not without its advantages. By keeping the allocation of powers and responsibilities open to negotiation, the Spanish process of devolution contained a high degree of inbuilt flexibility. In this way a definitive settlement on the scope of regional autonomy was foreclosed and constitutional asymmetry was almost made inevitable. If constitution makers had sought to come up with a more definitive settlement in 1978, the constitutive assembly may well have collapsed. Even the compromise text was not approved by the Basque Country, in contrast with that region's Statute of Autonomy which emerged a few years later.

Finally, the UK is the odd fellow among our cases. First, the British devolution settlements only pertain to Scotland, Wales (and Northern Ireland). Second, of these three regions, only Scotland and (until its autonomy was suspended) Northern Ireland had legislative powers. As I will discuss later, Wales has received executive autonomy only. Third, there is no supreme, written 'British constitution' in the strict sense of the word. The powers of the devolved authorities are listed in central parliamentary Acts, that were approved (and can be amended by) simple majorities. The parliamentary Acts which determine the autonomy of the devolved authorities are known

as the Scotland, Wales and Northern Ireland Acts. Fourth, the principle of conferring regional powers is different between each of these cases. The Scotland Act specifies the legislative areas in which the *national* parliament *remains* competent, that is, after devolution. The Wales Act specifies the *executive* competencies in which the Welsh Assembly *gains* competence after devolution. The method of listing central powers in the Scotland Act is somewhat at odds with the logic of devolution. One would expect the centre to list the legislative powers which it devolves and to keep control of the residual powers. However, the Scotland Act is so detailed in its provisions – in particular section 5, listing the reserved matters for the centre – that a double list of competencies almost emerges when the list of *exceptions* to these central powers is taken as a list of de facto regional legislative powers. The method of allocating legislative powers is similar for Northern Ireland, but the Northern Ireland Act also prescribes detailed mechanisms of power-sharing for the way in which these devolved matters have to be exercised.

2.2. Dimension 2: administrative versus legislative federalism

General concepts

A second dimension, which is closely related to, but analytically distinct from, the first one, looks at the relationship between law-making and administration. We can distinguish between federal or regionalized systems on the basis of whether the level of government that is responsible for legislating on a certain policy is also made responsible for executing (implementing or administering) that policy. Dietmar Braun refers in this context to the difference between ‘the right to decide’ (regulate or legislate) and ‘the right to act’ (implement; Braun 2000b). The design of a federation is more cooperative, when, as a matter of principle, both of these functions are assigned to different levels of government. In theory, in a federal design in which this is the case, the distribution of tasks could work either way. The federal government may come to rely on the regions for the implementation of its adopted legislation, or the regions may be dependent on the centre for the implementation of its regional laws. In practice, the first form is paramount. Where the centre relies on the regions for implementing the bulk of its legislation, the nature of its policies can acquire a regional flavour without necessarily undermining their overall thrust or direction. This could benefit the overall legitimacy of the federal policies. In contrast, it is harder to spot the potential benefits of a design that would entrust one federal administration with the task of implementing different regional laws, unless it would make the implementation of these bills more cost effective.

When regional implementation of federal law-making is the rule, rather than the exception, we can speak of *administrative or functional* federalism (the most frequently used terms in German are *Verwaltungsföderalismus* or *Vollzugsföderalismus*). When, on the contrary, most federal laws are implemented by federal ministerial departments or federal agencies, and regional

departments or agencies administer most of the regional laws, the term *legislative federalism* is used. Where the regional implementation of federal law is the rule, rather than the exception, cooperation is bound to be the rule as well. In this sense, administrative federalism pushes federal or regionalized states closer to the organic end of the continuum.

There is some connection between the first and second dimensions of the cooperative continuum. When one level of government sets the legislative frame of a policy but allows the other level to take supplementary legislative action, it is also more likely to rely on that level for implementing that frame. However, this need not necessarily be the case. Particularly in multinational states, such as Spain, the centre may like to implement, and not merely oversee, the legislative framework which it previously adopted. If badly coordinated, the consequence may be policy duplication, administrative competition between the relevant central and regional administrative services and judicial litigation to sort out who is entitled to act.

Applying concepts to our case studies

Switzerland, Germany and Austria. The three 'Germanic' federations share one important attribute: to a large extent the federal legislator depends on the cooperation of the regions for the implementation of its policies.

For instance, Article 46 of the Swiss constitution specifies that 'the cantons shall implement federal law in conformity with the constitution and the (federal law)' but also that 'the Federation shall leave the cantons *as large a space of action as possible*, and shall take their particularities into account ... as well as ... the financial burden that is associated with implementing federal law by leaving sufficient sources of financing to the cantons, and by ensuring an equitable financial equalization'. The Swiss, unlike the German constitution, is not always explicit in prescribing which federal legislative matters must be implemented by the cantons. For instance, in the case of environmental policy (Article 74, paragraph 3), cantonal implementation is explicitly envisaged. In other areas cantonal implementation is specified in a simple federal statute. Overall, the Swiss centre plays a limited role in implementation. Defence, monetary policy, customs and federal taxes (including VAT and federal fees) are the only subject areas for which the federal government has developed an administrative apparatus of its own (Wälti 1996: 122). Cantons often only agreed to the regulatory centralization of a particular policy if they retained a dominant role in its implementation or if they retained a right to formulate secondary legislation in such matters. They also wished to retain control of the means (revenue-raising) to finance the implementation of federal law. Cantons have not harmonized the administrative instruments for implementing federal legislation either. This has led to policy divergence in the implementation of federal law (Wälti 1996; Vatter 2004).

Also Germany displays a pattern in which most federal legislation is implemented by regional administrations. The 'administrative' nature of German federalism has a long tradition which goes back to the early days of German federalism. Even today, only few federal matters are administered by federal administrative departments or agencies. These are the Foreign Service, federal taxes, federal waterways and shipping, transregional social insurance institutions involving more than three regions (for instance, the federal employment service), defence, railways, federal waterways and the central bank. The regions implement federal legislation which does not pertain to the above subject matters. Thus, although the subject areas in which the regions can legislate (and implement) are limited to culture, policing, education and some aspects of regional economic development, the subject areas in which the federations legislate *and* implement are limited in scope too.

The German constitution makes a distinction between federal legislation which the regions implement *as matters of their own concern* or *as agents of the federation*. The extent of federal supervision, but also of federal co-financing is lowest when the regions implement federal law *as matters of their own concern*. Any corrective steps in the case of perceived non-compliance by one or several regions must be agreed by the second chamber. The Bundesrat is supposed to act as the collective springboard of regional interests at the federal level. When the regions operate *as agents of the federation*, the federal government may issue general administrative rules, which regulate the uniform training of civil servants and harmonize their salaries. Federal supervision not only entails the lawfulness but also the appropriateness of the actions taken, and the federal government has a right to instruct the highest regional authorities who must comply with the instructions. Also in this case, federal general administrative rules require the consent of the federal second chamber. Likewise, 'joint tasks' require the consent of the federal second chamber (and the *de facto* unanimous regional consent of the various planning committees which prepare and implement them – see further Scharpf 1988, 1994). The federal government commits itself to the payment of at least half of their expenditures.

Austria is the most centralized of the three Germanic federations. The Austrian constitution contains a list of 17 areas in which the federal level is authorized to legislate and implement. However, for each of 17 such designated areas (including for instance cost-intensive posts such as public health) exceptions are listed. Furthermore, Article 11 contains six subject areas in which the federal level legislates, but the regions implement. For a further six subject areas which are listed as 'federal framework laws' regional implementation is required. It includes important matters such as social welfare policy (including maternity, infant and adolescent welfare and the administration of hospitals), public utilities (electricity) and labour relations in the agricultural and forestry sector. Federal ministries leave the regions with little discretionary powers in choosing the methods for implementing

federal legislation (Fallend 2003: 22). In this sense, the Austrian regions implement federal law, more 'as agents of the federation', than as 'matters of their own concern'. As I will discuss at greater length in Chapter 6, the Austrian second chamber does not provide the regions with sufficient input in overseeing the implementation of federal law.

Belgium, Spain and the United Kingdom. States which have adopted a federal or regionalized structure as a means to hold together a multinational polity are more likely to opt for a 'legislative' than an 'administrative' form of federalism. Minority nations may be eager to acquire legislative and administrative responsibility in policy fields which a federal government has agreed to devolve. For some time though, the regions may not assume full administrative responsibility in devolved matters. For starters, regional administrations cannot be established from scratch. Administrative units that were controlled by the centre may continue to exist and only gradually come to serve different political masters. In addition, the centre may be reluctant to give up its administrative control at once. For some time then, regional administrations may face the competition of federal administrative units. Possibly, the centre may seek to utilize its control of sub-regional units such as provinces as a means to 'shadow' the activities of the regions. In Spain, for instance, the provinces had accumulated some legitimacy as decentralized structures of the central state before devolution kicked in. Although such sub-regional structures exist in other federations as well, their control by the regional levels of government is normally beyond doubt.

Belgium is the multinational state in which creating regional administrations by splitting up formerly central departments was easiest to accomplish. Unlike in Spain or the UK it is difficult to identify a Belgian 'majority nation'. By 1978, all major political parties had split along linguistic lines. Therefore, the incentives for retaining parallel central administrative units with the purpose of 'shadowing' regional agencies were relatively weak.

Belgian federalism is also quite 'legislative' in nature. The federal constitution or the rules dividing competence do not provide a single federal legislative power for which regional implementation is required. Similarly, regional legislative competencies are implemented by regional administrative departments or agencies. Most of these were carved out of existing central departments. Usually, the latter were neatly divided between Dutch- and French-speaking sections when legislative devolution kicked in. For instance, when education policy was first devolved, the Dutch- and French speaking sections of the education ministry gained responsibility for implementing education policies of the Flemish and French Communities. Flemish and French Community administrations gradually adopted divergent human resource policies (De Rynck 2002), and the Flemish administration has been influenced more strongly by Anglo-Saxon principles of 'New Public

Management'. Despite these interregional divergences, all the regional administrations have retained certain practices that were prevalent in the unitary Belgian setting. For instance, like their compatriots at the federal level, regional ministers are surrounded by strongly politicized ministerial cabinets, rather than by a college of top career civil servants (Brans and Hondeghem 1999).

The federalization of Belgium has not rendered the so-called *provinces* obsolete. However, provincial administrations do not partially compete against or overlap with the devolved regional administrations. Rather, they operate as functionally decentralized bodies with responsibility in a relatively limited number of competence areas.² Following the most recent round of constitutional reforms (2001), provinces have now become functionally decentralized bodies under the authority of the Flemish and Walloon regions. There is no distinct province in Brussels. Its provincial competencies are directly assumed by the Brussels Capital Region (Vlaamse Provincies, kerntakendebat, 2003).

As in Belgium, the implementation of regional law by regional administrative departments should be the standard practice in Spain. Unlike Belgium, however, the Spanish state has not transferred all the administrative field services that were tied to devolved legislative matters (Börzel 2002). Since the regional authorities nonetheless established or expanded administrative services in the newly devolved areas, administrative duplication and intergovernmental friction has been the result. Decentralized central departments (*administración periférica del Estado*) exist alongside regional administrative departments. For instance, between 1982 and 1986, when all the regions assumed some legislative and administrative powers, 360,000 civil servants transferred from the central to the regional governments. The regions recruited some 40,000 civil servants themselves. By 1992, the total number of transferred civil servants exceeded 430,000. However, in spite of the expansion in regional staff, the number of central civil servants was not reduced accordingly (Heywood 1995: 156).

As in Belgium, Spanish provinces operate as intermediary layers of decentralization. Their history predates that of the regions. They are sandwiched between the regional and local tiers of government. Once the regional structures fell into place, it was assumed that provincial administrators would become answerable to the regional authorities for policies in which the regions can regulate. In practice, the provincial administrators still fell under the authority of the central ministry of public authorities and a director-general supervised by a central minister (Newton and Donaghy 1997: 112). Central governments have also continued to appoint civil governors, recently renamed as *assistant provincial delegates* of the central government. They act as the highest central delegates at the provincial level. They head the provincial administrations and are in control of state

police and security forces at provincial level (Newton and Donaghy 1997: 114). Next to civil governors, the central government appoints a central government delegate (*delegado del gobierno*) to each of the regions. These central 'watchdogs' count as the highest central representatives in the *regions*, and in official meetings they only rank second to the presidents of the regional executives. They seek to bridge central and regional administrative interests. The civil governors (assistant provincial delegates) are directly answerable to the central government, not to the presidents or executives of the regions.

Finally, in Britain, Scottish (and so long as it applied) Northern Irish devolution are legislative in character.³ In contrast Welsh devolution is exclusively administrative. However, long before devolution was implemented, the centre established its own field administration for implementing UK policy for Scotland and Wales.

Scotland received its own Office (and Secretary of State, i.e. minister in the British Cabinet responsible for Scottish Affairs) as early as 1885. In areas such as agriculture, education, fisheries, health, local government, prisons and poor relief, Scotland had known a strong tradition of administration by independent boards. In the twentieth century these professional boards would give way to a strengthened Scottish Office and Scottish civil service. Following devolution in 1999, the Scottish Office became the Scotland Office, still headed by the Secretary of State for Scotland (Rhodes et al. 2003: 83). A majority of its civil servants was transferred to the Scottish civil service, which turned into the implementing arm of legislative policies adopted by the Scottish Executive and First Minister.

A Welsh Office and Secretary for Wales did not come into being until 1964. Although the Welsh Office gradually increased its authority, it never obtained the discretionary powers of the Scottish Office in issues such as health, education and agriculture. Following devolution in 1999, the Welsh Office became the Wales Office. Unlike the Scotland Office it remains a more centrally controlled administrative service. It is responsible for implementing policies in which the Welsh Assembly gained the power to enact supplementary or secondary 'legislation'. Technically speaking, that autonomy is 'executive' only. In reality, one could argue that the Welsh Assembly must act within a legislative frame that is set by Westminster. Because of this complex (and arguably unsustainable) arrangement, the Welsh Secretary has retained a more important role as a liaison officer between the central and regional levels than his Scottish counterpart. Nevertheless, after devolution the combined supporting staff for both regional secretaries was reduced to some 110 civil servants (Hazell 2000b: 153). Since June 2003, the secretaries for Scotland and Wales have been made a part of a newly created Department of Constitutional Affairs. The Scotland and Wales Office retain a separate status, and the secretaries are still full members of the British Cabinet (albeit that they may combine their ministerial functions with other portfolios).

3. Constitutional asymmetry

The British example makes clear that not all the regions of a federation or a regionalized state are equal. The literature of comparative federalism uses the term 'asymmetry' to denote such interregional differences in status or autonomy. Yet, asymmetric federalism covers many meanings.

At one level, asymmetry refers to cultural, socio-economic and political party differences between the regions and between the regions and the centre. We call this *de facto* asymmetry. At a different level, asymmetry is used to describe a situation whereby some federated entities have gained greater self-governing powers than others (Kymlicka 2001: 104). Where these differences are effectively *constitutionalized* we speak of constitutional or formal (*de jure*) asymmetry. *De facto* asymmetry frequently leads to the entrenchment of some formal asymmetric institutional devices. For instance, in Spain and the UK different aspirations underpinning decentralization (the presence or absence of minority nationalism) explain why some regions (Basque Country, Galicia, Catalonia, Scotland, Wales) have called for more legislative and/or executive autonomy than the other regions (Fossas 1999; Keating 2001b).

The term asymmetry can be applied to all federal political systems, not necessarily to federations only (Elazar 1987: 44–61). In this section I will only discuss elements of constitutional asymmetry. Furthermore, I will only pay attention to formal asymmetry in its *narrow* meaning, that is, where it pertains to differences in the distribution of *competencies*. Some scholars have also pointed at asymmetry which arises from overrepresenting the smaller regions in intergovernmental bodies or federal institutions such as the lower house, the central executive or, most characteristically, the second chamber (Keating 1998b: 197–203, and Chapter 6). The three countries in which asymmetry has been most apparent are Spain, the UK and Belgium. I will discuss them in that order.

3.1. Diminishing constitutional asymmetry in Spain

When Spain democratized, devolution was proposed as a mechanism to contain minority nationalism where it mattered most: the Basque Country, Catalonia and Galicia. Initially, the Spanish devolution scheme created a highly asymmetric and complex system of multilevel governance. The Spanish constitution lists two *main* routes to regional autonomy: the fast-track route (or Article 151) which exclusively applied to the three historic regions and a slow-track route (Article 143) which applied to the other regions. The Statutes of Autonomy of the historic regions required the consent of the relevant regional electorates by referendum. The statutes of the non-historic regions necessitated the consent of *all* provincial councils and *two-thirds* of all municipal councils. Furthermore the powers of the slow-track regions were frozen for five years after their statutes had first been approved (Gibbons 1999: 18–19).

Next to the two main routes, the constitution also listed a few alternative routes to autonomy. One of these is constitutionally assigned as 'exceptional'. Constitutionally speaking popular majorities are needed in all of a region's provinces before it can qualify for this procedure. Andalusia fell short by only one of its eight provinces of that requirement. Nonetheless, the Spanish government conceded autonomy in 1980. As a result, Andalusia was the only one of the non-historic regions which managed to catch up with the fast-track regions. The constitution also contained the option of expanding regional powers by simple organic law, instead of by amendment of a region's Statute of Autonomy. Valencia and the Canary Islands successfully used this provision, which meant that they gained somewhat more autonomy than the other non-historic regions except for Andalucía. Finally, Navarra declined to join the Basque Country as its fourth province. However, a parliamentary law recognized its historic *fueros*. In consequence, Navarra is entitled to the same level of fiscal autonomy as the Basque Country. This level exceeds that of all the other regions, including Catalonia and Galicia. Table 3.1 lists the constitutional origins for each of the Spanish regions, and the date on which their Statutes of Autonomy came into force.

Next to differences in the timing and route to regional autonomy, the regions have also controlled different sets of policies. These sources of constitutional asymmetry can be summarized as follows.

Table 3.1 The Spanish regions and differences in constitutional status

Name of region	Constitutional route to autonomy	Date Statute of Autonomy entered into force	Name of region	Constitutional route to autonomy	Date Statute of Autonomy entered into force
Basque Country	Fast track (historic)	18-12-1979	Aragon	Slow track	10-08-1982
Catalonia	Fast track (historic)	18-12-1979	Castilla-La Mancha	Slow track	10-08-1982
Galicia	Fast track (historic)	06-04-1981	Canary Islands	Intermediary track	10-08-1982
Andalusia	Fast track (exceptional)	30-12-1981	Extremadura	Slow track	25-02-1983
Asturias	Slow track	30-12-1981	Balearic Islands	Slow track	25-02-1983
Cantabria	Slow track	30-12-1981	Madrid	Slow track	25-02-1983
La Rioja	Slow track	09-06-1982	Castilla y León	Slow track	25-02-1983
Murcia	Slow track	09-06-1982	Navarra	Special provision (<i>fueros</i>)	10-08-1983
Valencia	Intermediary track	01-07-1982			

First, for long the four fast-track regions plus Valencia, the Canary Islands, and Navarra have had more autonomy in health policies than the other regions. These regions could claim central block grants to finance their extra responsibilities.

Second, the Statute of Autonomy for the Basque Country enabled the creation of an autonomous Basque police force, which operates alongside the national police force. Similarly, the Spanish constitution recognizes different legal standards which underpin civil and private law in Catalonia and acknowledges Galicia's deviant legal system with respect to land tenure and payments (Agranoff 1999a: 102).

Third, the outstanding feature of formal asymmetry today pertains to the distribution of tax powers. Invoking their *foral* states, the Basque Country and Navarra collect all taxes except customs duties and the taxes on petroleum products and tobacco. The centre controls the most important taxes for all the other regions, including Catalonia and Galicia (Agranoff 1999: 99).

The fourth source of asymmetry ensues from the presence of regional languages in only five of the regions. In addition to Castilian (Spanish), the official state-wide language, the constitution recognizes Euskara, Galician, Catalan, Valencian and Majorcan – two derivatives of Catalan – as co-official languages. Citizens who live in regions in which these languages are spoken are free to opt for Spanish or to use the regional language as a working language. The Statutes of Autonomy preclude discrimination on the basis of language and prescribe the co-official status of Castilian as the basis of regional linguistic policy (Agranoff 1999: 100).

The fifth and final source of asymmetry results from differences between the fast track and the other regions in their levels of constitutive autonomy. Unlike the fast-track regions, the other regions organize their legislative elections on the same day. They cannot freely change the legislative terms of their assemblies and they are not allowed to install more than ten members in their executives. The historic communities have more freedom to organize their institutions as they see fit, including the timing of legislative elections. The elections of the Galician, Catalan and Basque legislative assemblies do not normally coincide with that of the other regional assemblies (Colomer 1998: 45).

Despite these differences, the asymmetric features of Spanish devolution have considerably diminished since devolution was first implemented. By now, all 17 regions share certain characteristics. Each region has its own minister-president, executive, legislative assembly, civil service and High Court of Justice. By 2001 all regions were involved in town planning, tourism, social welfare, museum policy and, where applicable, regional language policy.

The most significant step in reducing levels of formal asymmetry came in 1992, when a central agreement (Pact of Autonomy) made 32 areas of responsibility accessible to *all* of the ACs. Technically speaking, such an

agreement had been possible in 1987, five years after the moratorium on competence-expansion for the slow-track regions elapsed. Yet, it took a further five years before the necessary bipartisan support between both of the largest state-wide parties, the Social-Democrats (PSOE) and Conservatives (PP) was found. The agreement also specified an overall maximum level of responsibility for the regions. However, its main purpose was to even differences in competencies between the fast- and slow-track regions (Gibbons 1999: 21; Agranoff 1999: 99). In the wake of the 1992 agreement, the centre started to devolve important aspects of education policy to all of the regions in 1996. An agreement in December 2001 also devolved health care to all of the regions, so that there is little 'formal' discrepancy left between the fast- and slow-track regions in this regard as well.

Between 1993 and 2000, two central minority governments were dependent on the support of ethno-regionalist parties from Catalonia, the Basque Country or even the Canary Islands. Although this helped the regions to further their levels of regional autonomy, it did not *substantially* increase asymmetry. For instance, the share of central income tax revenues that accrues to the regions has doubled between 1993 and 2000 (from 15 to 30 per cent). Yet, the fast-track regions (other than the Basque Country) have not received any preferential treatment as far as the distribution of this extra money is concerned.

3.2. Constitutional asymmetry in Britain

Since the Spanish levels of constitutional asymmetry have significantly diminished in time, one could argue that the UK provides the best contemporary example of asymmetry.

A first major component of asymmetry pertains to the allocation of different degrees of regional autonomy to Scotland, Northern Ireland and Wales. For instance, the main devolved matters for Scotland are health, local government, housing, planning, economic development, financial assistance to industry, transport, criminal justice and the courts, police and fire services, agriculture, food and fisheries, sports, statistics, education, social work, tourism, the arts, environment and natural heritage. To finance these expenditures, Scotland is primarily dependent upon a central block grant, but it can also vary the basic rate of income tax by up to three pence in a pound. Furthermore, through its control of local government, the Scottish Parliament could lay claim on additional receipts from the local council and business taxes (Pilkington 2002: 99).

By comparison, until devolution was suspended, criminal justice, policing and the courts were not among the devolved powers for Northern Ireland. The Northern Ireland Act leaves open the possibility to transfer these matters at a later date. Tax legislation remains completely under central control. Furthermore, due to its multi-ethnic character, the UK intervened more strongly in the organization of the Northern Irish devolved institutions.

It has prescribed complex power-sharing (consociational) rules that are entirely missing from devolution for Wales and Scotland (Tonge 2001). However, unlike the Scottish Parliament, the legislature of Northern Ireland could legislate on employment, the Northern Irish civil service and social security issues. Laws in these matters had to respect a certain parity of benefit rates, so as to prevent any discrepancies with the rest of the UK.

Wales only has *executive* powers in the above areas. Wales has no power whatsoever in some matters that have been devolved to Scotland and/or Northern Ireland such as criminal justice, policing, the courts, the Welsh civil service and welfare. Like Northern Ireland, Wales does not control any aspects of tax legislation. However, it does have executive powers in regulating the use of Welsh, its own regional language (Hazell 2000a: 4–5).

The second major component of asymmetry in the British case refers to the absence of any form of English regionalism. The UK Parliament retains full control of legislative and/or executive powers for England. The question remains, whether, as in Spain, devolution for Scotland and Wales will trigger the regionalization of England.

In 2001, the British government produced a White Paper entitled *Your Region, Your Choice*. The paper set out the steps that would lead to directly elected regional assemblies for eight English regions (the South East, the South West, the East of England, West Midlands, East Midlands, Yorkshire and the Humber, the North West and the North East). English regional assemblies would assume functions which are presently performed by central British offices or less accountable quasi-government agencies (so called *quangos*). They would leave local government intact, but do away with the supra-local, but sub-regional district and county levels. English *assemblies*, as assemblies, would not enjoy the same authority as the Scottish or Northern Irish *Parliaments*. Initially they would have even less autonomy than the present Welsh Assembly. English regional assemblies could implement strategies for improving regional sustainable development, employment, economic development, spatial planning, transport policy, housing, waste management, health policy, culture and biodiversity (White Paper 2001: 43). They would be authorized to do so by Parliament. However, the centre would retain full legislative authority in these matters. As in Wales, regional assemblies would only receive some degree of executive autonomy (but in a more limited number of matters). Each of these assemblies would also constitute their own small regional assembly executives. The executives would be responsible for implementing the executive autonomy; the assemblies would serve to scrutinize it.

Popular support for the regionalization of England is low. In November 2004, the central government organized a first referendum on creating a regional assembly in the region where support for it was believed to be highest (North East). More than 75 per cent of the voters turned against the proposal (BBC News Website 5 November 2004). Since then, the regionalization of

England has been put on hold. Thus far, the Spanish scenario does not seem to repeat itself in Britain. Voters may have turned against the proposal for a variety of reasons. They may identify with England, but not with an artificial region. They may have feared that a regional assembly would add another level of bureaucracy. They may have found the proposed assemblies too weak and unaccountable owing to their lack of any fundraising capacity. Or, they may have simply wanted to protest against the way in which an increasingly unpopular Labour government sought to sell the measure.

3.3. Modest constitutional asymmetry: Belgium

Next to Spain and the UK, Belgium is often listed as an important example of asymmetry (Agranoff 1999; Keating 1998b; Witte 1992). However, from a comparative perspective, Belgium does not contain many examples of constitutional asymmetry in the strict sense of the word. Unlike in Spain, asymmetry is not expressed primarily in the allocation of different legislative powers to the three Communities or three Regions (Swenden 2002). For instance, each of the Communities has almost identical Community competencies. This is so notwithstanding the major differences in size between the Communities: the German-speaking Community counts only 70,000 citizens, whereas the Flemish Community comprises roughly six million inhabitants. Similarly, the Brussels Capital Region, the smallest of the three Regions has almost the same set of competencies as the Flemish Region, the largest of the three. The most important difference in status *between* the Communities or *between* the Regions concerns the status of Brussels as a third Region alongside Flanders and Wallonia. To protect its role as an (inter)national capital, the legislative acts that are issued by the Brussels' Regional Parliament (ordinances) are judicially somewhat inferior to the legislative acts that emanate from the two larger regions (decrees).⁴ Furthermore, the 'constitutive autonomy' of the Brussels Capital Region is more constrained than that of the other Regions or Communities.⁵ Unlike the members of the other regional assemblies, the members of the Brussels' Regional Parliament cannot freely change the design of their regional institutions, most notably the way in which the Regional Parliament is elected. To protect the interests of the Flemish minority in Brussels, such changes can only be approved by the federal parliament with the consent of both linguistic groups.⁶ Similar constraints apply to the tiny German-speaking Community.

The previous paragraph made clear that the inter-Regional or inter-Community differences are rather limited. Therefore, asymmetry in the Belgian model primarily refers to two related factors.

The first factor relates to the difference between two types of regional entities (Regions *and* Communities) each with distinct sets of powers. As we have seen in Chapter 2, the powers of the three Regions relate to territorially defined competencies. Prominent examples are agriculture, area-development

planning, environmental policy, housing, water and energy policy, regional economic development, employment policy and international cooperation in these matters. By comparison, the powers of the Communities relate to 'individual or personalized' matters. They include culture and language, education, health policy, social welfare (assistance), the use of language and international cooperation in these matters (Deschouwer 2005: 56–7).

The second factor pertains to some institutional asymmetries which have resulted from the incongruence between Community and Regional borders. The Flemish Community comprises the Dutch-speakers who live in the Flemish *and* in the Brussels Capital Regions. The French Community assembles the French-speakers who live in the Walloon and in the Brussels Capital Regions. Therefore, the inhabitants of the Brussels Capital Region rely on the Flemish or the French Community for Community matters. However, the population of the Flemish Region is more congruent with that of the Flemish Community as a whole than the population of the Walloon Region with that of the French Community. This is so because there are relatively few Dutch-speakers who live in Brussels (see Chapter 7). Consequently, the Flemish Regional and Community governments and parliaments have merged into one Community government and parliament. A similar merger did not take place between the Walloon Regional and French Community institutions. However, there is still a formal difference between the Flemish Region and the Flemish Community. For instance, to represent the interests of the Dutch-speakers who live in Brussels, Dutch-speaking voters who live in Brussels directly elected six members of the Flemish Parliament. These elections concur with the renewal of the Flemish Parliament and the Parliament of the Brussels Capital Region. However, these six members can only vote on Community affairs in the Flemish Parliament (because the Flemish Community stretches into Brussels). They do not vote when the Flemish Parliament decides on Regional matters.

3.4. Switzerland: do half cantons constitute an example of constitutional asymmetry?

To conclude, I should provide a word of clarification on the meaning of *half cantons* in the Swiss federal context. Half cantons do not have half the powers of 'full' cantons. They share exactly the same set of constitutional powers. In this sense they do not exemplify 'constitutional asymmetry' in its narrow meaning. However, they receive weaker representation rights in the centre. Unlike the full cantons, half cantons only delegate one instead of two members to the federal second chamber. Furthermore, when calculating the cantonal majorities that are needed for constitutional change, each of the 20 full cantons contributes one vote, but the 6 half cantons contribute only half a vote. Thus, the total number of votes amounts to 23, and a cantonal majority is reached when a group of cantons which contributes 12 votes offer their consent (Linder and Vatter 2001: 95–123). The status of half cantons

is more a reflection of their historical development than of their difference in demographic weight. For instance, with a population of 35,600 the full canton of Uri is larger in population size than two other half cantons (Appenzell Inner-Rhoden and Obwalden), but considerably smaller than four other half cantons. The largest of the half cantons, Basel-Land, has a population of 257,000, roughly eight times the size of Uri (all population figures for 1998; Dafflon 2001).

4. Formal processes for changing the distribution of central-regional competencies

4.1. General observations

The distribution of competencies or the rules dividing competence must be open to change. Societies evolve, and so does the structure of a state, including the distribution of powers between the centre and the regions. Most of these rules, as was specified above, are enshrined in the written constitution or in special laws with a quasi-constitutional status. Therefore, if we approach change from a constitutional point of view, two questions seem particularly relevant. First, what is the method for *formally* amending the constitution or the rules dividing central-regional competencies (special majority laws, parliamentary acts, statutes of autonomy, organic laws, state laws etc.)? Second, for each of our case studies, are these rules regularly amended and, if so, what is the formal involvement of the regions in this process?

Constitutions are normally more difficult to amend than standard legislative acts. Constitutions provide polities 'with an operating system'. Therefore, they should be more durable or robust than standard legislation (Lutz 1994). In general, the constitutions of federal states are even more difficult to amend than those of unitary states (Lijphart 1999). This is so because, in a federal state, constitutions also serve as 'power-maps' (Duchacek 1970) which determine the relationship between the centre and the regions. The involvement of the regions in amending the constitution emerges as a logical requirement that is missing from most unitary state structures.

Despite the fact that most federal constitutions are harder to change than most of the unitary ones, a large variety of formulas exists for changing a federal constitution (Lutz 1994; Swenden 2004a). The nature of the chosen constitutional amendment formula may reflect a particular philosophy with regard to what the political classes perceive as the appropriate role of a constitution, including the sections which specify the powers of the centre and/or the regions. Some constitutions only seek to serve as a crude power-map. They outline the broad structure of the political system, but leave ample room for interpretation as to how the main principles should be put into practice. The 'short and obscure' US constitution is frequently listed as

the most prominent example of such a constitution (Elazar 1986; Gavison 2002). The US constitution contains a very short list of federal legislative powers. Other constitutions offer a detailed state code. Often they emerge in response to a past dictatorial regime, or they dispense with an outdated state structure, such as a unitary state format that was imposed upon a multinational society. In fact, the Austrian, Belgian, German and Spanish constitutions are also relatively detailed in specifying the competencies of the centre and/or the regions. In time the Swiss constitution has become relatively long and specific as well.

When constitutions are relatively 'short and obscure' and thus also more parsimonious with regard to specifying the competencies of the centre or the regions we expect to find a tough amendment formula. Constitutions must stand the test of time. Therefore the basic principles should not be open to change so easily. This also applies to the amendment of short catalogues of central or regional competencies in federal constitutions. Conversely, constitutions that serve as detailed state codes should be easier to amend so as to keep pace with new developments in society. Where such constitutions also contain a detailed catalogue of central or regional competencies the same principle applies.

The flexibility of a constitution also has major implications for the potential relevance of judicial review (i.e. the change of meaning of a constitution which emerges from the jurisprudence of a constitutional court or a supreme court). In countries with a robust amendment formula, the meaning of the constitution is more likely to change as a result of judicial review than of formal constitutional change (Swenden 2004a). Conversely, in countries with a flexible constitution, competence adjudication is more often accomplished by means of formal constitutional change than of judicial review. The same logic applies to changing the meaning of a constitutional catalogue of central or regional competencies. The more detailed it is, the narrower the scope of judicial interpretations; the shorter it is, the wider the scope for judicial review.

If we leave aside Britain, each of our country cases has a relatively long constitution and contains a relatively detailed catalogue of competencies. Yet, not all of these constitutions are open to flexible change. Furthermore, the constitutions with the most flexible amendment formula are not necessarily the ones that are the most frequently amended. In this sense, we have to take into consideration certain political factors that fall beyond the pure mechanics of constitutional change.

In general, we can discern three different ways of changing federal constitutions. Each of them provides some form of regional input. I rank them here from the most to the least flexible method. Within our group of countries, we only find applications of the first and third methods for constitutional change.

The first method is to require the consent of the central second chamber alongside the lower house. From the viewpoint of the regions, such a

method is satisfactory if (a) the second chamber provides for some sort of regional representation and (b) the prescribed majorities there ensure that the constitution cannot be changed without the consent of a majority of the regions. Each of the countries that we are considering here has a second chamber. However, as I will argue more extensively in Chapter 6, only in Germany and Switzerland is that second chamber sufficiently powerful and composed in such a way that it can live up to the task of regional representation.

The second method is to subject constitutional change to the consent of a qualified majority of the regional parliaments in addition to federal bicameral approval.

The third method is to submit constitutional amendments to a popular referendum, possibly following the consent of the central legislature with special majorities. In general, federations or quasi-federations that prescribe a referendum also require regional alongside popular majorities. For instance, in Switzerland, a proposal for constitutional change is rejected if more than half of the voters endorse it but these voters do not constitute electoral majorities in more than half of the regions.

The following section explores the relationship between the philosophy of the constitution, the formula for changing it (or the rules specifying the central and/or regional competencies) and the frequency of such changes in greater depth for each of our case studies.

Switzerland

The Swiss constitutional amendment formula is particularly robust. Each of the alternative options for constitutional change requires the involvement of the regions.

Whenever a federal government introduces a constitutional amendment, the consent of the federal bicameral legislature is required. Alternatively, the Swiss people can put forward proposals for constitutional change (a so-called 'popular initiative') themselves. They can only do so if such proposals are supported by the signatures of 100,000 Swiss citizens. In either scenario (government or people's initiative) amendments are only approved if they pass the hurdle of a referendum (mandatory referendum). To do so, they must fulfill a double majority quorum: the votes in favour must represent a majority of the electorate choosing to vote and they must represent more than half of the cantons (the so-called *Ständemehr* – Kobach 1994: 104).

The people can also consider a 'total revision' of the constitution. In this case, they need to vote on the appropriateness of such a revision first. If the matter is resolved in the affirmative, both chambers of the Swiss bicameral legislature dissolve, federal elections are held and a constituent assembly is established. Subsequently, the draft of the revised constitution must be endorsed by the people in a referendum requiring a popular and a regional majority. In 1999, a total revision of the federal constitution was agreed

upon with the required majorities. The term 'total' mainly applies to a re-codification and simplification of the constitution, albeit that the constitution which entered into force in January 2000 also contains some new paragraphs (Schmitt 2005: 352–4).

Despite the high threshold for constitutional change, the Swiss constitution has been amended on numerous occasions; 139 times between 1874 and 1995. A detailed catalogue of central/cantonal legislative responsibilities has emerged as a result. Constitutional change is less likely than in Austria, Belgium or Germany, but much more likely than in Spain. For instance, for the period between 1873 and 1992, the Swiss constitutional amendment rate (i.e. the number of successfully approved amendments divided by the number of years in which the constitution has been operating) was 0.78 (Lutz 1994: 369). Hence, the constitution is changed almost annually. This is more frequent than could be expected on the basis of the chosen amendment formula. However, this observation must be qualified in two respects.

First, the federal government is much more successful in initiating constitutional change than the people. Only 12 of 216 'people's initiatives' put forward between 1848 and 1997 obtained double majority consent compared with 146 of 201 government-initiated proposals for constitutional change (Linder 2001: 118). In part, this reflects the federal government's efforts to consult widely with the cantons and the leading interest groups before proposing constitutional change.

Second, the sheer number of constitutional amendments is more impressive than their scope, particularly in altering the federal-regional balance of powers. At best, successful amendments led to an *incremental* rise of federal legislative powers. Legislative centralization has come at a certain cost. The referendum postponed the centralization of some policy functions which most federations had been regulating at the federal level for a much longer period of time. For instance, the Swiss welfare state did not take off until after World War II. Arguably, in the absence of the double majority requirement, central welfare provisions (social insurance and health care) might have been offered at an earlier date. Or, it took the federal government three referendums before it was finally authorized in 1995 to collect VAT (Obinger, Armingeon, Bonoli and Bertozzi 2005; Kriesi 1995). Or, a major revision of the federal constitution was not accomplished until 1999, although the first serious proposals were put forward as early as 1966 (Schmitt 2005: 353). In addition, the centralization of health care, environmental and agricultural legislation was not always accompanied by their financial and administrative centralization (Wälti 1996: 128; Kriesi 1995: 48). Finally, the prospect for obtaining *double* majorities has become more difficult in recent times. Proposals which sought to strengthen the role of the federal government in immigration policy (*Einbürgerschaft*) or to craft a federal energy and cultural policy failed because of a lack of *cantonal* not popular support. As a result of Switzerland's increasing urbanization, 1 vote in the smallest canton of

Uri is now worth 34 votes in the largest canton of Zurich. Assuming that majorities in the smallest cantons vote against a proposal, constitutional change can be blocked by cantons which represent just 9 per cent of the Swiss population (compared with 11.5 per cent in 1880; see Linder and Vatter 2001: 99).

Germany and Austria

The German case provides a stronger confirmation of the anticipated link between the degree of detail of a constitution, including its competence catalogue and its flexibility. Truly constitutional amendments that dissolve the character of Germany as a *social, federal, democratic state, governed by the rule of law* are 'inadmissible'. But if we leave aside amendments with such a draconic reach, the German Basic Law is relatively easy to change. Proposals for constitutional change require the consent of two-thirds of the *membership* of the federal lower house, and of two-thirds of the *votes* in the Bundesrat, the federal second chamber. Unlike in Switzerland, constitutional amendments do not normally require the consent of the people. This is the case only for proposed changes to the regional borders. Here the popular consent of the affected regions is needed. The most recent example of such a referendum is the proposed merger in 1996 of Berlin and Brandenburg. It failed owing to a lack of popular consent in Brandenburg. Since constitutional amendments do not necessitate the consent of the regional parliaments either, the second chamber is the sole guarantor of regional representation.

The German constitution has been amended more than fifty times since 1948. Major structural changes to its federal system (particularly the strengthening of the centre in law-making and taxation) took place in 1966–69. This coincided with the presence of a federal Grand Coalition or CDU-SPD government, which could easily mobilize the necessary majorities in the federal lower house and the second chamber. In any case, constitutional change always requires the support of the parties in federal government. In recent years, the number of German federal governments with slim parliamentary majorities has increased. Therefore, the support of at least one opposition party (not necessarily the largest one) is now needed to obtain two-thirds of the lower house votes. That support does not necessarily guarantee a majority of votes in the second chamber. As I will discuss in Chapter 6, this is so because the Bundesrat, the second chamber, is composed on a different basis. The smallest regions are overrepresented; only members of the regional executives are represented, and they must vote by region and not (only) by party. In fact, due to the overrepresentation of the smaller regions, the smallest seven regions, representing a population of 13 million inhabitants, or about 16 per cent of the total German population, suffice to block a constitutional amendment.

It is frequently asserted that, notwithstanding the requirement of regional block voting in the second chamber, members of the Bundesrat vote more

often by party than by region. This assumption will be tested more in depth in Chapter 6. However, the negotiations that led to a reweighting of the regional votes in the Bundesrat after German unification prove that territorial considerations matter. Shortly after unification it was agreed that each of the four largest regions, representing more than half of the German population (46 million inhabitants) should obtain one extra vote. As a result, German constitutional change requires the consent of *at least one* of these regions (together they make up 24 votes in the Bundesrat). The extra vote that the largest regions received prevented the five newly acceded Eastern Länder from acquiring a blocking minority in the second chamber.

The guaranteed collective regional input in the process of constitutional change did not stop the legislative centralization of German federalism, particularly between 1949 and 1993 (Klatt 1999). Arguably, some of these centralizing reforms might have been blocked had they required the consent of the regional parliaments. Regional executive leaders were willing to centralize these powers, because they could still codetermine them at the federal level in a collective manner. In contrast, for each competence that is centralized, regional parliaments lose any effective mechanism of control or influence.

Of all the *federal* constitutions, the Austrian constitution is the easiest to amend. Constitutional amendments can be passed by the federal lower house. They require the presence of at least half its members and must be cast with a two-thirds majority. A 'total revision', – a recodification as in Switzerland – must be submitted to the public. A popular referendum is needed for partial revisions of the constitution when a third of the members of the lower house or the second chamber, the Bundesrat, so require (Article 44) (Luther 1997: 911). The Bundesrat is also the only formal mechanism for regional representation, yet it is not well suited to this task. The Austrian Bundesrat has only acquired a right of veto on constitutional amendments which weaken the legislative or administrative capacity of the regions since 1984. The Bundesrat must consent with a two-thirds majority. Furthermore, the composition of the second chamber does not guarantee that it will be used as a territorial chamber. Members can sit and vote by party instead of by region and the smallest regions find themselves only slightly overrepresented (see Chapter 6).

Since Austria has seen prolonged periods of Grand Coalition government at the federal level (at least between 1945 and 1966 and between 1987 and 2000), finding the necessary majorities for constitutional change in these periods was not difficult. The federal government fell well short of a two-thirds majority in the lower house for the rest of the time so that the support of at least one federal opposition party was needed to find the required majorities in the lower house. In this sense, the Austrian federation has 'gradually centralized' in legislative and fiscal terms without much resistance from below.

Belgium, Spain and the United Kingdom

The Belgian constitution is relatively flexible insofar as the regional parliaments or the people need not give their consent to constitutional change. Constitutional amendments require federal bicameral consent. The federal lower house and Senate must endorse amendments with two-thirds majorities each. The amendment of special majority laws (which have a de facto constitutional status) not only requires two-thirds majorities in each chamber, but also majorities *within the Dutch- and the French-speaking linguistic groups* in the lower house and Senate. Any rules that specify the competencies of the Regions and Communities, irrespective of whether they are spelled out in the constitution proper or in special majority laws are in need of the second type of majority.

One additional constraint applies exclusively to the amendment of constitutional articles proper. A federal parliament can only amend those articles which a previous parliament has declared 'fit for amendment'. Hence, a sitting federal government can prevent the amendment of certain constitutional articles in the next legislative term by refusing to endorse a statement which authorizes their revision. Parliamentary elections must intervene in between the adoption of such a statement and the potential revision of the constitution. Initially, this rule was meant to give the general public some input in the future direction of constitutional change. However, in reality, voters have been hardly concerned with proposals for further constitutional change. Instead, they have used such elections for assessing the overall policy record of outgoing federal governments.

Since 1970, the Belgian constitution has been amended regularly. However, amendments which changed Belgium into a federation were grouped together in five major waves of constitutional reform (1970, 1980, 1988–89, 1992–93 and 2000–2001). The reforms of 1992–93 also generated a 'total revision' of the constitution. Articles were reshuffled, recodified and simplified. They gave the constitution a more comprehensible outlook.

Although amending the constitution only requires the consent of federal MPs, finding the appropriate majorities is by no means easy. All major Belgian parties are split along linguistic lines. By convention, ideologically related parties (say the French- and Dutch-speaking Social Democrats) are united in federal government or opposition. Yet, they are not necessarily of equal size within their linguistically homogeneous party systems. Therefore, federal coalition governments tend to be oversized and often approximate the two-thirds parliamentary majority that is needed for standard constitutional change. Most of the reforms which have turned Belgium into a federation resulted from protracted negotiations between party leaders of at least four, sometimes even six, parties in federal government. As changes to the federal structure often require special majorities some federal governments even had 'to buy in' the support of at least one federal opposition party.

When placing the Belgian formula for constitutional change into a comparative perspective, three elements stand out. First, unlike in Switzerland, constitutional change was never put to a popular vote or made subject to formal consent by the affected regional parliaments. In fact, most of the regional parliaments were not even directly elected before 1995. Second, in political terms, the lack of regional involvement in amending the federal constitution is compensated by the absence of state-wide parties. To some degree, this turns all federal MPs into agents of their language community. The double-majority requirement ensures that no language group can unilaterally impose its views upon the other. Finally, the second chamber does not add much value in terms of regional representation (Vanhee 2003; Swenden 2004b). This is so because the Belgian Senate is largely composed on the same basis as the federal lower house (although it has a smaller membership and about a fifth of its members resides in the Community parliaments; see Chapter 6).

As in Belgium, amending the Spanish constitution only requires the consent of central political actors. Proposals for constitutional change may originate with the central government, the national lower house or the Senate. One or several regional parliaments can also put forward proposals for constitutional change but their consent is not required. To become effective constitutional amendments require the approval of three-fifths of the members of the lower house and the Senate. In the event of bicameral dissent, a joint committee with an equal number of delegates from both chambers may propose a compromise. Where the votes in favour of a compromise represent more than half but less than two-thirds of the Senate votes in that committee, the support of two-thirds of the lower house delegates in a second vote is required to make it pass. Ten per cent of the members of the lower house can request a referendum on a constitutional amendment within 15 days after it is adopted by the lower house. Proposals for a total revision of the constitution or a partial change of certain sections thereof result in the immediate dissolution of both houses. Following an election, proposals must be endorsed by majorities of three-fifths in both chambers. In this case a referendum is compulsory. So far, no optional referendums on constitutional amendments have taken place.

From a comparative perspective, reforming the Spanish constitution does not seem excessively difficult. Although constitutional change may require a referendum, unlike in Switzerland, there is no need for regional representation. A nation-wide majority would suffice. Furthermore, constitutional amendments do not need the consent of a qualified majority of regional parliaments. The referendum is optional and unlikely to be invoked unless opposition parties believe that they stand a reasonable chance of winning it. Therefore, it may come as a surprise that the Spanish constitution has been amended only once since 1979. In 1992, an amendment was inserted, enabling EU citizens who live in Spain to participate in and become

candidates for municipal and European elections, as required by the Maastricht Treaty (Newton and Donaghy 1997: 30).

The main reason why proposals for constitutional change have often failed is the lack of bipartisan support in the central parliament, particularly in the lower house where it matters most. To achieve majorities of three-fifths, the support of the largest government and opposition parties is almost always needed. At times, the parties in government (Conservatives or Social Democrats) have been dependent upon two or more small ethno-regionalist parties for obtaining a *simple* parliamentary majority. However, two-third majorities would have required a Grand Coalition government. As in Germany, Austria and Belgium, the second chamber is the sole formalized mechanism for regional representation in explicit constitutional change. As in all four countries, except for Germany, it is not well suited to accomplish that task.

This said major changes to the structure of the Spanish regionalized state have been made possible without explicit constitutional change. For instance, the important bipartisan (PP-PSOE) agreements in 1992 and 1996 which evened the constitutional asymmetry between 'fast-track' and 'slow-track' regions were specified in a simple organic law. The financing of the regions as well as the working of the constitutional court are also specified in such laws. Their amendment requires the consent of the national *lower house* with an absolute majority of its members, but not of the Senate. In addition, the autonomy of the regions is regulated further in their statutes of autonomy. Their reform 'shall be in accordance with the procedure established in them and shall in any case require the approval of the central parliament by means of an organic law'. Changing the statutes of autonomy also requires the consent of the corresponding regional parliaments and possibly that of the regional electorate (as is the case for instance for changing the Catalan statute of autonomy). Hence, the regions have received sufficient input only in amending their own regional statutes of autonomy.

Finally, the Scotland, Wales and Northern Ireland Acts are parliamentary acts that can be amended or revoked by a simple majority of the central lower house (House of Commons). The legitimacy of these acts is relatively high, given that each of them was subject to a referendum. This may complicate their unilateral amendment, let alone their repeal. Northern Ireland is an exception in this regard. Although the UK government repeatedly suspended devolution for Northern Ireland, on each occasion it did so in close cooperation with David Trimble, the former Northern Irish First Minister.

In view of the length and degree of detail of the devolution Acts, frequent amendments could be anticipated. In fact, in their six years of operation, the Scotland and Wales Acts have already been amended several

times. Although such changes may result from close cooperation between the centre and each of the devolved authorities, there is no *formal* guarantee that this will be the case. The presence of regional secretaries of state in the central cabinet provides a weak form of regional representation, as was the overrepresentation of Scotland and Wales in the House of Commons until the 2005 general elections. The UK also lacks a territorial second chamber.

5. Changing the distribution of central-regional competencies by means of judicial review

5.1. General observations

Changing the meaning of constitutions, including the catalogues of central or regional competencies, does not necessarily require their explicit amendment. As was indicated in the previous section, judicial review is a potential alternative. Judicial review can be accomplished by a supreme court, a constitutional court or, as in Switzerland, the referendum. In Western Europe, judicial review by a specialized constitutional court, which is distinct from the highest court of appeal in non-constitutional affairs (supreme court), is the norm. However, until well into the twentieth century, reviewing the compliance of legislative instruments with the constitution was the prerogative of parliament or the people. Influenced by constitutional lawyer Hans Kelsen, Austria was the first West European country to establish a court which could rule on the constitutionality of legal norms (Stone Sweet 2000). Other West European countries followed suit.

Scholars of comparative federalism hold different views on the capacity of constitutional courts for interpreting the constitution, including the catalogues of central and/or regional competencies. For instance, William Riker dismissed the relevance of the US Supreme Court in this regard. In his opinion, the role of the Supreme Court as a major force in the centralization of US powers

is ... fallacious and could only come from an overspecialized view of the political process. The Court is an organization without much political or military force and therefore cannot be expected to occasion or even to pace constitutional change ... A more accurate way to interpret the role of the Court, which is by construction and its framers' probable intent admittedly a wholly centralized institution, is to say that the Court hastens the process of centralization when it is in phase with the ideology of the Presidency and cannot impede centralization when it is not. (Riker 1975: 102)

Riker is correct in arguing that constitutional judges do not operate in a political vacuum. Courts always phase the dilemma of 'resolving legislative conflict about constitutionality, while maintaining or reinforcing the political legitimacy of constitutional review into the future' (Stone Sweet 2000: 200). Lacking democratic legitimacy, constitutional judges must be prudent and well reasoned, if they want to ensure that their position in the political system as whole is not undermined and if they want their judgements to be implemented effectively.

However, Riker also underestimates the potential of constitutional courts to challenge the prevailing views of ruling (central) politicians. More recent research into constitutional court jurisprudence (including the US Supreme Court) has stressed the relevance of several constitutional courts, not only in interpreting but also in 'shaping the law' (Stone Sweet 2000; Shapiro and Stone Sweet 2002). Legislators can anticipate the risk of judicial review and refrain from inserting certain clauses in a legislative text. The impact of constitutional courts is higher if their judgements cannot be easily rendered obsolete by a legislature. When the latter can amend the constitution easily, the court will have no choice but to reconsider its opinion in a subsequent hearing on the same matter. Therefore, judicial review is likely to generate a higher impact when constitutions are difficult to amend.

In the previous section I made clear that *in practice* the constitution of Spain is the most difficult to amend, whereas the Austrian constitution is the easiest to change. The German and Belgian constitutions fall somewhere near these two extremes. Therefore, we expect the Spanish Constitutional Court to play an important part in clarifying the meaning of the Spanish constitution. Although the Spanish constitution is already quite detailed in specifying central and regional powers, it is also open to ambiguity. Since policy-makers have not succeeded in clarifying these rules by explicitly amending the constitution, much of the work has fallen onto the shoulders of the Spanish Constitutional Court. Conversely, the Austrian constitution has been amended regularly. Consequently, the members of the federal parliament and government have had the largest stake in clarifying the division of central-regional competencies. Switzerland and Britain do not fit into this equation. In Switzerland, the Constitutional Court cannot review federal bills, but the people can. In Britain the specificity emerges from the lack of a single codified and superior constitution. What the central Parliament decides shall be law.

In the following section, I take a closer look at two aspects. When they engage in judicial review, constitutional courts can influence the distribution of central-regional competencies. Therefore, does the *procedure* for electing judges and the *composition* of the court itself reflect the regional principle? Second, in what sense has the jurisprudence of the constitutional courts affected the distribution of central and regional competencies? Have its judgements generated a decentralizing or a centralizing influence?

5.2. The composition of constitutional courts

In general, there is no explicit constitutional provision which guarantees that judges are drawn from the principal regions that compound a federation or from regions that can be considered as 'minority nations'. In this sense, constitutional courts are indeed 'central' institutions as Riker claims. Two partial exceptions come to mind.

First, half the members of the Belgian Constitutional Court must be Dutch-speaking; the other half must be French-speaking. Hence, the Court's composition is based on the linguistic, not the regional, principle. The language of a judge is determined by the language of her law degree certificate, or, for judges who served as MPs prior to entering the Court, the language group in parliament to which they belonged. At least one judge must prove sufficient knowledge of German. The Court functions in two chambers of seven members each, three from each language community and a president (who may belong to either language community). The president must cede her chair to a colleague whenever a case must be dealt with in a language other than her own. Consequently, whenever matters must be considered in Dutch, at least four judges will belong to that language group. However, two judges from either chamber may ask for a matter to be discussed in plenary session. Here, the number of Dutch- and French-speakers is balanced and decisions are taken by (simple) majority (SML-CA, 7 January 1989, Titles II and III).

Second, the Swiss constitution stipulates that all languages have to be represented in the Constitutional Court. It does not specify whether the representation of languages should be in proportion to their demographic strength. In 1997, of 30 justices, 18 were German-speaking, 9 spoke French, 2 were Italian-speaking and 1 spoke Retro-romansch (Kälin 2002: 197).

The regions also play a relatively limited, and at best, indirect role in choosing constitutional judges. The most common procedure is for constitutional judges to be proposed by central political institutions. Where the second chamber is involved and provides some form of regional representation, the indirect input of the regions is secured. For instance, the members of the Swiss Federal Court (Bundesgericht) are appointed by a joint session of the federal lower and second chambers (Vereinigte Bundesversammlung). Members of the German Constitutional Court are nominated in alternation by the federal lower house and the Bundesrat, requiring the endorsement of two-thirds of its members.

From the viewpoint of comparative federalism, the input of the Austrian, Spanish and Belgian regions in determining the composition of their Constitutional Courts is inadequate. Half the members of the Austrian Constitutional Court are appointed by the federal president on the nomination of the federal government; the other half are nominated by both houses of the federal parliament. The Austrian Bundesrat nominates only a quarter of the Court's members and does not operate as a territorial second chamber. Of 12 Spanish constitutional judges, 2 are named by the central government,

2 are appointed by the General Council for the Judiciary and 8 are directly nominated by the central parliament (4 by each chamber on the basis of a three-fifths majority; Rubio Llorente 1988a: 127–31). Catalonia, the Basque Country and the ethno-regionalist parties have been pushing hard for more influence in determining the Court's composition; so far without success (Gunther, Montero and Botella 2004). Finally, even in Belgium, only the federal parliament decides on the composition of the Constitutional Court. Each house of parliament elects half of the judges.

5.3. The jurisprudence of constitutional courts and their impact on the distribution of central-regional competencies

Strong constitutional courts: the German and Spanish constitutional courts

In comparative political studies, the German Bundesverfassungsgericht (GCC) frequently emerges as the most powerful constitutional court in Western Europe (Lijphart 1999). However, in terms of *clarifying and altering the central-regional distribution of competencies*, I would argue that its influence has been smaller than that of the Spanish Constitutional Court (SCC).

As is the case for several European constitutional courts, the GCC engages in *concrete* and *abstract* judicial review (Stone Sweet 2000). Abstract review emerges when the federal or regional governments or at least a third of the members of the federal lower house believe that an adopted bill violates the constitution. In the absence of a concrete, pending case a procedure may be invoked immediately after the president, as head of state, has signed a bill into law. Abstract review can be important for clearing out federal-regional responsibilities (Laufer and Munch 1998).

For instance, recurrent examples of 'abstract review cases' have pertained to whether or not a federal law requires bicameral consent. The German constitution stipulates for which type of bills the consent of the Bundesrat is needed (so-called *consent-bills*). The federal second chamber can only cast a *suspensory* veto against all other bills (so called *simple-bills*). The GCC played an important role in clarifying the difference between both types of bills and hence in specifying the veto powers of the second chamber (and regional executive leaders) in federal law-making. The court determined that a federal bill which amends the non-consent obligatory part of a previously adopted consent bill is not in itself consent obligatory (Laufer and Munch 1998). As a result, the number of disputes on the consent-obligatory character of a bill has sharply declined since the mid-1980s (Ziller and Oschatz 1998).

There is only mixed evidence to support Riker's assumption that the court has favoured the centralization of German federalism. As was indicated above, until recently, the GCC has supported the centralization of concurrent legislative powers. The federal government only had to specify that its actions contributed to the objective of the 'equalization of living conditions' (Blair 1981).

However, in other respects, the court's jurisprudence has not always supported the federal point of view. Some landmark rulings illustrate this.

In the *Concordat Case* (1957) the court ruled that the regions could not be bound by an agreement between the Pope and (Nazi) Germany (the federal state) on religious education. This would jeopardize the constitutionally guaranteed autonomy of the regions in primary and secondary education (Sawer 1969: 83). Using the Concordat as a means to intrude into an area of regional competence would violate the principle of 'federal good faith' (*Bundestreue*). Likewise, in the *Television Case* (1961) the court held that a federal government's power to regulate the technical aspects of broadcasting does not empower it to run its own broadcasting services (Sawer 1969: 84). In this sense, the court safeguarded the role of the regions in education and in organizing the public media.

In more recent years the GCC has played a prominent role in overseeing the 'political neutrality' of fiscal equalization measures. The modalities of these measures are specified in the constitution and in federal legislation. The GCC has regularly condemned the federal government for distributing regional resources on a political instead of an equitable basis. For instance, in 1987, the CDU-FDP federal government worked out a scheme that would have increased structural aid to attract private investments in most of the CDU-controlled regions. This scheme left Baden-Württemberg and a majority of the SPD regions in the cold. In the same year, the federal government allocated its oil extraction revenues to all the CDU but only to two SPD governed regions (Renzsch 1989: 343–5). The GCC forced the federal government into reconsidering both measures. In 1998, the Constitutional Court forced the federal and regional governments into a more profound renegotiation of the entire fiscal equalization scheme by 2004 (Ziblatt 2002). This time, party-political acrimony did not underpin the complaint. Rather, fiscally strong regions (Bavaria, Baden-Württemberg and North-Rhine Westphalia) felt punished by the excessive and arbitrary nature of the equalization arrangements (see Chapter 4).

The Spanish Constitutional Court (SCC) has played a very important role in carving out central and regional legislative competencies. The court's prominence results from the difficulty of amending the Spanish constitution and from the overall ambiguity in which the distribution of central-regional competencies is spelled out. The court's jurisprudence can affect central-regional issues in three regards. First, it decides on appeals against statutes of autonomy, organic laws, ordinary laws of national and regional legislatures and international treaties. Second, it decides on appeals for the protection of citizens' rights and freedoms. These include the thorny issue of regional languages. Finally, it decides on appeals with regard to the catalogues of central and regional competencies (Agranoff and Gallarin 1997: 8).

Between 1981 and 1991, the central government appealed against nearly 10 per cent of all regional bills. In the same period, regional governments

appealed against more than 20 per cent of all central bills (Heywood 1995: 147; Stone Sweet 2000). This underlines the acrimonious character of inter-governmental relations. Many complaints are framed in an ongoing power struggle between the central and regional governments. Therefore, they take the form of 'abstract review questions'. Apart from the Prime Minister, Parliamentary President, or 50 members of the central lower house or second chamber, abstract review procedures can be triggered off by the regional executives as well.

Of 143 abstract review cases that passed the court between 1981 and 1990, 42 per cent were introduced by regions against central legislation; 31 per cent originated with the central government, usually against legislation passed by the regions (Stone Sweet 2000: 65). Between 1981 and 1982 the national government even challenged half of the laws that were passed by the Catalan or Basque regional parliaments. Thereafter the share of regional laws that was challenged by the central government declined to approximately 10 per cent. From the mid-1980s onwards, the regional governments increasingly challenged central laws. Catalonia and the Basque Country introduced two-thirds of the complaints. That share declined in the 1990s when some of the ethno-regionalist parties provided left- and right-wing central minority governments with the hoped-for legislative majorities. In return, the central government agreed to regional policy concessions (see Chapter 6).

Despite the centre's monopoly in nominating the members of the Constitutional Court, the SCC has often ruled in favour of the regions. For instance, influenced by the failed military coup in 1981, the Conservative UCD government sought to scale back and harmonize the process of devolution. To that purpose it enacted with the support of the Social Democrats (PSOE), *LOAPA* (*Ley Orgánica de Armonización del Proceso Autonómico*). This bill prescribed central government approval for legislative acts that were adopted by the regional assemblies and reduced some of the powers already granted to the (historic) regions (Agranoff and Ramos Gallarín 1997: 12). The SCC's decision to strike down more than a third of this important law may be considered its most important ruling to date. The court's judgement clearly demonstrates that constitutional courts can and sometimes do act against the dominant central opinion. Although the ethno-regionalist parties fiercely opposed *LOAPA*, the bill had the full support of the two most important state-wide parties at the time. In its verdict, the court emphasized that 'autonomy' should mean that regions are entitled to make final decisions in certain competence areas.

In different rulings the SCC acknowledged the need of a coordinating central role in some policy areas that were first understood as being exclusively regional. Concrete examples are education, tourism, health care and economic development (Agranoff and Ramos Gallarín 1997: 13). In general, the SCC has sought to find a balance between two conflicting principles of

the constitution: the *principio dispositivo*, according to which each region can assume different powers within the framework of the central constitution, and the principle of *solidarity*, which seems to call for a moderation of special autonomy rights which the historic communities are seeking to obtain.

The SCC has made some controversial rulings on the thorny issue of regional languages. Also in this respect it has been quite receptive to the viewpoint of the historic regions. For instance, the Spanish constitution requires that every Spaniard knows Castilian (Spanish) and it gives the central government the exclusive authority to issue diplomas. These competencies seem to suggest that the centre should be able to impose Castilian as a language of instruction in education, possibly alongside a regional language. However, the regions control other aspects of education policy and the constitution grants them the 'power to promote instruction in the language of the autonomous community'. Therefore, the question was raised whether the Catalan government could legitimately expect its citizens to know Catalan by the end of their primary school studies, and to offer them all course subjects in Catalan thereafter. The Catalan government believed that such policies would not violate the constitution. However, it recognized that it would have to provide education in Castilian at primary school level, prescribe at least one compulsory course a term in Castilian, and exempt students who had been educated in a different region before entering secondary school from the obligation to learn Catalan. To the astonishment of many Castilian-speakers, the SCC did not strike down the law. It appreciated the measures which the Catalan government had taken to guarantee the provision of education in Castilian. Castilian-speakers could at least start their education in their own native language and progressively acquire the Catalan language (Stone Sweet 2000: 107–9).

In recent years, the SCC adopted a more sceptical view towards the 'asymmetric nature' of the Spanish state. Perhaps the SCC may have been influenced by some pending European jurisprudence on the matter. The EU does not normally interfere in the domestic legal order of its member states. However, the European Commission had repeatedly voiced its discontent with the exceptionally high level of fiscal autonomy of the Basque Country and Navarra. It considered their fiscal autonomy, particularly some aspects of the Basque corporation tax, as a violation of EU competition rules. In the late 1990s, the European Court of Justice (ECJ) was asked to consider this matter in a preliminary ruling procedure, following a dispute which the Spanish government had first introduced against the Basque Country in the Spanish court system. The Advocate General of the ECJ joined the European Commission in its view that some aspects of the Basque fiscal autonomy should be considered as illegal state aid. Usually, the ECJ follows the advice of the Advocate General in a subsequent ruling. When the Spanish government realized that the ECJ would annul certain aspects of the Basque tax provisions, it withdrew the case. However, it used the opinion of the

Advocate General as a means to force the Basque authorities into conceding some of that autonomy (Bourne 2003: 611–12). Furthermore, the Spanish Constitutional Court may have looked less favourably upon the Basque tax asymmetry as a result. In a case brought to it by La Rioja after the ECJ dispute, the SCC no longer accepted the *foral* status of the Basque Country and Navarra as sufficient ground for accepting their special tax treatment. Rather, their tax autonomy was seen as a potential violation of the equality principle, as stipulated in section 14 of the Spanish constitution. The judgement of the court could have major ramifications. It remains unclear whether on this basis any form of constitutional asymmetry could be considered as a violation of the equality principle.

A constitutional court of increasing relevance?

The Belgian Constitutional Court

Compared with the SCC, the Belgian Constitutional Court (BCC) has played a much smaller role in delineating central-regional competencies. The limited role of the BCC is owing to a number of factors.

First, the Regions and Communities contain extremely long and detailed catalogues of competencies. Thus, the BCC may have many issues to consider but its rulings only affect the allocation of competencies at the margins. Second, the absence of concurrent legislation reduces the likelihood of judicial litigation. Third, until 2004, the regional executives were mostly made up from parties which also controlled the federal executive. Consequently, many contentious issues could be kept out of the court. Compromise solutions among the party and executive leaders of the federal and relevant regional governments prevented judicial litigation. The bicommunal composition of the federal executive and the requirement that its decisions must be taken by consensus have also contributed to a compromise-building atmosphere. When the federal executive cannot find a compromise, no decision is more likely than court action. The latter could threaten the survival of the government.

Despite these observations, the role of the Constitutional Court in deciding on federal-regional issues is not insignificant and may be on the rise. First, early on in its existence (the court was not established until 1984), the BCC developed the notion of 'monetary and economic union' (MEU). MEU prevents the regional governments from engaging in activities which would undermine the 'monetary and economic union' of the country. The doctrine puts a straight-jacket on wide-scale regional taxation. Although extensive regional tax autonomy was not envisaged at the time, at present it features highly on the agenda of some Flemish parties. Second, the court proceedings also authorize a group of MPs to file complaints. This option has become increasingly popular with opposition parties. It is not unthinkable that federal opposition parties which govern at the regional level may use it as a means to increase the powers of the regions (or oppose federal government policy). Third, since 2004, the

practice whereby the same parties control the federal and regional governments no longer holds. This increases the need for intergovernmental relations. In the absence of a political solution, judicial litigation may follow.

The Austrian Constitutional Court: a weak counterforce against federal centralization

In the first nine years of its existence (1920–29), all members of the Austrian Constitutional Court (ACC) were appointed by the federal parliament. Thereafter, the president and federal executive appointed half of its members each. Although the strengthened grip of the federal executive was meant to ‘depoliticize’ the court, it had the opposite effect. At least in Austria, the central control of the nomination process seems to have contributed to jurisprudence which embraced legislative centralization (Welan 1988: 66).

An additional constraint on the autonomy of the ACC is the strong influence of neo-corporatist actors in Austrian politics and society. When these professional associations (unions, employer’s representatives) assess federal or legislative federal drafts, they take the code of the ACC into consideration. However, when they disagree, they persuade the central government and legislature to propose a constitutional amendment which renders the court’s vision obsolete (Welan 1988: 76). As we have seen, the Austrian constitution can be changed quite easily. In general, federal legislatures have moved swiftly to overturn decisions of the ACC which they (or the professional associations) dislike.

The ACC’s jurisprudence has underlined its ‘passive and reactionary’ character. Most of the court’s rulings have run in parallel with the dominant (federal) political tendencies of the day (Welan and Noll 1997: 171). In 1977, the then President of the Constitutional Court, Antonioli, even resigned because, in his view, the court had become an ‘arm of the government’ (Obinger 2005). With regard to federalism, the ACC’s judgements have not served to curb the strongly centralized character of the Austrian federation or to protect the constitutional autonomy of the regions.⁷

One recent example to illustrate the latter is the so-called *Volksgesetzgebungscase* (referendum case). In this ruling, the ACC declared an article of the regional constitution of Vorarlberg void for breach of the federal principle of *constitutional homogeneity*. The constitution of Vorarlberg would have authorized its population to demand the enactment, amendment or abolition of a regional law by way of a citizen’s petition (Gamper 2003). If supported by a fifth of the electorate, the regional legislature would be forced to call a binding referendum on the issue. The constitutional amendment would not have any direct implications for the federal government, as it only affected legislative politics in Vorarlberg. It would thus in no way upset the existing distribution of federal-regional competencies.

Yet, the ACC ruled that a citizen’s petition could not be reconciled with the principle of ‘constitutional homogeneity’. The ACC based its judgement

on some debates which preceded the making of the Constitutional Act of 1920. These made clear that 'the federal constitutional lawmaker wanted to provide the referendum only to a limited extent', favouring representative democracy instead. Therefore, the court concluded that 'the repressing of the referendum in general does not merely form a *federal* constitutional standard that binds the federation, but [is] a fundamental constitutional principle of representative democracy that binds the *state* constitutions as well' (Court judgment, cited in [and translated by] Gamper 2003: 51; my italics). In this way, the judges constrained the constitutional autonomy of the regions beyond what is required from the federal constitution (Gamper 2003).

Two odd fellows: the Swiss Constitutional Court and the UK Privy Council

The Swiss Federal Court stands out among the group of constitutional courts in Western Europe. The Federal Court is constrained in its capacity as a constitutional court because it lacks the authority to rule on the constitutionality of federal legislation. It can check the compliance of federal administrative acts and *cantonal* laws with the constitution, but judicial review of *federal* legislation is a matter of the people. When drafting the federal constitution, the Radical Liberals believed that judicial review of federal legislation by a constitutional court would strongly violate the 'sovereignty of the people' principle (Von Beyme 1988: 24). The Federal Court can test the compliance of all legislative acts, including federal laws, with the European Convention for Human Rights. Therefore, it is sometimes argued that a limited scope for judicial review of federal legislation, albeit indirectly, is now possible.

Swiss citizens can challenge any federal law (not necessarily on grounds of unconstitutionality) by collecting 50,000 signatures. Alternatively, 8 cantonal authorities can trigger off a referendum on a disputed federal law. The first ever such referendum took place in May 2004. It resulted from the combined protest of 11 cantons against the federal government's plans to harmonize fiscal legislation (Schmitt 2005: 372). Federal laws are upheld if they receive the consent of a majority of the people.

The Swiss public has been less willing to endorse federal legislative acts and decrees than constitutional amendments, although the opposite could be expected. Roughly 7 per cent of all bills or decrees which the federal parliament passes are challenged by referendum. Almost half of these bills eventually collapse, whereas the share of failed constitutional amendments is some 20 per cent lower. In contrast with constitutional amendments, contested laws must first be petitioned before they are actually put to a public vote. Hence, laws which the public is asked to vote *against* have already passed a first hurdle, whereas constitutional amendments must always be voted upon in a referendum, irrespective of whether or not they generate widespread opposition (Kobach 1994: 109).

In general, the people have stopped the approval of federal bills which would have increased the scope of the federal government vis-à-vis the cantons. The impossibility of the Federal Court to review federal legislation prohibited a wide reading of certain constitutional clauses that may have served to expand the powers of the centre. In this sense, the public has voted similarly on federal bills and constitutional amendments proper. Only incremental changes are tolerated.

To conclude, a few words on the other odd fellow in this group of federal or regionalized states: the United Kingdom. The UK lacks a written codified constitution and therefore it has no constitutional court proper. Yet, some judicial authority is needed to test whether the central or devolved authorities respect the rules dividing competencies that are spelled out in the Scotland, Wales (and Northern Ireland) Acts. The body that was chosen to pursue this task is the Judicial Committee of the Privy Council. The Committee does not necessarily contain judges from Scotland, Northern Ireland or Wales, but its composition is more flexible than that of the Law Lords. The chamber of the Privy Council that deals with devolution disputes is open to any member of the Privy Council who holds or has held high office within the Commonwealth. Hence, when a dispute directly concerns Scottish legislation a sufficient representation of Scottish judges in the ruling chamber can be provided for (Bogdanor 1999: 207).

So far, the Privy Council has been of no significance for sorting out devolution disputes. Apart from the very recent nature of devolution, the current Labour dominance of all the UK governments has served to minimize judicial conflict. Therefore, any intergovernmental disputes are resolved within the party rather than the court rooms. This may change as soon as one party no longer controls the central and regional governments.

6. Conclusion

By looking at the method in which legislative powers are attributed and how the 'right to decide' (legislation) connects with 'the right to act' (administration), we can determine which of our federal or regionalized states *require* substantial *coordination* between the centre and the regions. It makes sense to distinguish between the *requirement* of intergovernmental cooperation and the actual *delivery* of that cooperation. Whether designs which require substantial cooperation also *provide* the necessary institutions for intergovernmental cooperation was not touched upon in detail here. In Chapter 6 I will discuss the actual contribution of the federal second chamber or other intergovernmental channels of cooperation in this regard.

Table 3.2 summarizes the main findings of this chapter. We can determine the required degree of interlevel cooperation by considering the levels of *legislative interlocking* first (the first of our two dimensions). The Swiss, German and Austrian constitutions establish a strong legislative role for the centre.

Table 3.2 Summary of distribution of legislative and administrative competencies and methods for changing that distribution

Country/ Region	Distribution of legislative powers	Residual powers	Levels of central- regional legislative interlocking	Distribution of administrative powers	Levels of central-regional legislative-administrative interlocking	Required level of cooperation (columns 4 and 6)	Position on dual-organic continuum	Method for changing distribution of legislative and administrative competencies	Dominant actors in changing distribution of competencies
Austria	Mostly federal	Regional	Moderate	Central and regional	Moderate to high	Moderate to high	Closer to organic end	Federal legislature (bicameral)	Federal government
Belgium	Mostly separated or shared but non- concurrent	Federal (potential transfer to regional level)	Low to moderate	Separated	Low	Low	Closer to dual end	Federal legislature (bicameral)	Federal government
Germany	Mostly federal, but concurrent	Regional	Moderate to high	Mostly regional	High	High	Closest to organic end of all cases	Federal legislature (bicameral)	Federal government + GCC
Spain	Separated or shared	Regional	Moderate	Separated in principle but shared in practice	Moderate	Moderate	Halfway continuum	Central legislature (bicameral; potential referendum	Federal government (organic law) and SCC
Switzerland	Mostly federal or shared	Regional	Moderate to high	Mostly regional	High	High	Closer to organic end	Referendum	Federal government and the People
UK (Scotland)	Separated or shared	Regional	Low to moderate	Separated	Low	Low	Closer to dual end	Central legislature	Central government
UK (Wales)	Central only	Central	—	Mostly regional	High	High	Closer to organic end	Central legislature	Central government

However, in the Swiss and German cases the federal legislative dominance is not absolute. The Swiss constitution also contains a large number of shared federal-regional legislative powers. The large number of concurrent legislative powers, framework bills and joint-decision programmes in the German constitution ensures that the regions are left with some legislative scope in federal matters. In this sense, a strong degree of cooperation is required. Legislative powers are most centralized in Austria. The Austrian constitution specifies only a few framework bills, lists an extensive number of exclusive federal powers and relatively few shared federal-regional powers.

In contrast with the three 'Germanic' federations, the devolved arrangements of Belgium and Spain tend closer towards the dual end of the continuum. In Belgium, this is exemplified by the absence of a clear hierarchy of norms between federal and regional laws. This said, some cooperation may be required where different 'aspects or slices' of a policy field are assigned to different levels of government. In this sense, the detailed listing of Regional or Community competencies has not always satisfied the Regions. Some devolved policy packages still lack coherence.

On the whole, the Spanish distribution of legislative powers follows a more dual blueprint as well. Yet, the ambiguity of the Spanish constitutional text leads to the potential intrusion of the regions in matters which the constitution has assigned as exclusively central, or to the potential interference of the centre in matters which the constitution identified as potentially regional. Consequently, there is scope for legislative overlap, making the Spanish distribution of legislative competencies less dual than a first reading would seem to suggest.

Finally, in the UK, the devolved arrangements for Scotland (and so long as it applied also Northern Ireland) take on a more dual conception of federalism, although, as in Belgium, certain policy areas are scattered between both levels. Wales only has secondary legislative (executive) powers, and therefore completely relies on the centre for legislative guidance.

Central-regional cooperation can result from high levels of *legislative-administrative* interlocking as well (the second dimension of our dual-organic continuum). In Switzerland, Germany and Austria, the federal government relies on the regions for implementing most of its legislation. This tendency is most outspoken in Germany. It is less obviously the case for Austria, where the federal government implements a larger share of its own legislation. Although the Swiss cantons are also heavily involved in implementing federal legislation, they have retained the largest (fiscal and policy) discretion in deciding on how to do this.

Compared with the three Germanic federations, the level of legislative-administrative interlocking is low in Belgium. Each level administers its own legislative policies. The same observation applies to Scotland after devolution, although Scottish civil servants are still bound by central administrative principles. However, such a practice is not uncommon among other

federal or regionalized states. For instance, in Germany, regional civil servants comply with federally set career standards as well. This enables their circulation from the regional to the federal level, possibly even from one region to another.

The situation is more complex in Spain. Here, the centre has not completely ceded its administrative responsibilities in devolved legislative matters. Potential administrative duplication and competition can result from this. Unlike in Belgium, the Spanish centre has also kept control of the provinces and used provincial administrations for shadowing regional affairs. Finally, Wales has executive powers only. Therefore, it is bound to cooperate with the centre for any policy which it implements. In this sense, the level of legislative-executive interlocking is nowhere higher than in Wales.

We can establish which of our cases comes closer to the organic or dual end of the continuum by determining their levels of central-regional legislative and legislative-administrative interlocking. On that basis Germany, in particular, but also Switzerland approximate to the organic end of the continuum. Austria is also included in this group, although the centre does not have to rely as strongly on the regions for the implementation of its legislation. In this sense, Austria is more a centralized than a joint-decision federation. Due to the absence of legislative autonomy, the devolution settlement for Wales also contains a strongly inbuilt need to cooperation. Spain assumes an intermediate position, whereas Belgium and Scotland more clearly tend towards the dual end of the continuum.

In the second part of this chapter, I briefly touched upon the issue of constitutional asymmetry. As it stands, asymmetry is still a major issue in Britain and it is likely to remain so as long as there is no support for the regionalization of England or for the creation of a separate English parliament. Thus far, the UK has not followed the example of Spain. In Spain, the autonomy that was initially conceded to the historic regions spilled over to the 13 regions with a non-historic character. As a result, the Spanish decentralization process has grown less asymmetric in time. Possibly in the UK a similar 'spill-over effect' may be confined to Wales. At some point in time, Wales is likely to ask for a form of legislative devolution that is modelled after the Scottish example. Although Belgium exemplifies asymmetry as well, asymmetry is the outcome of the separate existence of Community and Regional structures, each with different sets of competencies.

In the third part of this chapter I reviewed processes for changing the distribution of constitutionally assigned powers. With the exception of Switzerland, changing these powers normally only requires the consent of the central parliament. The UK is the only country in which the second chamber cannot block such changes. However, in Chapter 6, I will demonstrate that only the German Bundesrat occasionally uses its veto powers effectively to represent regional concerns. In this sense, the formal involvement

of the regions in decision-making that affects their set of powers is often inadequate.

From a comparative viewpoint, the formal process for changing the distribution of competencies is a relatively easy one in all of our countries except Switzerland. Despite the requirement of a referendum with special majorities, the Swiss constitution has been changed regularly, but such changes only incrementally increased the role of the centre. All of our cases also contain relatively long and detailed catalogues of competencies and these have been open to regular adjustment. As a corollary the role of the constitutional courts has been relatively small. There is one major exception to this rule. For reasons that were explained above, the Spanish constitution has not been amended regularly. Consequently, the Spanish Constitutional Court has played a pivotal role in clarifying the distribution of competencies.

The input of the regions in codetermining the composition of the Constitutional Court is limited. In this sense, Riker is right in his claim that constitutional courts should be considered as 'central institutions'. However, this does not necessarily mean that the constitutional courts will side with the centre. In fact, the jurisprudence of the German and Spanish constitutional courts contains examples which have strengthened or protected the autonomy of the regions. The Spanish Constitutional Court has played a pivotal role in consolidating the 'state of the autonomies'.

This chapter purposefully left three issues untouched which nonetheless lurk at the background of the analysis. First, we know more about the method of distributing legislative and administrative powers, but we do not yet know which powers have been allocated to what level and more importantly why? Second, and related to the previous point, the power to raise revenue or to spend is enshrined in legislation. In this sense, we have already touched upon fiscal legislation in this chapter. Yet, tax and spending bills constitute a special form of legislation. The level which controls the power of the purse secures considerable powers within the federal system as a whole. Finally, some federal designs may require more federal-regional cooperation than others, but we do not yet know whether such cooperation mechanisms are effectively provided. In the next chapter, I consider the first two of these issues. Chapter 6 considers the last one.

4

The Centre and the Regions: the Political Economy Approach

1. Introduction

Chapter 3 provided an overview of the methods in which competencies are assigned, adjudicated and interpreted in a federal or regionalized setting. Yet, a more fundamental question was left untouched. Which competence areas or functions have been assigned to the central or regional levels of government and, more importantly, *why*? Leaving aside historical or case-specific reasons, can we derive any insights from comparative political economy in answering that question? Is there a certain pattern of competence distribution that would make governance more efficient and effective and does the practice of federal or regionalized states live up to that expectation? This chapter seeks to answer these questions. It is divided into six sections.

In the first section, I summarize three theories which predict how the distribution of competencies in a federal state unfolds: a functional, a legislative and a regulatory theory (Peterson 1995; Kelemen 2004).

The second section provides a schematic overview of the actual distribution of competencies in Western Europe's federal or regionalized states. I discuss which of the above three theories is best suited to explain the distribution of competencies and why.

In the third section I introduce the notion of the *scope* of federalism. Federations can have a very *centralized* or a *decentralized* scope. The scope of federalism is determined by considering *expenditure and revenue* assignments of the different levels in the state. A state has a decentralized scope when the regions absorb a relatively high share of all public expenditures and raise most of the revenue to cover these expenditures (and vice versa).

In reality most states do not have sufficient revenue-raising capacity to finance all of their expenditure programmes. The fourth section of the chapter considers why this is the case. The answer to that question comes in two parts. The first part considers whether certain taxes are better (de)centralized

for 'technical' reasons. The second part takes the normative reasons for justifying the (de)centralization of the major tax sources into account.

When regional expenditure programmes are not covered by regional taxes, a fiscal imbalance arises. In the fifth section I analyse the contribution of the central government in reducing such imbalances. This involves a thorny discussion of 'fiscal equalization' mechanisms. The centre usually reduces fiscal imbalances on the basis of central grants. When doing this, the centre can engage in a form of horizontal equalization, that is, it may seek to reduce interregional differences in revenue or expenditure capacities. Alternatively, some affluent regions may directly channel some of their money into the coffers of those regions poorer in resources.

The final section briefly discusses the distribution of tax powers as well as the mechanisms of fiscal equalization for each of our cases studies.

2. Competence assignment in a federal state: an overview of three theories

Modern governments engage in three important socio-economic tasks. They must stabilize the macroeconomic parameters, they redistribute money from the *haves to the have nots*, and they allocate public goods. In order to stabilize the economy and to control overall levels of inflation, governments can adjust monetary policies (increase or decrease interest rates for instance) or they can adjust fiscal policies (broadly defined as 'the government's plan for spending and taxation' – Braun et al. 2003: 5). Governments that are committed to provide citizens with a minimum level of welfare (social subsistence, health, pensions, unemployment benefits ...) must transfer certain tax resources from the *haves* to the *have nots*. Finally, governments are responsible for regulating and/or providing goods of a (semi)-public character. Public goods are different from private goods. Access to public goods cannot be denied to those who refuse to pay a price for them. For instance, environmental measures which seek to reduce levels of noise pollution near airports benefit all citizens who are living in such areas, irrespective of their tax-paying behaviour. Unlike private goods, public goods do not assume an exclusiveness of consumption. For instance, all citizens breathe air, or, in principle, public motorways are open to each person holding a drivers' licence (Ostrom and Ostrom 1991: 164–9). Many public goods are not entirely pure; either by definition (for instance, roads that are congested limit their consumption), or by choice (for instance, in most countries education is not entirely free, certainly university education may be provided as a partially or exclusively private good). In this sense, governments must contemplate to what extent they wish to subsidize the provision of such semi-public goods, and how they seek to allocate them.

Redistributive and stabilization goals interfere with the pure objective of allocating. The preferred mixture of these objectives varies from one country

to another; and within one country from one time period to another. For instance, redistributive policies are more strongly developed in Germany than in the United States. Therefore, general tax levels are higher in Germany than in the United States. Yet, even within the context of the post-war German welfare state, the dominant economic paradigm has shifted between the late 1960s and 2005. This is so, despite the participation of Social Democrats in federal governments at the beginning (1966–82) and end (1998–2005) of that period.

Federal or regionalized democracies are not different from unitary democracies in that they should find a suitable mixture between stabilizing, redistributive and allocative goals. However, for two reasons, whether or not a state is federal may greatly affect its *ability* to find such a balance.

First, federal states assign expenditures to different levels of government. Since federalism also implies a certain diffusion or decentralization of political control, a federal government cannot normally codetermine how the regions will spend *all* of their public money. Similarly, federal expenditure programmes normally fall beyond the control of the regional governments.

Second, in all federal and most of our regionalized states, the regions can raise at least part of the revenue which sustains their expenditure programmes. Consequently, a federal or multilayered structure can constrain the freedom of one government to impose monetarist or fiscal strategies upon the other. Central governments of a federal or a regionalized state are more constrained in pursuing unilateral supply-or-demand-side policies than central governments which operate in a unitary context.

In federal states then, the control over the stabilization, redistribution and allocation of public or semi-public goods is not necessarily attributed to the same level of government. Nonetheless, there are conflicting theories as to which level will engage in what type of activity. Paul Peterson has summarized two of these conflicting views as 'a functional' and a 'legislative theory' of federalism (Peterson 1995: 16–50).

According to the *functional* theory of federalism, the centre will control the stabilizing and redistributive functions, whereas the regions will focus on allocative or, in Peterson's terminology, 'developmental' programmes. He conceives of developmental programmes as 'programs that provide the physical and social infrastructure necessary to facilitate economic growth' (Peterson 1995: 17). In this sense, the 'functional theory of federalism' corresponds with the majority viewpoint of public economists in this regard (Musgrave and Musgrave 1973; Oates 1972). Ultimately, the functional theory predicts that the distribution of competencies answers the question 'who is best at doing what'?

Stabilization and redistribution require a strong degree of interregional coordination. Such coordination is provided more efficiently by a central government than by an interregional coordination body. Thus, central governments will assume a dominant role in monetary policy-making.

To control inflationary pressures, central governments may also coordinate borrowing policies at all levels. In some federations, the centre and the regions may be banned from engaging in unilateral deficit-spending. They may be forced to operate under 'tight budget constraints' instead (Rodden, Eskeland and Litvack 2003). Some expenditure programmes, such as unemployment benefit schemes, are very sensitive to changes in the economic cycle. They could undermine the overall macroeconomic stability of the state if the regions were to expand them and engage in debt-financing. For this reason, the centre also normally controls them.

Apart from holding the strings of macroeconomic policy coordination, central governments are also more actively engaged in redistributing money from the *haves* to the *have nots*. The objective of redistribution requires that central governments control the base and rates of the most mobile and progressive taxes. Central governments are more impartial and represent a wider range of interests than regional governments. Central governments can also seek to phrase redistributive programmes in terms of individual rather than of territorial need. Redistributive objectives may conflict with the goal of allocative efficiency, but society may give higher priority to the need of providing educational or health services of comparable standard throughout the state. For instance, the people may fully support the need to 'pool or centralize' certain social costs. Examples could be social insurances which protect against mental or physical disability or unemployment and pension schemes. For the same reason, policies that generate cross-border externalities, such as environmental pollution, are regulated by the centre as well. Finally, central governments also control the delivery of a number of public goods that qualify as supra-regional or *national*, that is, 'goods whose benefits extend nation-wide or whose provision is subject to substantial economies of scale' (Ter-Minassian 1997: 4). Typical examples of these are defence, cost-intensive infrastructure for interregional transport (interregional highways or railways), immigration policies, national telecommunications infrastructure and foreign relations (with the proviso that regions may possess substantial powers to conduct foreign policy in areas in which they have domestic competence). Costly research and development tasks could be added to the list and, potentially, higher education also. For instance, providing the latter at a supra-regional level may generate substantial economies of scale. This is particularly so when a federation comprises a large number of small regions which could not bear the full cost of providing these goods separately (as is the case in Switzerland).

The functional theory of federalism predicts that the centre will primarily engage in redistributive and stabilization policies. However, regional governments should assume a dominant role in regulating and implementing (but not necessarily funding) developmental programmes. By decentralizing expenditure programmes, public services can be offered that best approximate to local market conditions and thus benefit the welfare of all.

Paul Peterson has distinguished between *physical* and *social infrastructure* programmes. Examples of '*physical infrastructure*' programmes are road construction and maintenance (of roads which do not cross regional borders), basic utilities, such as electricity supplies, public parks or sanitation systems or fire prevention services and public transport. '*Social infrastructure*' programmes refer to education policies, public health, but also policing and justice (except for cross-border criminality; Peterson 1995).

The *legislative* theory of federalism predicts a very different distribution of competencies. It argues that form does not necessarily follow function. Using the premises of rational-choice theory, it predicts that the distribution of competencies will reflect the aspirations of individual policy-makers at the various levels of government and the existing power relations between them. The legislative theory sees 'legislators' as the most important policy-makers in the political process. Legislators are less driven by finding a distribution of policy programmes which maximizes the welfare of *all* than by securing their own re-election. In that case, central legislators may seek to control the most important developmental programmes. Such programmes have spatially concentrated benefits, but diffuse costs among all the federal tax payers. Hence, a legislator may bargain to see the construction of a sports centre, a roadway or a research laboratory within the region from which she originates. However, she may be less keen to support a fiscal assistance plan to help the blind. Indeed, welfare programmes of the latter type are usually not confined to one region. Arguably, the share of blind people should be about equal in all the regions of a federation. However, the costs of such welfare programmes are certainly not more dispersed than the costs of developmental programmes. Therefore, they have a less favourable cost-benefit ratio. At best, central legislators may still try to take credit for such programmes, but shift the responsibility for funding and implementing them to the regions (Peterson 1995: 39–47). Put differently, the centre may still regulate on them (so as to take credit), but under the form of an 'unfunded mandate' (i.e. without providing the necessary funding). It follows that the legislative theory of federalism predicts a distribution of competencies which looks very different from what the functional theory has in mind. The centre will assume a dominant role in controlling developmental programmes, but the regions may carry the brunt of the redistributive programmes. The legislative theory of federalism does not say anything in particular on which level of government will be made responsible for the overall goal of macroeconomic stabilization.

In recent years, a third theory has emerged which provides yet an alternative view on how the distribution of competencies in a multilayered state may unfold. This theory sprang from the creative mind of Daniel R. Kelemen (Kelemen 2000, 2004). At one level, his theory is narrower in scope than the functional or legislative theories of federalism. It does not consider the

envisaged distribution of large-scale redistributive or developmental programmes in a federal state. Instead, it focuses on 'regulatory' policies only, such as environmental regulation, anti-trust policies, or food and safety regulation (Kelemen 2004). Regulatory policies do not normally generate major direct costs, but where they seek to reduce barriers or prescribe minimum product standards they may generate substantial transition or implementation costs.

At a different level, however, the regulatory theory of federalism is broader in scope than the legislative theory. It shares with the latter an assumption that political actors are driven by rational self-interest. However, it is less focused on legislators, and also takes the interest of other political players into account such as executives, civil servants and judges. For instance, whereas legislators may seek their re-election, judges may seek to expand the scope of disputes on which they can rule. Moreover, the regulatory theory more explicitly takes the incentives of central *and* regional actors into account. Incorporating a broader set of actors and the specific institutional configuration in which they interact, Kelemen argues that the regions will come to delegate most of the regulatory powers to the centre but will keep control of their implementation. The centre's control of regulation and the region's responsibility for implementing these rules is not a function of the self-interest of central legislators. Such an outcome results from the mutual interest of central and regional political actors. Furthermore, the regulatory theory does not predict whether the regions wish to keep control of the mechanisms for financing the implementation of these regulatory policies.

In order to understand why and how such a distribution of competence unfolds, consider Kelemen's line of thought. Central actors wish to maximize their influence in all policy fields. Regional actors are only willing to delegate regulatory powers to central policy-makers if by doing so they can reach a policy objective which they cannot reach independently. This could happen whenever the regions engage in a destructive race to the bottom or whenever they must find agreement on cross-border issues such as environmental pollution.

For instance, assume two adjacent regions, A and B, both with full responsibility in setting and implementing environmental standards in the field of noise pollution. Yet, A sets much higher environmental standards than region B. Region A would then suffer from the noise levels produced by Region B, but Region B may feel threatened in its economic activities when Region A seeks to enforce its higher environmental standards in court. For region A, a commonly accepted noise level would be desirable: it would save the cost of introducing court cases; appease regional constituents who would now benefit from lower noise levels and remove B's competitive advantage vis-à-vis A. Conversely, region B may be persuaded to agree to higher environmental standards if that would give its products free access to the

customers of region A. It may be easier for A and B if such a solution is worked out by a federal arbiter than by means of bilateral agreement. Central governments in turn may be keen to take on such a role, as it allows them to increase the scope of their activities and to serve a publicly felt need. Federal courts may welcome this development as well, as they can now rule on a larger number of competencies.

However, central governments will never absorb the full implementing authority in these policy fields. This would force them to invest considerable amounts of money in setting up the necessary bureaucracies and in bearing the full political costs of potential implementation failure. Conversely, the regions may be keen on retaining some of the authority for implementation as well. This way, they would retain some say in centrally regulated policies and be able to shift the blame onto the central governments whenever policies fail. Furthermore, regions which previously imposed a lower standard (region B in the above example) may be particularly keen on implementing these policies. This may provide them with some leeway in applying the higher standards which region A or the federal government proposed. Consequently, in a large number of policy areas in which the central government assumed regulatory competence, the regions retain implementing authority. In sum, in the field of regulatory policies, the distribution of competencies would be in many respects reminiscent of 'administrative federalism' (Kelemen 2004: 1–22).

3. Competence assignment in Western Europe: testing the three theories

Table 4.1 provides an overview of the distribution of competencies, based on a reading of the constitutions or the rules specifying central-regional competencies for each of our cases. For states with asymmetrically assigned competencies, the table reproduces data for the most autonomous region in the case of Britain (Scotland) or the most common regional regime in the case of Spain.

I have identified a limited number of policy areas and regrouped them in roughly four sections: international (economic) relations; instruments with a strong impact on macroeconomic stabilization (control over monetary and fiscal policies); large expenditure programmes with a primarily non-redistributive character; and redistributive programmes that transfer money from the *haves* to the *have nots*. The various expenditure or regulatory fields are still relatively wide in scope, but a more detailed approach would have reduced the comprehensiveness of the table. Where a category is left blank, the constitution (or a special majority law, organic law etc.) remains silent on a competence matter. Depending on which level is granted the residual powers, such competence areas are included in the authority of the central or regional levels of government.

Table 4.1 Distribution of competencies in Western Europe's multilayered setting

	BEL	ESP	GER	ÖST	SUI	UK
Constitutional Distribution of powers (legislation)						
International (economic) relations						
Defence	F	C	F	F	F	C
Treaty implementation	F/R	C	F/R	F/R	F	C
Citizenship	F	C	FL/RA	FL/RA	F-Frame	C
Immigration (into federation)	F	C	FL/RA	F	C	C
Immigration (between regions)	F	C	FL/RA	F	R	C
Dominant pattern	F	C	FL/RA	F	F	C
Macroeconomic stabilization (fiscal and monetary policies)						
<i>Functioning of economic union</i>						
Trade and commerce	F	C	FL/RA	F	F	C
External trade	F/R	C			F	C
Interstate trade					F	
Intrastate trade	F					
Currency	F	C	F	F	F	C
Banking	F	C	FL/RA	F	F/R	C
Bankruptcy		C				C
Dominant pattern	F	C	FL/RA	F	F	
<i>Taxation</i>						
Customs/Excise	F	C	F	F	F	C
Corporate tax	F	C	FL/RA	F	F	C
Personal income tax	F	C	FL/RA	F	F/R	C
Sales tax/VAT	F	C	FL/RA	F	F	C
<i>Debt and borrowing</i>						
Federal public debt	F	C	F	F	F	C
Foreign borrowing	F/R	C/R	F/R	F	F/R	C
Domestic borrowing	F/R	C/R	F/R		F/R	C
Dominant pattern	F	C	FL/RA	F	F/R	C
Allocative or developmental programmes						
<i>Transportation and communication</i>						
Roads and bridges	R	C/R	FL/RA	F/R	F/R	R
Railways	F	R	F	F	F	C
Air	F/R	C/R		F	F	C
Telecommunications	F/R	C	F	F	F	C
Postal services	F	C	F	F	F	C
Broadcasting	R	C	F/R	F/R	F/R	C

Continued

Table 4.1 Continued

	BEL	ESP	GER	ÖST	SUI	UK
Allocative or developmental programmes						
<i>Agriculture</i>						
Agriculture	R	C	FL/RA	FL/RA	F/R	R
Fisheries	R	C/R	FL/RA			R
<i>Resources</i>						
Mineral resources	R	C		F		C
Nuclear energy	F	C	F	F	F	C
<i>Education</i>						
Education and research		C/R				R
Primary and secondary education	R	R	R	F/R		R
Post-secondary education	R	C	F-Frame R	F	F/R FL/RA	R
Research and development	F/R		FL/RA	F/R	FL/RA	R
<i>Cultural affairs</i>						
Culture	R	C/R	R		R	R
Language	F/R	C/R	R	R	FL/RA	R
<i>Environmental policy</i>						
Environment	F/R	C/RA C/R	FL/RA	F/R	FL/RA	R
<i>Law and security</i>						
Civil law	F	C	FL/RA	F/R	F	R
Criminal law	F	C	FL/RA	F/R	F	R
Organization of the courts	F	C	FL/RA	F	R	R
Police (internal security)	F	C/R	FL/RA	F/R	R	C
<i>Local Government</i>						
Dominant pattern	R F or R	C/R	R FL/RA	R F or R	R FL/RA	R C or R or F or R
<i>Health policy</i>						
Health care and sanitation	F/R	R		F/R	R	R
Hospitals	F	C/R	FL/RA	FL/RA	FL/RA	R
<i>Social policy</i>						
Unemployment insurance	F	C	FL/RA	F	FL/RA	C
Income security (subsistence)	F	C	FL/RA	F	F	C
Social services	R	C/R		R	FL/RA	R
Pensions	F	C	F	F	FL/RA	C
Dominant pattern	F or R	C	FL/RA	F or R	FL/RA	C or R

Legend: F = Federal; C = Central; R = Regional (in Belgium, Community or Region); FL/RA = Federal legislation and regional administration; F-Frame = Federal framework legislation.

Source: General distribution of categories and data for Austria, German and Spain based on Herperger 1991: 49–54, and Watts 1996: 118–22; data for Belgium based on Alen and Muylle 2003; data for UK (Scotland only) based on Bogdanor 1999: 204, and Hazell 2000a: 4.

3.1. Testing the predictive value of the legislative and functional theories of federalism

Which of the alternative theories is best suited to predict the distribution of competencies in Western Europe's federal or regionalized states? Let us consider the two theories which make claims with regard to the distribution of powers in the widest range of policies: the functional and the legislative theory. Table 4.1 clearly illustrates that, in Western Europe, the functional theory of federalism has a higher predictive value than the legislative theory. There is a clear dominance of the central governments in steering the most important instruments of macroeconomic stabilization. Monetary policies are certainly set at the central level but, in general (Switzerland is an exception), the centre also controls the legislative instruments for setting or raising the most important taxes. Typically, these are the personal income, corporate income and Value Added Taxes (VAT). Although the centre may not 'collect' (administrate or implement) these taxes itself, it uses their revenues to finance some important social (redistributive programmes) in health and social policy. The centre clearly dominates core welfare legislation, particularly in unemployment and pensions. However, in some federations (Austria, Switzerland and Germany) the regions retain an important role in implementing these policies. Furthermore, in the UK, Scotland has acquired legislative and implementing powers in health policy (but remains dependent upon the centre for financing these policies). This puts Scotland at odds with the other cases, where health is at best a shared policy.

As the functional theory of federalism would have it, the regions are much more active in education and cultural policies. The cross-border nature of some transport mechanisms (for instance air transport) is more likely to generate central regulatory control than that of others (bus transport, for instance). In this sense, the centre only assumes developmental functions in policies which, by their very nature, require substantive cross-border coordination.

Obviously, the empirical findings beg the question why we find so little evidence in support of the legislative theory of federalism. I put forward two main reasons for why this is the case.

First, Paul Peterson developed his two theories with the American context in mind. The American political system has some institutional features which make the predicted outcome of the legislative theory more likely than in Western Europe. The US presidential system is marked by a loose party structure and comparatively strong legislatures which are elected by the first-past-the-post system (Weaver and Rockman 1993). For legislators 'first past the post' acts as an incentive to seek 'a personal vote' (Ferejohn, Cain and Fiorina 1987). They can do this by approving developmental projects that respond to the specific desires of the constituents whom they represent and by avoiding policies which disperse benefits. In the central legislature,

constituencies coincide with the states or regions (Senate) or subsets thereof (House of Representatives). Weakly disciplined parties cannot prevent individual legislators from adopting such 'pork barrel' attitudes. With the exception of the UK all or most of the central and regional legislatures of our cases are elected by a system of proportional representation, usually involving a strong list component. The majority (Switzerland stands out as an exception) are parliamentary. Leaving aside Switzerland, they are marked by relatively strong party discipline and cohesion. Therefore, there is less scope to pursue policies that are exclusively seeking regional constituency benefits.

Second, the theory of legislative federalism does not entirely think through the impact of rational-choice attitudes on all policy actors, central and regional alike. Short-term electoral benefits may stimulate central legislators to increase developmental programmes and to reduce redistributive programmes. However, regional legislators are concerned with their re-election as well. As electoral districts for regional (legislative) elections are normally subsets of districts for central (legislative) elections, members of a regional legislature could seek to blame federal instead of regional policy-makers for reducing service standards or increasing overall levels of taxation. If they communicate this message successfully, the aggregate group of regional voters may be persuaded to vote against federal legislators for their 'shirking' behaviour on the occasion of the first next general elections (Gilette 2001: 126). More developmental programmes may be kept at the regional level, and the centre may be inclined to uphold a stronger commitment to redistribution.

3.2. Some observations on the predictive value of the regulatory theory of federalism

The legislative theory of federalism seems of limited value for explaining how competencies in Western Europe's multilayered context unfold. Kelemen's 'regulatory federalism' builds on similar 'rational-choice' assumptions, but arrives at different outcomes. Although his empirical analysis does not consider large-scale developmental or redistributive programmes, it predicts a distribution of regulatory competencies in which the centre and the regions settle for an 'administrative' form of federalism. In general, Germany, Switzerland and Austria have adopted such a distribution of tasks, even in the non-regulatory policies that were not touched upon in his comparative study (Kelemen 2004). However, would we find a similar distribution of competence in Spain, Belgium and the UK?

At one level, there is reason to believe we would. Spain, Belgium and the UK display a 'centrifugal' form of federalism or decentralization. Because of their multinational character, the central governments of these states may be willing to cede implementing authority, without giving up legislative control as well. This is most obvious in the case of Spain and Britain. In both states, the centre is associated with a majority nation (the Castilians,

the English). Conversely, the regions or minority nations may not wish to acquire legislative and implementing authority at once. This would make them vulnerable to policy failure at a moment when they still lack experience in the implementation of policy and have to build up an autonomously recruited regional bureaucracy.

In contrast, there is good reason to assume that the regions of these multinational states may wish to expand their role in regulatory politics in time. As minority nations, they seek to maximize their levels of political autonomy, possibly more at home than in the centre. In multinational states, the minority nations may contest the authority of the state and seek to capture full control of policy measures which are still shared with the centre. In Belgium, recurrent Flemish demands to increase the 'homogeneity of policy packages' (to be understood as the further devolution of policy sections in their regulatory, fiscal *and* administrative dimensions) prove this point. In a multinational context, to obtain implementing authority may just be a stepping-stone towards acquiring corresponding regulatory autonomy.

There is insufficient space to discuss the distribution of environmental competencies for each of our multinational states, let alone for all the cases in this study. Yet, we can have a quick look at the distribution of environmental legislation to see whether the regulatory theory of federalism holds. Environmental policy is highly regulatory and it is also one of the policies which Kelemen considered in his original study. On that basis, the Spanish and Belgian cases provide mixed evidence for the regulatory theory of federalism.

On the whole, the Spanish case supports the regulatory theory. In environmental policies, the central state enacts framework legislation, but entrusts the regions with the responsibility to implement these rules. Regions must comply with the minimum environmental standards which are set by the centre, but they can move beyond the 'lowest common denominator'. Tanja Börzel has demonstrated that the Spanish regions accepted and even transferred some of their regulatory powers in environmental policy back to the centre. Yet, the Spanish regions retained the right to implement these policies and secured a larger contribution of the centre in the financing of these policies. However, this 'shift of competence' was driven by the increasing 'Europeanization' of environmental regulation in the first place. Furthermore, the regions did not happily consent to an erosion of their competences in environmental regulation. For some time then, they refused to implement central environmental rules, they blocked any communication with the centre and they even sought redress with the Constitutional Court. In this matter, the court sided more often with the centre. Furthermore, domestic environmental groups vocalized their protest against such acts of regional unresponsiveness. Even business groups sided occasionally with the centre because they deplored the high levels of regulatory uncertainty. Eventually, the regions changed tactics when they realized

that a more cooperative approach could address their grievances without also weakening their influence in the central and European policy arenas (Börzel 2002: 178–208).

However, in Belgium, the responsibility for the regulatory *and* administrative aspects of most environmental policies is in regional hands. Their implementation is mainly funded by central grants or regional user charges. Compared with Spain, the EU is less of a ‘centralizing’ than a ‘coordinating force’. The Belgian regions can represent Belgium at the EU (and international) levels in matters that fall within their area of competence. Therefore, there is no desire to centralize regulatory control of environmental policies. One recent exception pertains to the regulation of noise level standards caused by air traffic. Air traffic in and around Brussels international airport affects the quality of life of citizens who live in three different regions: Brussels, Flanders and Wallonia (Gelders and Facon 2004). The absence of one common standard has sparked judicial litigation and the demand by at least one region for recentralizing the right to determine environmental noise levels. Arguably, in the presence of state-wide Belgian parties, the centre might have been compelled to push this matter further. Belgium lacks state-wide parties. Hence, in Belgium the distribution of environmental policies does not entirely conform with the regulatory theory of federalism.

3.3. Whither the European Union? A brief intermezzo

The purpose of this book is to analyse Western Europe’s domestic systems of multilevel governance and to treat them as much as possible in isolation from the European or international context. Yet, in some respects, the EU dimension cannot be ignored. However, the EU fits well into the functional and regulatory theories of federalism. The European Union hits the member-states and the regions of its federal or regionalized states in two important respects.

First, the scale of the West European nation-states in the globalized economy is (or may be deemed) too small to pursue autonomist monetary or macroeconomic stabilization objectives. Therefore, with the exception of Switzerland and the UK, each of the above states has transferred its monetary policies to a European Central Bank (ECB) and subjected itself to a strict regulatory framework. That framework constrains its fiscal and budgetary options (i.e. the Maastricht criteria and the provisions emerging from the contested Growth and Stability Pact). Although the UK and Switzerland do not participate in the common currency, their current trade patterns warrant a close monitoring of the fiscal policies of the euro member-states and the ECB’s monetary strategy.

The EU’s involvement in monetary and macroeconomic stabilization confirms the general thrust of the functional theory of federalism. In a federal state, these functions would normally be centralized. Therefore, their elevation to the supranational level follows the conviction of some member-states

that these macroeconomic policies are better served by the European than the member-state levels. This said, the EU is scarcely involved in redistributive, let alone developmental, policies. The Common Agricultural Policy and the expanding Regional Policy funds may be considered as a form of European redistribution, but the scale of these programmes is very limited compared with the vast sums which member-state governments pour into their welfare or social security programmes (for a comparison, see Scharpf 1999; McKay 2001). Furthermore, the EU lacks proper fiscal resources (own taxation) to fund these programmes.

Second, apart from establishing the general budgetary framework within which the euro member-states must operate, the EU is also a very active regulator, primarily in areas of interstate commerce, trade or, as documented above, the environment. In their analysis of MLG in Europe, Liesbet Hooghe and Gary Marks documented the increasing relevance of the EU in areas of economic policy, social/industrial policy, legal-constitutional policy (justice and home affairs, policing and citizenship) and international relations/external security. In each of these four policy sections, the EU has become an important regulator, even in some respects (for instance, external commercial relations) the only one (Hooghe and Marks 2001: 187–9). However, the regulatory impact of the EU should be put into context. For the EU has turned into an active regulator, particularly in the four policy sections mentioned above, but it still relies on the goodwill of the member-states or their regions for implementing most of these regulatory policies (Börzel and Risse 2000; Kelemen 2000, 2004; Swenden 2004a). In this sense, the EU exemplifies ‘administrative federalism’ par excellence, and it is no wonder that this peculiar distribution of functions was incorporated into Kelemen’s regulatory theory of federalism.

4. The scope of federalism: expenditure and tax (de-)centralization

The previous section made clear that we can discern certain patterns in the assignment of competencies in a federal or regionalized state. Yet, a more than cursory look at Table 4.1 reveals substantial differences in the extent to which the centre is engaged in regulating or administering certain policies. For instance, within the field of ‘law and security’, we notice that the Belgian and Spanish centres are in charge of civil and criminal law and of organizing the courts. Leaving aside the Basque Country, these central governments also control the main police forces. In Austria, the centre coordinates the court system, but some police forces as well some aspects of criminal and civil law fall under regional control. In Germany, the federal government legislates in nearly all of these matters, but the regions implement. Finally, in Switzerland, the centre controls criminal and civil law, but the cantons are responsible for the main police forces and the courts (other than the Federal

Court). There is no clear rationale why criminal and civil legislation is central in some countries, but regional in others.

Hence, we can reasonably claim that for each of these countries *developmental* or *allocative* programmes are more likely assigned to the regional level than *redistributive* programmes. However, the number of developmental programmes that falls under regional control may be higher in some countries than in others. Similarly, the extent to which the centre is involved in redistributive programmes may vary from one country to another. To specify these differences, I introduce the notion of the *scope* of federalism. The scope of federalism would be rather limited if the centre clearly outweighs the regions in the public policies which it controls. Put differently, we face a rather 'centralized' state (or federation). Conversely, a state in which the opposite holds is a rather decentralized one. The scope constitutes another continuum, alongside the dual-organic continuum that was specified in the previous chapter.

The scope of federalism could be measured in various ways. One method is to look at the number of fields in which the centre legislates and/or implements and to contrast this with the policy areas in which the regions fulfil either or both of these tasks. Yet this method would raise a number of problems. For instance, how 'decentralized' is German federalism, when the most common method of distributing powers is to centralize legislation but to decentralize implementation? Furthermore, in Austria, Spain and Switzerland, some policy *fields* (such as education policy) are not assigned entirely to the central or regional levels of government. Rather, the centre and the regions are each in control of certain *aspects* of education policy (F/R in Table 4.1). In addition, some policy fields may absorb more public money than others. Education policy, in which the regions usually play the largest role, is more costly than environmental policy, a policy in which central regulation dominates. Finally, some policies may be funded on the basis of own-source revenues, others may be entirely sustained by central grants.

When measuring the scope of federalism, I suggest taking two criteria into account: levels of *expenditure (de)centralization* and corresponding levels of *tax (de)centralization*. The scope of federalism is very limited, when there is limited expenditure and tax decentralization; it is high when the regions enjoy extensive expenditure and tax-raising autonomy. States with high expenditure autonomy but little revenue-raising autonomy occupy an intermediate position. Although a theoretical possibility, high revenue-raising autonomy does not normally correspond with little spending autonomy (however, one could argue that in Switzerland the level of revenue-raising autonomy exceeds that of the corresponding spending autonomy).

Of both concepts, taxonomists seem to agree best on how to measure levels of expenditure (de)centralization. Table 4.2 lists the distribution of public expenditure programmes between the central, regional and local levels for each of our cases.

Table 4.2 Public expenditure distribution in a multilayered setting

	BEL	ESP	GER	ÖST	SUI	UK
Central	59.2	51.0	35.0	63.9	32.0	75.0
Regional	40.8	32.5	38.0	24.5	39.0	25.0
Local		16.5	27.0	11.6	29.0	
Total	100.0	100.0	100.0	100.0	100.0	100.0

Note: For Belgium and the UK countries local and regional cells were merged, as no separate data for regional and local public expenditures were available.

Sources: (*Québec Commission sur le déséquilibre fiscal, 2001*: figures for Belgium and Germany); Thöni 1999: 106–7 (Austria); Pola 1999: 42–3 (United Kingdom); Dafflon 1999: 270; Ruiz-Almendral 2003: 43 (Spain). Year of accuracy for percentages listed: Belgium (1998), Spain (2002), Germany (1995), Austria (1995), Switzerland (1994), United Kingdom (1993).

As we can read from Table 4.2, Switzerland and Germany have the most decentralized expenditure distribution. Regions and municipalities in both countries absorb respectively 68 and 65 per cent of all public expenditures. The comparable figures for Belgium and Spain stand at respectively 40 and 49 per cent. In Austria, regional and local governments account for 36 per cent of all public expenditures, whereas the comparable figure for the UK stands at only 25 per cent. The data illustrate that of all the local governments listed, the Swiss spend the largest share of public money. The comparable figure for Germany is high as well. However, compared with Switzerland, the policy autonomy of the German municipalities is subject to stronger (regional) political oversight. In this sense, Swiss federalism is a federation of three, equally strong layers. In the other states, the expenditure autonomy of the local governments is relatively weak or the mechanisms of administrative or political oversight (usually by the regional instead of the central governments) are generally much stronger.

The scope of federalism cannot be measured by solely considering the extent to which public expenditure programmes are decentralized. We must also take a close look at corresponding levels of 'revenue or tax (de)centralization'. For instance, on the basis of their public expenditure levels, the German and Swiss federations seem equally decentralized. The German Länder and the Swiss cantons absorb roughly comparable shares of the public expenditure pie. Yet, unlike the Swiss cantons, the German regions have little revenue-raising autonomy to finance their regional expenditures. They cannot decide to expand these programmes without receiving extra money, for which they are partially dependent upon the centre. Furthermore, the centre may specify certain conditions as to how it wants that money to be spent.

Measuring levels of revenue or tax (de)centralization is a complex matter. We must first specify what makes certain taxes central and others regional.

This requires a brief review of the literature on fiscal federalism. Tax legislation contains information on the *base*, the *rate*, the *administration* of the tax and the *distribution of the tax revenues*, that is, who should be entitled to spend tax revenues (Braun et al. 2003: 19). Hence, we can think of a personal income tax for which the centre determines what qualifies as taxable income (base) and sets the rate. However, on that same tax, the regions may add a surcharge or, politically more beneficial, offer a rebate. Furthermore, the tax revenues may be shared between the centre and the regions, and the regions may be responsible for administering the tax. Thus, we must consider the role of the centre and the regions in each of these aspects. For each tax we can then determine whether we are dealing with a fully centralized or a fully regionalized tax. Fully centralized taxes leave all decisions on the tax base and rate entirely with the centre; they are administered by the centre. All tax receipts exclusively benefit the centre which can use it to finance its constitutionally allocated tasks. Typically, taxes on foreign trade qualify as fully centralized taxes (Ter-Minissian 1997: 9).

In contrast, taxes are fully decentralized if the tax base, rate and administration are entirely regionalized and all tax revenues accrue to the regions (or municipalities). Taxes on housing property frequently qualify as fully decentralized. In reality, most taxes prescribe a joint or parallel effort at the federal and regional levels in any, several or all four aspects of a tax policy. Cost-saving, redistributive or macroeconomic goals may determine the tax regime that is chosen for each type of tax. Dietmar Braun and his 'fiscal federalism' team worked out a comparative taxonomy, mapping the variety of tax arrangements in a multilevel setting. In Table 4.3 I borrow from their terminology (Braun et al. 2003: 16–27).

Fully centralized or fully decentralized taxes fit in the first row: they are *unilateral* insofar as one level of government is entirely responsible for determining the tax base, rate and administration. In turn, tax receipts accrue entirely to the government which is levying the tax. Unilateral taxes offer

Table 4.3 Typology of tax regimes (on the basis of four indicators)

	Tax base	Tax rate	Tax administration	Tax recipients
Unilateral	C or R	C or R	C or R	C or R
Concurrent	C and R	C and R	C and R	C and R
Shared	C	C	C or R	C and R
Overlapping	C	C and R	C	C and R

Source: Braun et al. 2003: 19 (amended for combination shared – tax administration from C into C or R). In Germany, shared taxes provide for federal administration; in Spain, shared taxes provide for larger degree of regional administration; with C = central; R = regional.

the benefit of transparency, given that tax payers know exactly which government to hold accountable for the taxes they are paying. Conversely, governments have complete information to determine a tax rate that best corresponds with existing market conditions.

Taxes are *concurrent* if the central and regional governments establish independent tax policies with regard to the same tax base. For instance, citizens may have to pay a central and a regional personal income tax. With the exception of Switzerland, no federal or regionalized European state has a significant concurrent component in its tax system.

Shared taxes assume a central monopoly in determining the base and rate of the tax. Tax revenues are shared between the federal, regional (and possibly also local) governments. With the German context in mind Dietmar Braun and his team also specified the federal administration of the tax as one of its core features. Arguably, Spanish VAT comes conceptually close to a shared tax, but the Spanish regions are solely responsible for administering the tax. I have adjusted Dietmar Braun's classification scheme accordingly. The distribution of the tax revenue between the various levels can be arranged in a fixed formula that is specified in a federal or central fiscal law. Alternatively, a formula may result from an intergovernmental agreement between the federation and the regions. More robustly, distributional formula could be constitutionally anchored.

Finally, taxes are *overlapping* when the federal government determines the tax base and is responsible for levying the tax, but the regions are allowed to *vary tax rates* and to share in the general tax receipts.

Of all four tax types, only fully centralized (unilaterally central) and shared taxes leave the regions without discretion in determining the base or rate of a tax. Regions may influence the rate and base structure or the distribution of such taxes through their participation in federal legislative policies or their required consent to constitutional amendments with such effect. However, this constitutes more of a collective than an individual right to regional self-expression. Each region loses its autonomy to determine the rate or base of such taxes as it sees fit. Hence, shared taxes are certainly 'more' centralized than unilaterally regional taxes, but not to the point where we should categorize them as 'fully' central.

Table 4.4 lists the regional and local public revenues as a percentage of all public revenues, prior to central revenue transfers. We should treat these figures with caution, as the IMF statistics on which they are based typically categorize a number of shared taxes as 'regional'. This somewhat distorts the data for Germany in particular, where shared taxes constitute a large share of the total tax mass. Furthermore no comparable data which would have disaggregated regional and local revenue sources was found. Keeping these considerations in mind, Table 4.4 demonstrates that the level of revenue or tax decentralization is highest in Switzerland and lowest in the UK. Although the findings are consistent with the assumption that regionalized

Table 4.4 Public revenue distribution in a multilayered setting

	BEL	ESP**	GER	ÖST	SUI	UK
Central	92.7	87.6	51.5	79.8	29.2	95.9
Regional and Local	7.3*	12.4	48.5	21.2	70.8	4.1
Total	100.0	100.0	100.0	100.0	100.0	100.0

*Regional and local revenues as a share of total public revenues without social security revenues.

**Excluding Navarra and the Basque Country.

Source: As for Table 4.2.

states have a less decentralized fiscal structure than federal states, the Belgian case stands out as an exception. The Belgian regions have an unusually low level of revenue-raising autonomy. Leaving aside the Swiss example we notice that the levels of revenue decentralization are generally at the low end, certainly compared with the corresponding levels of expenditure decentralization that were listed in Table 4.3. Put differently, the regions and local government do not raise enough money to cover their expenditure needs.

When the regional governments do not raise sufficient money to cover their expenditure needs, a fiscal imbalance arises. With the exception of Switzerland, the regions are dependent upon central grants for a substantial part of their expenditure. *Vertical* should be distinguished from *horizontal* fiscal imbalances. The latter emerge when the capacity to meet expenditure needs varies from one region to another. This may be the case because the revenues from certain regional taxes are unequally spread (for instance, an oil tax can only benefit regions with several oil wells). Alternatively, horizontal imbalances could arise because per capita revenues and expenditures vary strongly from one region to another. For instance regions with high economic growth may receive higher tax revenues, and have to spend less on social assistance payments.

In Table 4.5, I have sought to illustrate the degree of vertical fiscal imbalances (VFI) for all of our case studies, by combining the data in Tables 4.2 and 4.4. The top line expresses *regional and local* public expenditures as a percentage of all public expenditures *after* central transfers (RE). The middle line indicates *regional and local* public revenues as a percentage of all public revenues *prior* to central transfers (RR). Vertical fiscal imbalances are calculated as the ratio of RR and RE. When the ratio is lower than 1.0, regionally or locally raised taxes do not cover regional or local expenditures, leading to a vertical imbalance. Conversely, a perfectly vertical *balance* leads to a ratio of 1.0. However, if the ratio exceeds 1.0, the regional and local governments receive more money than they spend. A VFI arises in a sense that the central government may become dependent upon the regions and local governments for financing part of its expenditures (a very rare case of 'upward revenue sharing').

Table 4.5 Regional tax revenues and vertical fiscal imbalances

	BEL	ESP**	GER	ÖST	SUI	UK
Expenditures (RE)	40.8	49.0	65.0	36.1	68.6	25.0
Revenues (RR)	7.3*	12.4	48.5*	21.2	70.8	4.1
VFI	0.14	0.25	0.75	0.59	1.03	0.16

*Regional and local revenues as a share of total public revenues *without* social security revenues.

**Excluding Navarra and the Basque Country.

Source: As for Table 4.2.

Table 4.5 should be interpreted with some caution. If overall revenues exceed overall public expenditures or vice versa, a vertical imbalance cannot be adequately expressed by calculating the ratios of total (regional and local) revenues and total (regional and local) expenditures. Yet, if we assume that regions aspire to balanced budgets, total revenue and expenditure levels for any given period of time should be of comparable magnitude.

The table displays VFI of considerable size. The level of VFI is high in Belgium, but in Switzerland the combined revenue resources of the cantons and municipalities exceed the already comparatively high level of regional and local expenditures. The level of VFI seems low in Germany as well, albeit that the German regions are primarily financed by means of so-called shared tax revenues. Conversely, the limited fiscal autonomy of the British regions (and municipalities) is in tune with the embryonic or only partial regionalization of their state. In spite of the significant policy autonomy of the Belgian and Spanish regions, they have remained largely dependent upon central grants.

5. Vertical fiscal imbalances and why they arise

The previous section made clear that VFI are common. This begs the question why they arise. The answer to the 'why' question comes in two parts. The first part is technical. Public economists agree that certain taxes are more suitable for decentralization than others. The second part is normative. Some public policy-makers favour a centralization of the most important taxes because it facilitates redistribution. Others propagate regional tax decentralization because it fosters accountability, produces efficiency gains and stimulates limited government. We can refer to the first group as the 'Keynesians' and to the second as the 'Monetarists'.

5.1. Why not all taxes are suitable for decentralization

Not all taxes are equally well suited for decentralization. Public economists emphasize that the central government best raises taxes that: (1) have the

most mobile tax base; (2) generate *unevenly distributed revenues* because they are linked to tax bases with an unevenly distributed regional basis – for instance, a tax on oil in a federation with only one or a few oil-producing regions; and (3) are *highly elastic*, that is, are most sensitive to changes in income. These taxes are best suited for central stabilization objectives because their decentralization could spark acute regional budget deficits (and subsequent deficit spending) in the event of a sharp economic downturn (Ter-Minissian 1997: 9).

Usually, the following tax bases are ranked in *decreasing order of mobility*: capital or corporate income; personal income; sales or value added (VAT); and finally property. Put differently, capital and income taxes are best suited for centralization; VAT and sales taxes are suited for decentralization either in part or in their entirety; property taxes are ideal regional (or often local) taxes. On the basis of the *elasticity* of tax revenues, income and corporate taxes qualify best for centralization whereas revenues of property or natural resources are less dependent upon fluctuations in the economic cycle.

The suitability of certain taxes for decentralization is also influenced by the *cost* of their administration. For instance, on the basis of the mobility of the tax base, sales taxes and VAT are equally well suited for decentralization. However, for efficiency reasons VAT is best levied centrally, whereas sales taxes can be more easily decentralized. This is so because sales taxes are *single-stage taxes*, that is, they are levied only once, when the consumer buys goods that are subject to taxation. In contrast, VAT is a ‘multi-stage tax’, charged at different stages of the production process. Therefore, the administration of VAT requires that the information concerning the taxation of goods at each phase of the production and distribution process is fully and efficiently provided. This criterion is more easily fulfilled if only one tax agency is preoccupied with the tax.

Furthermore, the factors that determine whether a tax is suitable for decentralization vary with the *sociocultural context*. For instance, in Belgium, levels of interregional personal mobility are low because of the presence of an important linguistic fault line (Murphy 1988). Citizens who live in Flanders (and thus are Dutch-speaking) are not likely to move to Wallonia and (until recently also) to Brussels (where most citizens speak French). Walloons are not likely to relocate to Flanders. Consequently, if personal income taxes were regionalized, Belgians would not be easily persuaded to move to the region with the lowest personal income tax rates (i.e. assuming that the tax is levied on the basis of where a person lives, not works). The cost of acquiring a profound knowledge of the other national language may be too high even if it would lead to tax credits. In this respect, the Belgian context is quite different from the American, where citizens are more easily persuaded to ‘vote with their feet’ (Tiebout 1956) by moving to the region which offers them the best tax/service ratio.

5.2. Why not everyone favours a decentralized tax structure:

Keynesians versus monetarists

In the past decades Western policy-makers in federal or non-federal states alike have relied on two major philosophies for governing the economy. We can simplify them as *Keynesianism* and *monetarism* (Barrat Brown 1990; Braun et al. 2003).

Keynesianism prescribes that, in the event of an economic downturn, governments should be allowed to raise their expenditure levels and lower taxes, seeking to stimulate aggregate *demand* (consumption). Public investment combined with lower taxes should increase consumption levels and eventually lower unemployment rates. Keynesian strategies initially cause deficit spending and require governments to borrow money on the market. However, in the medium to long term, the economic growth which these policies generate should reduce public debts overall.

In contrast with Keynesianism, *monetarist* or neo-classical strategies put the objective of deficit reduction and inflation control first. They focus on the *supply*-side of economics, that is, the creation of an environment that stimulates entrepreneurs to invest and create employment. Keynesian policies are not seen as an appropriate response to economic crises; they rather aggravate them. Like Keynesians, monetarists favour tax reductions, but they should be accompanied by cut-backs in public expenditures levels. In addition, governments should stimulate wage moderation and labour flexibility, enabling private firms to increase profits and thus generate additional employment.

At present the monetarist option finds stronger resonance among the group of economic policy-makers in the Western world. For instance, in the years following Germany's unification, rising social security expenses resulting from record unemployment figures pushed up public budget deficits to unprecedented heights. Should German governments still adhere to Keynesian economic policies, as they were in the 1960s, these budgetary shortfalls would not be considered as inherently problematic. Keynesianism lost much of its attractiveness in the 1970s, when increasing debt levels and a towering inflation were not offset by economic growth and higher employment levels. In fact (in theory), the EU's Growth and Stability Pact does not allow the German public debt to exceed certain levels. Therefore, the German Social Democratic Schröder government has approved some painful structural reforms in labour and social policy instead of leading public expenditure to much higher levels.

Whether or not a state is federal affects its ability to pursue the Keynesian or monetarist philosophies.

First, problems may arise when not all governments of a federation stick to similar economic philosophies. In theory, a federal government which favours a monetarist policy may coincide with one or several regional governments which prefer Keynesian demand strategies or vice versa. Central

governments which pursue monetarist policies may wish to establish some rules that not only force their own budgets but also that of the regional governments into equilibrium. Similarly, they may wish to constrain regional borrowing policies that lead to regional deficit spending, for instance, by applying the so-called 'golden rule'. This rule requires that borrowing should be used to finance public investment projects (Ter-Minassian 1997). Regional governments which prefer a less restrictive economic philosophy may object to such regulatory interference from above. In some federal states, central governments may not even be authorized to prescribe such rules in the first place. Conversely, central governments which prefer a Keynesian economic policy may seek to strengthen their policy capacity by coordinating public investment projects and increasing the overall size of redistributive programmes. Such strategies may be vetoed by regional governments which defend more orthodox economic policies and consider the centre's ambitions to increase redistribution and to coordinate policies as a means to curtail their political autonomy.

Second, a central government's choice for a Keynesian or monetarist approach affects its view on whether it should constrain regional economic and fiscal autonomy. Public economists who adhere to a monetarist philosophy believe that public economies are best served with limited governments. Therefore, their main concern is to prevent central and regional governments from overspending, and to keep the level of central redistributive payments within certain limits. In this sense, monetarists do not dispute that the central level is more suitable for redistribution, but they prefer not to see too much of it. Central governments which support a supply-side philosophy may also not seek to intervene in regional taxation all that much. We would even expect them to defend regional tax autonomy. Regional tax autonomy would strengthen links between the regional governments and their electors and generate regional policies that best suit local market conditions. In contrast, by separating taxation from spending autonomy, regional citizens would lose an important link between the regional programmes from which they benefit and the price (taxes) which they are willing to pay for them. In the view of some public economists such a lack of transparency inevitably leads to overspending or inefficiencies. Proponents of fiscal decentralization point at the so-called *flypaper effect* which results from a lack of regional fiscal autonomy. The flow of central grants may not be used efficiently: too much of the money may go into extending regional public expenditure programmes, too little will be used as a 'tax subsidy'. Money sticks with the regional governments which receive it, instead of flowing to the citizens for which it is meant (Ahmad and Craig 1997: 82–3). If regional voters were able to decide for themselves on the use of these expenditures, they might opt for tax cuts, instead of more programme spending. In this sense, the flypaper effect is the consequence of distorting the link between the paymaster (central government) and the corresponding electorate (citizens living in the region).

Conversely, central governments which adhere to a Keynesian strategy are keener on centralizing tax-raising powers. Part of the central tax revenues can be used to co-finance regional expenditures. Regions may lose some of their autonomy, not only because they are dependent upon federal income for financing a part of their expenditure programmes but also because central governments may specify how they want their money to be spent. Proponents of a strong redistributive component argue that the long-term benefits of redistribution offset its short-term disadvantages. Furthermore, they argue that allocative efficiency would be undermined if regions were to engage in a downward spiral of competition, seeking to attract private investment by minimizing social expenditures and reducing regional tax rates. Federal states with considerable patterns of interregional migration may witness a movement of high-skilled labour to regions that provide the lowest income tax rates. Conversely, the unemployed may flock to regions offering the most generous social benefits. Facing considerable budget deficits these 'welfare magnets' may be forced to cut back social expenditures and bring their tax levels down to that of the economically stronger regions. For this reason, the financing of these redistributive programmes which operate as an indirect form of territorial equalization (because they are largely based on individual rather than regional need) should be kept under central control (Ter-Minissian 1997).

Prevailing economic philosophies may change in time. At present, concepts such as 'market-preserving' or 'competitive' federalism which proclaim limited government, orthodox budgetary policies and inter-regional competition coupled with regional tax autonomy find considerable resonance among policy-makers (for academics supporting such forms of federalism, see in particular Weingast 1995). Such philosophies square better with the prevailing monetarist ideas of our time. For instance, in Germany, the relative fashion of concepts such as 'competitive federalism' has been exemplified by statements from some political leaders representing the resource-richest Southern regions, in particular Bavaria, Baden-Württemberg and Hesse (for an overview and discussion, see Zibblatt 2002; Jeffery 2002; Renzsch 2002). However, while German federalism may be moving into a slightly more competitive direction, much more 'competition' is needed to entrust its regions with the level of fiscal autonomy that the Swiss (or beyond the scope of this analysis also US or Canadian) regions have enjoyed for several generations. In this sense, the current tendency in most West European federal states other than Switzerland may be to decentralize fiscal powers and to foster some degree of interregional competition, but the platform upon which these policies develop may vary substantially from one state to another. Furthermore, existing policies may be hard to reverse, when vested-interest groups or political parties can utilize veto points to prevent structural fiscal reform (Tsebelis 2002; Pierson 2004).

Overall, if we take the assignment of tax powers between the federal and regional policy levels as a rough indicator for which economic philosophy has left its strongest mark in Western Europe, it is still the Keynesian, not the monetarist. In fact, with the partial exception of Switzerland and the Basque Country, personal income, corporate income and the most important sales taxes are controlled by central governments. Consequently important *vertical* fiscal imbalances have emerged, making the regional governments partially dependent upon the allocation of these surplus resources.

6. Vertical and horizontal fiscal imbalances and how they can be reduced

With the exception of Switzerland (and the Basque Country and Navarra), each of our cases displays strong vertical fiscal imbalances. Therefore, a substantial part of central tax revenues is devolved to the regions to reduce these imbalances and to help finance their expenditures. The way in which this is done, as well as the extent to which the centre constrains the policy autonomy of the regions when devolving part of its revenue, varies substantially from one country to another.

In general, the literature on fiscal federalism distinguishes between three *types* of grants: general-purpose grants, block grants and specific-purpose grants (or so-called categorical grants). General-purpose grants are unconditional in character. Block and specific-purpose grants determine the policy objectives on which the centrally collected money should be used (Ahmad and Craig 1997). Block grants leave considerable discretion in the hands of regional governments. They only specify the general policy objectives within which the money should be spent: health care, education, social welfare, etc. Specific-purpose grants are more detailed. For instance, they may specify that central money should be used to finance preventive health care, to organize vocational training programmes for the unemployed, to offer scholarships for university students or to buy sophisticated medical hardware for a selected group of university hospitals.

The argument in favour of unconditional grants is that they serve to finance the activities of the regional governments but leave the linkage between regional spending priorities and regional preferences intact (Ahmad and Craig 1997: 87). The main argument against unconditional grants is that the quality of regional services could fail to meet national standards of service delivery or fail to address so-called 'negative externalities' or 'spillovers'. For instance, conditional grants can prevent regions from gaining a competitive advantage by lowering their environmental standards when they oblige farmers to comply with a minimum environmental standard. Furthermore, regions adjacent to the low-standard region are spared from having to pay extra for meeting their higher standards (as a result of river or air pollution caused by the lowest-standard region). In sum, a social

optimum can be achieved by providing a conditional grant that ties money to minimum performance criteria.

Mechanisms that underpin the conditionality of block and specific-purpose grants may vary. First, grants can have an *open-ended* nature. This means that the size of a grant is linked to the presence of a condition – for instance the number of university students. A federal grant would be open ended when an increase in student numbers with 10 per cent results in an automatic increase in the size of the corresponding grant with 10 per cent. The grant would be *close-ended* if the grant was *capped* at a fixed number of students (say 100,000), above which the central government would no longer pay. The standard argument against *open-ended* grants is that they stimulate regional administrations to inflate numbers (say of students, of hospital beds etc.) beyond what is economically necessary. Second, conditional grants can be *matching* or *non-matching*. In the case of matching grants, the centre commits itself to co-finance regional expenditure programmes. Matching grants enable central governments to redirect regional preferences and to secure a harmonized standard of service delivery by requesting regions to spend money in policy areas which they would otherwise neglect. However, the standard argument *against* matching grants is that apart from reducing regional autonomy, they also stimulate overspending because they split costs between two levels. Furthermore, since central money ‘sticks’ to regional money, regions with a larger fiscal capacity may end up spending, and thus also receiving more. In this sense, matching grants can only contribute to the overall objective of social equity if they are calculated in relation to the total pool of regional expenditures instead of expenditures for each region separately (Ahmad and Craig 1997: 88).

A system of grants may reduce vertical fiscal imbalances without also narrowing down horizontal (interregional) fiscal inequalities. Central governments may decide to redistribute tax receipts to the regions on the basis of the ‘derivation’ principle (*principe de juste retour*). This principle implies that the tax receipts of a region should correspond to its contributions to the shared tax, irrespective of its population. For instance, if region A with 15 per cent of the population generates 20 per cent of all personal income-tax receipts, it should also receive 20 per cent of all the personal income-tax receipts which accrue to the regions. When central governments act accordingly they engage in vertical equalization. However, they do not take part in any form of horizontal equalization.

We could think of a formula, however, that does not take derivation but population as its basis. Here, the central government contributes to reducing the vertical *and* horizontal fiscal imbalances, because each region now receives an equal per capita share of the regional pie, irrespective of its fiscal strength. The level of fiscal equalization could be much higher still. A per capita distribution of tax receipts may not contribute to providing regional services of comparable standard throughout the state, if high

unemployment figures in region B result in per capita social welfare needs that are much higher than in region A. Therefore, the centre could decide to redistribute federal grants with the aim of providing services of equal standard throughout the federation at a *comparable per capita cost*. Obviously, in the latter case, the federal government aspires to a form of equalization at the *revenue side* (by ensuring that the per capita tax powers are comparable after redistributing the federal grants) and at the *expenditure side* (by securing public services of equal standard throughout the federation). It thus couples a form of *regional government capacity equalization* with a form of *regional government performance-based equalization* (Ahmad and Craig 1997). In practice, no federation provides a form of equalization which leads to perfect capacity (revenue) and performance (expenditure) equalization. Yet federal states differ significantly in the overall degree of horizontal equalization and in their choice for revenue, or a mixture of revenue and performance equalization.

As the previous paragraphs clarified, federal centres, whilst seeking to reduce vertical fiscal imbalances can also engage in reducing interregional differences in fiscal or expenditure capacity. When central governments act accordingly, we can say that they engage in horizontal fiscal equalization in the *broad* sense of the word. However, next to central governments, regional governments can also engage in reducing such interregional differences. Resource-rich regions could directly transfer some of their fiscal resources to the resource-poor regions without direct interference of the central government. When this occurs, we can say that the resource-rich regions engage in horizontal fiscal equalization in the *narrow* sense of the word.

In most federations – Germany is a partial exception – reducing horizontal imbalances is entirely left to the federal government. This should not come as a surprise. The centre has more leeway for equalization, because of its larger fiscal capacity. It is also perceived more easily as being somehow above the narrow fiscal interests of the individual regions.

7. Regional spending, tax autonomy and equalization: an overview

The following paragraphs illustrate the levels of regional tax and spending autonomy, as well as of the mechanisms of fiscal equalization for each of our case studies. We first consider the federal state with the most extensive regional fiscal autonomy, Switzerland. We conclude the analysis with the least ‘decentralized’ multilevel system in terms of its regional tax autonomy, that is, the United Kingdom. Table 4.6 specifies the type of tax for those taxes which generate the largest pool of revenue in each of our cases: the personal income tax, corporate income tax, and sales and VAT.

Table 4.6 Different tax sources and their corresponding tax type

	BEL	ESP**	GER	ÖST	SUI	UK
Personal income	Partially overlapping	Partially overlapping	Shared	Shared	Concurrent and shared	Partially overlapping*
Corporate income	Partially overlapping	Unilateral (C)	Shared	Shared	Concurrent	Unilateral (C)
Sales or VAT	Shared	Shared	Shared	Shared	Unilateral (C)	Unilateral (C)

*Only for Scotland; **Autonomous Communities, except Basque Country and Navarra; C = Centre.
Source: Braun et al. 2003: 25 and Quebec Commission 2001.

7.1. Switzerland

Of the Western European federations, Switzerland offers the largest degree of regional (and local) tax autonomy. The Swiss constitution stipulates that the federal government may raise income tax, but only up to 11.5 per cent on the income of the general population. Similarly, the federal government is not allowed to tax profits of corporations above 9.8 per cent of their total net profits and to tax corporate capital above 0.0825 per cent on the capital and reserves of legal entities (Article 128 SC). The constitution also earmarks roughly a third of the above-mentioned revenues for regional consumption and requires that a part of it shall be used for fiscal equalization purposes. Each of the above-mentioned taxes is specified as 'Federal Direct Taxes' (FDT). There are more shared taxes, but the federal government's share is 80 per cent or higher for three of them. This almost turns these taxes into exclusive federal taxes (the tax on games and entertainment counts as an exception as 75 per cent of its revenues accrue to the regions). VAT is the only exclusive federal tax of significance, but its rate is constitutionally fixed.

Within the total pool of regional and local revenues, personal income-tax receipts contribute 46 per cent of all tax revenue, whereas the tax on profits and capital generates a further 10 per cent. Property taxes, taxes on capital gains, gifts and inheritance tax, and a non-VAT sales tax further spice regional and local revenue coffers. Cantonal and local governments receive a total of 26 billion Swiss francs in shared taxes or specific grants (these could be federal grants benefiting the cantons or municipalities, or cantonal grants benefiting the localities). In contrast, own-source revenues add up to the much higher figure of 73 billion Swiss francs (both figures for 1999 – Quebec Commission 2001).

As a result of their high level of tax autonomy, average per capita regional tax receipts vary substantially from one canton to another. Such differences may result from discrepancies in per capita income and, as a corollary,

regional per capita tax capacity. For instance, the regional per capita income in Zug is more than double (2.2) the regional per capita income in the Jura (Dafflon 2001: 8). Regional variations in tax receipts may also stem from inter-cantonal tax competition. For instance, in order to attract investment from foreign or Swiss employers, Swiss cantons have entered into a downward spiral of competition as far as taxing business profit is concerned. In the seven French-speaking cantons of Switzerland, business profit taxes decreased by 11.14 per cent between 1985 and 1999. The reported decreases were as high as 28 per cent in Berne and 32 per cent in the Jura (Dafflon 2001: 26). With the exception of Berne, the fiscal burden on business profit and capital in French-speaking Switzerland is still above the Swiss average, making the German-speaking cantons more attractive to firms in terms of their business tax regimes (Dafflon 2001: 26).

Despite the considerable regional tax autonomy and the presence of parallel tax systems, several measures ensure that public-service standards are comparable.

First, it must be remembered that Switzerland largely follows a cooperative federal design in aspects that are not related to fiscal federalism. Regional or local tax autonomy does not necessarily imply regional or local policy autonomy. As in Germany, the legislative onus lies with the centre, but the cantons and communes carry an important implementing (and funding) responsibility. For instance, in environmental policy the federal government enacts most of the legislation, the cantons coordinate and supervise the implementation process and the municipalities implement the policies. About two-thirds of the environmental expenses are made by the municipalities. A part of these are financed under the form of conditional federal or cantonal grants (Dafflon 2001: 13).

Second, despite the presence of parallel or concurrent taxes, some harmonization of the direct taxes takes place, in particular with regard to the definition of the tax base. However, in the view of Bernard Dafflon, downward fiscal competition in the field of business taxation can only be stopped if the federal government receives a right to determine the upper and lower limit (or the range) within which cantonal business tax rates could vary (Dafflon 2001: 28). One could fear that in the present context of open tax competition, cantons will engage in deficit spending, that is, cantonal tax rates might be too low to cover regional expenditure needs. The federal constitution does not prescribe tight budget constraints; cantons are only prohibited from borrowing money from the central bank. Despite such fears, regional deficit spending is relatively rare. Several *cantonal* constitutions impose balanced budgets, only accepting temporary deficits in the event of a recession. Furthermore, a beneficial tax regime is not the only factor which people or firms take into account when settling somewhere. A canton's budgetary health (and often the corresponding quality of its services offered) may play an equally important role. Finally, in most cantons, citizens can trigger a

referendum on fiscal matters, that is, also on the most suitable taxation/expenditure mixture. The referendum provides an ad hoc but powerful instrument for constraining fiscal policy initiatives of federal, regional and local governments in office. It can prevent the cantons from engaging in deficit-spending as a result of reducing their tax rates too much (Braun 2003: 33; Dafflon 1999: 276).

Third, although cantons differ substantially in size, average national income, geography and expenditure needs, there are well-developed policies of equalizing fiscal burdens. Without substantial vertical fiscal imbalances, such efforts primarily take the form of horizontal equalization (broadly defined). Equalization policies do not seek to equalize fiscal effort or expenditure levels across the federation, but they aspire to a *minimum* quality of public service delivery throughout the federation. This should be achieved *without wide* discrepancies in regional tax effort. To that purpose, grants are made available, which take one of three types.

A first group takes the form of conditional federal grants to the cantons. These grants consist of a minimum transfer component that is equal for each of the cantons, and a variable transfer component that is higher for cantons with a relatively low financial capacity. The capacity to raise taxes is calculated on the basis of four measures: (1) per capita national income in each of the 26 cantons (as an estimate of potential per capita cantonal tax revenue); (2) per capita tax burden; (3) per capita tax revenues of the cantons and communes; and (4) an estimate of cantonal expenditure requirements. The last component takes the huge discrepancies in regional population density into account as well as the relative share of agricultural land in the mountains or the plains (Dafflon 2001: 31).

A second type of equalization takes place when distributing the regional pie of shared tax receipts. Here, cantons must take differences in regional financial capacity into consideration. For instance, only 57 per cent of the regional share of FDT receipts is distributed on the basis of origin. The formula for redistributing the remaining 43 per cent takes divergences in financial capacity into account. Similar arrangements apply for the distribution of half the cantonal proceeds of the withholding tax and customs duties on fuel, that is, two further shared taxes, and more than half the regional share of earnings from the Swiss National Bank (Dafflon 2001).

Finally, cantons with above-average financial capacities pay above-average contributions to federal old-age pensions and to federal disability pension schemes. Cantons with a per capita contribution to FDT below 80 per cent of the national average are allowed a reduction in their contributions to some federal family allowance schemes.

Of all three schemes, the shared tax revenue component entails the largest form of equalization. Federal conditional grants and cantonal contributions to federal social security programmes follow next. None of the above schemes establishes a form of horizontal equalization in the *narrow* sense of

the word. The third form of equalization could be interpreted as a cantonal grant for federally regulated social security programmes. Horizontal equalization only occurs indirectly as regions which contributed less into the scheme may also stand to benefit more in terms of above-average social security receipts.

7.2. Germany

At first sight, Germany displays relatively low vertical fiscal imbalances (VFI) (see Table 4.3). Yet, in contrast with Switzerland, this is not the result of considerable regional tax autonomy, but of the shared character of the most important taxes, including personal income, VAT and corporate income (see Table 4.4). In OECD statistics, such taxes are usually categorized as 'regional', but it is fair to say that they are much 'less regional' than taxes for which the regions can determine the base and rate. The German regions control only few taxes of the latter type. These are taxes on gambling and gaming, taxes on real-estate transactions, beer taxes, taxes on motor vehicles and estate taxes.

By the same token, shared taxes are more than simply federal taxes. The German regional governments can codetermine their base, rates and regional revenue allocation. To that purpose they can utilize an institutionally entrenched veto point at the centre; the federal second chamber (the Bundesrat). Furthermore, the federal government also controls only a limited number of tax revenues for which it alone determines the base, rate and allocation. Excise and duties are the most important examples. Own-source revenues contribute less than 20 per cent to federal and regional revenue coffers (Zimmerman 1999: 167–9). The overwhelmingly shared character of the German tax system is further evidence of the strongly inbuilt cooperative nature of the German federation.

Although the regions have limited tax-raising autonomy, they have wide budgetary autonomy. First of all, the regional pie of shared tax revenues does not come as a block or specific-purpose grant. The Länder are free to spend it as they see fit. (However, this is not the case for the so-called joint-policy programmes which are categorical grants of a matching type.) Regional governments have engaged in deficit spending, for which a number of reasons can be listed. First, the federal government does not impose budgetary constraints on the regions, it only encourages the various levels of government to 'coordinate' their budgets (Braun et al. 2003). Much of this coordination takes place in the Financial Planning Council in which delegates from the federal, regional and local governments are represented. However, the Council and its complimentary committee on public borrowing cannot take binding decisions; it only issues advice. Second, despite the fact that regional constitutions restrict unlimited borrowing to public investment purposes, regional budget constraints are not 'tight' (Rodden 2003: 171–3). Some regions (in particular Saarland and Bremen as of the mid-1980s) have bluntly

ignored these constraints and expected federal supplementary grants as a bailout relief instead. Third, regional banks (Landesbanken) often maintain close links with leading regional politicians who have been willing to grant cheap credit. Under pressure from the EU, this strategy is now changing. Banks are being privatized and must open themselves up to foreign creditors. As a result, they must improve their international credit ratings and display considerable credit market discipline (Rodden 2003: 175–8). Finally, the shared tax system itself is often put forward as the main reason for regional budgetary indiscipline. Shared taxes are said to blur accountability: they do not reward regions that have a smart fiscal and budgetary policy and they do not punish regions which perform poorly on both accounts.

Shared taxes may not be conducive to efficiency or accountability. Yet their widespread presence has facilitated the achievement of certain redistributive goals. Indeed, no other federal state in Western Europe puts such a strong emphasis on territorial equalization than Germany. The fiscal equalization process takes on massive proportions, more so after the relatively poor eastern regions have been fully integrated into the equalization scheme. In 1999, equalization payments made up roughly €27 billion.

German unification has not drastically changed the ambitions of the fiscal equalization process. The federal constitution prescribes a 'uniformity of living conditions' throughout the federation. This requirement was only mildly relaxed after unification; until 1994, it was known as a 'unity of living conditions'. Germany is also the only one of our case studies which combines both forms of horizontal equalization (broadly and narrowly defined). In 1999, almost three-quarters of the equalization payments came under the form of *federal* equalization payments; the remaining quarter of the payments came as horizontal equalization payments, narrowly defined.

Vertical fiscal imbalances are reduced by distributing shared tax revenues first. The constitution stipulates the size of the regional pie for personal income and corporate taxes. Half of the corporate tax revenues accrue to the regions, the other half remain in federal hands. Fifteen per cent of personal income-tax revenues flow to the municipalities; the remaining 85 per cent are equally divided between the centre and the regions. The derivation principle is followed for the distribution of both taxes (the place of residence of a person or a firm counts as the criterion). In contrast, the distribution of VAT, the third major shared tax resource, is stipulated in a federal law. This law is periodically adjusted (for which a federal bicameral majority is needed) and is the flexible element of Germany's shared tax system. As it stands, 2.2 per cent of VAT revenues accrue to the municipalities (a compensation for recently abolishing a local tax on ownership of corporations) and 5.6 per cent is set aside for improving the federal government's pension plan. The remaining 92.2 per cent is divided between the federal and regional governments, respectively on a 50.25–49.75 percentage basis (Quebec Commission 2001: 6). VAT receipts constitute the largest federal

revenue resource (58.0 per cent) followed by personal (36.4 per cent) and corporate income tax revenues (5.6 per cent). For the regional and local governments, personal income tax and VAT receipts are almost equally important. They make up respectively 43.0 and 40.0 per cent of all regional and local revenues. Corporate income taxes come third, filling close to 7.0 per cent of the regional and local revenue coffers.

VAT is not only the flexible component of Germany's shared tax system; it is also the component that is explicitly used for equalization purposes. Seventy-five per cent of regional VAT revenues are distributed on a per capita basis (and not on an origin basis). Consequently, regions with below average per capita VAT contributions benefit from the redistribution of VAT accordingly. The distribution of the remaining 25 per cent takes specific horizontal equalization purposes into account. To that purpose, the tax capacity (*Steuerkraft*) of each region is calculated by considering the average personal income of its working population and its corporation and regional tax receipts. The regional share of VAT revenues is distributed in such a way that the average tax capacity of the poorest regions rises to at least 92 per cent of the federation-wide average. In 1999, 7 out of 16 regions benefited from this arrangement (Jeffery 2003: 25).

Following the redistribution of regional VAT, affluent regions engage in a form of horizontal equalization (in the narrow sense). Instead of using average regional tax capacity as a benchmark, a new measure is calculated (*Finanzkraft* or 'fiscal capacity'). This measure takes average receipts of personal and corporate income and value added taxes into account in addition to certain socio-economic or demographic criteria. For instance, does the region have a high urban density (city states), does it contain important seaports etc.? As part of this process, the city states of Berlin, Hamburg and Bremen see their real population figures inflated by 35 per cent. Although such a measure could be justified on the basis of cost-intensive services which city regions provide to citizens who live in adjacent regions, the same argument cannot be used to motivate criteria which lead to the 'preferential treatment' of certain regions. As Charlie Jeffery points out, no clear rationale, other than logrolling in a federal package deal on fiscal equalization reform (requiring the consent of the regions in the Bundesrat), can justify both adjustments (Jeffery 2003). As a result of the horizontal equalization process (narrowly construed) the average fiscal capacity of the poorest regions increases further to 95 per cent of the national average. The higher the regional fiscal capacity rises above the average regional capacity, the higher the regional contributions to equalization. This principle is heavily criticized because regions with a regional fiscal capacity that is 10 per cent higher than the federation-wide average must set aside 80 per cent of their marginal revenues for equalization purposes.

As if the horizontal equalization (narrowly defined) were not enough, in the final stage of the equalization process, the federal government

contributes to additional horizontal equalization by means of so-called federal supplementary allocations. These allocations should guarantee that the regional capacity of the poorest regions is elevated further to 99.5 per cent of the federation-wide average. In addition, more supplementary allocations are set aside to remediate specific administrative, infrastructural (cf. the newly acceded Eastern regions) or budgetary (cf. the precarious budgetary position of Bremen and Saarland) problems of certain regions (Jeffery 2003: 26–7).

The German fiscal equalization process has been widely criticized for its complexity, arbitrariness and excessiveness. The complexity speaks for itself; the arbitrariness is exemplified by the rationale for certain payments. Equalization payments are excessive because some regions at the receiving end may be better off in terms of their per capita fiscal capacity after the fiscal equalization process than some of the donor regions at the start of this process. Equalization is particularly harmful for Baden-Württemberg, North-Rhine Westphalia and Bavaria. These are regions which, apart from being among the most affluent, are among the most densely populated as well. The average fiscal capacity of these regions even drops to the three bottom positions at the end of the equalization process (Sturm 2001). Admittedly, fiscal capacity does not take expenditure needs into account: average per capita expenditures are much higher in the Eastern regions because of higher unemployment figures there. However, one may wonder what incentives the affluent regions are left with to maximize their own revenues, or what stimuli the poor regions are given to organize their expenditures in a more cost-efficient way?

Given these criticisms, the German Constitutional Court has played an increasingly important role in addressing the complaints of some of the top 'payee' and even some of the 'receiving' regions (Bremen and Saarland) (Mackenstein and Jeffery 1999). Such complaints first emerged in the 1980s, but they could be held off in the first few years after unification. The Eastern regions were kept out of the equalization scheme until January 1995 and the federal government turned into the main paymaster of increased equalization payments.

However, halfway through 1998, Baden-Württemberg and Bavaria, later to be joined by Hesse, presented a new complaint to the federal Constitutional Court. As payee regions, they addressed the excessive character of equalization payments as well as the arbitrariness of several of the special payments made. In its judgement, delivered in November 1999, the Court forced the regions and federal government into working out a more transparent equalization scheme by 2005. This scheme had to leave the basic principle of equalization intact and had to retain a number of specific regional payments (though they should be better justified).

The federal government, with the consent of the Bundesrat, succeeded in working out such an alternative scheme. However, the changes, which

entered into force on the last day of 2004, are at best incremental. The share which contributing regions should set aside for equalization purposes is somewhat reduced (72.5 instead of 80 per cent of marginal revenues above 110 per cent of the national average). Furthermore, 12.5 per cent of tax surplus revenues in comparison with the previous year should not be used for equalization purposes (Gunlicks 2002; Zibblatt 2002). The changes also abolish or reform some of the arbitrary special payments. The federal government also upholds a strong commitment to pay infrastructure assistance to the Eastern regions and maintains a solidarity charge on income tax.

The legislative compromise (as well as a preceding deal on federal tax reform) still required considerable side payments. Some regions would otherwise have refused their consent in the Bundesrat (see Chapter 6). Most importantly, the agreement did not substantially alter the level of regional tax autonomy or reduced the overall tax burden. In sum, the recent reforms have altered Germany's architecture of fiscal federalism 'at the margins' only. Although the new arrangements are meant to last until 2019, it may not take long before the compromise is being challenged in the Constitutional Court again.

7.3. Austria

Austrian fiscal federalism comes closer to the German than to the Swiss model. The financing of the regions is stipulated in a separate financial constitutional law (*Finanzverfassungsgesetz – FVG – 1948/2001*). Financial settlement laws (so called 'fiscal equalization laws' or *Finanzausgleichsgesetze*) contain the provisions for putting the financial constitutional law into practice. They include a number of compulsory intergovernmental cooperation mechanisms and determine the size of federal grants that is used to reduce vertical and horizontal imbalances. Financial settlement laws are usually up for review every three years (Thöni 1999). The participation of the Austrian regions in federal law-making is not as well developed as that of the German Länder, given the comparably weaker position of the Austrian second chamber. Therefore, Austria provides a better illustration of a 'centralized' than a coordinated or cooperative approach to fiscal federalism.

Austrian regions also operate under much tighter budgetary constraints than the German Länder. When Austria entered the European Monetary Union, it enacted an internal Stability Pact to guarantee that the overall public budget deficits should not exceed 3 per cent of GDP. Taking into account outstanding domestic loans, regional and local governments cannot exceed aggregate deficits of 0.3 per cent of GDP. This leaves the regions with less budgetary leeway than the federal government (Darby, Muscatelli and Roy 2002: 30).

As in Germany, regions have very few autonomous taxes. Regional and local taxes combined make up only 7 per cent of all (i.e. federal, regional and local) tax revenues. Exclusive federal taxes represent more than a quarter of

all tax revenues. This is much higher than the comparable German share. Still, a substantial share of the federal as well as the bulk of regional income resources derives from shared or joint taxes. VAT receipts alone comprise almost a third of shared receipts, income taxes make up a further quarter. Of the remaining shared taxes, mineral oil tax and motor vehicle tax are the most important. They represent two-thirds of the aggregate tax income.

The regional pie of shared tax receipts is stipulated in federal financial settlement laws. At present, 56 per cent of income tax, 70 per cent of VAT, 88.6 per cent of mineral oil tax and half the motor vehicle tax receipts are federal. The remaining share of these four taxes is distributed among the regional and (in the case of income, VAT and mineral oil tax) also municipal governments (Thöni 1999: 110–16).

When allocating shared tax receipts to the regions, the federal government is engaged in a form of horizontal equalization. The derivation principle applies for only a part of the assignments. For instance, regional VAT shares are for 95.7 per cent distributed on a per capita basis (equalization is implied insofar as affluent regions generate above-average per capita VAT contributions). Of the remaining share, one slice (2.5 per cent) is distributed on a per capita basis without taking the population of Vienna into consideration, a tinier slice (0.5 per cent) is specifically earmarked for Vienna, and a third slice (1.4 per cent) is allocated on the basis of the derivation principle. Similarly complex arrangements emerge in the distribution of the receipts of mineral oil excise taxes. Of the sum that is set aside for regional consumption, 60 per cent takes into account regional population figures, a region's geography and the length of its regional roads. None of these indicators follow 'the derivation' principle (Thöni 1999: 113, Table 4.8).

Unlike in Germany there is no explicit horizontal equalization, narrowly defined. Furthermore, the required level of equalization ('pushing up a region's fiscal or financial capacity to the average regional fiscal or financial capacity') is not specified in detail. The interregional discrepancies in regional per capita income are also relatively small. Therefore, equalization payments are lower in relative terms than in Germany. Apart from the distribution of shared taxes, equalization occurs through other channels. As in Germany, joint tasks or cost-sharing arrangements are at work, particularly in education (which unlike in the other federations is already substantially centralized in legislative terms), hospital or road building. They take the form of conditional, matching grants.

As in Germany, the regional dependence upon shared tax revenues and the complexity of the distribution criteria have been repeatedly criticized. Although matters have not been taken to the Constitutional Court, the periodic renegotiation of the financial settlement laws often takes place in a climate of intergovernmental mistrust and acrimony. Following EMU, the regions have agreed to tighter budget constraints, but they have required a stronger input in any federal amendments to regional expenditure or

taxation autonomy in return. As a result, regional and local-government representatives acquired a collective veto against future federal decisions that would further increase regional or local contributions to overall public debt-management. Without such an intergovernmental agreement, the status quo is retained or extra costs must be fully covered by the federal government. This mechanism protects the interests of the regional and local authorities, which under the 0.3 per cent GDP deficit rule have little budgetary room left for manoeuvre. However, regional MPs have criticized the fact they have not had input into the making of such an agreement. Participatory democracy is set aside insofar as the agreement requires the consent of the relevant ministers of finance (Thöni 1999).

7.4. Belgium

The Belgian model of fiscal federalism is peculiar for two reasons.

First, Belgium is the only one of our case studies with two different forms of subunits: *Communities* and *Regions*. Of both subunits, only the Regions have some (limited) tax autonomy. Communities have *no* tax autonomy at all. The lack of fiscal autonomy for the Communities partly explains why the overall level of regional fiscal autonomy (i.e. Communities and Regions combined) is so low. Communities have no tax autonomy because they are defined on a personal, not on a territorial, basis. The Flemish Community addresses the Dutch-speakers who live in Flanders *and* in the Brussels Capital Region. The French Community caters for the needs of French-speakers who live in Wallonia *and* in the Brussels Capital Region. Citizens who live in Brussels do not have to declare their subnationality, let alone to 'fix' it once and for all. For instance, Dutch-speakers are free to attend French-speaking schools and vice versa. The share of Community grants which is flowing to Brussels is usually divided on an 80 per cent French/20 per cent Flemish basis. Such a distribution is rather generous for the Dutch-speakers. The share of Dutch-speaking citizens who live in Brussels is estimated at no more than 15 per cent of the total regional population. However, Dutch-speaking schools attract a large number of pupils who speak French at home.

Second, the Communities and Regions are primarily funded on the basis of shared tax revenues. Unlike in Germany, the regional pie of these revenues is not spelled out in a fixed distributional formula, but is calculated by using the baseline grant for a given year. The baseline grant is adjusted annually, to reflect inflationary changes or adjustments to the Gross National Income (GNI) instead (Verdonck and Deschouwer 2003). The size of the regional grant is immune to changes in their tax structure (base, rates, administration), however, and in this respect the Belgian grant system is very different from comparable systems in other federations. In fact, regional tax receipts come under the form of massive, unconditional block grants which are meant to finance broad policy expenditures. The regional share of federal VAT revenue finances most of the educational competencies.

Communities and Regions are at best *indirectly* involved in adjusting the base and rate of these taxes. The financing of the Regions and Communities is stipulated in a 'special majority law', which must be approved by both linguistic groups in the federal lower house and Senate.

Despite the wide *spending autonomy* of the Regions and Communities, regional governments cannot engage in extensive deficit-spending. Borrowing policy is overseen by a Superior Council of Finances, which sets the objectives as well as the limits of regional deficit spending. Furthermore, regional governments need the consent of the federal government if they wish to exceed the upper limit of deficit-spending. In contrast, the burden of reducing Belgium's overall public debt falls mainly on federal shoulders. More recently the regions have agreed to contribute more to overall public-debt relief, reflecting their growing policy autonomy, and, in the case of the Regions at least, also their slowly increasing fiscal autonomy. As in Austria, the federal government has invoked the Maastricht criteria to increase the regional contribution to overall public-debt relief. To some extent, such a move coincided with a relaxation of the federal budgetary plan after the 2003 general (federal) elections.

The funding of the Communities

Because they lack tax-raising autonomy, the Communities are entirely funded on the basis of federal tax receipts. Two-thirds stem from VAT and almost a quarter from Personal Income Tax (PIT; Verdonck and Deschouwer 2003). VAT and PIT shares cover almost 95 per cent of Community expenditures. For both taxes, the 1989 transfer (when the important Community competence of education was first devolved) is used as the baseline. Until 2001, VAT revenues were adjusted to reflect changes in the consumer index. VAT revenues finance the bulk of the Community expenditures in the field of education. However, a vast share of education expenditures is made up of the wages of teaching staff. The annual increase in VAT receipts was not high enough to cover the increases in wages. Consequently, it did not take long before the Communities faced budget shortfalls. For three reasons, the problems have been particularly acute for the French Community.

First, as was explained in Chapter 3, in Flanders, the Flemish Community and Region have merged their institutions. Therefore, money can be easily moved around from Regional to Community budgetary posts. Regions not only have more tax autonomy, but their income is also pegged more explicitly to adjustments in economic growth. In French-speaking Belgium the same budgetary 'trick' could not be used owing to the existence of separate Community and Regional budgets.

Second, the way in which Community grants are determined does not really entail an equalizing element. For instance, Community budgets for education are made up of VAT receipts. The share of VAT that flows to each of the Communities is calculated by considering the number of children

below the age of 18 attending school. Yet, average per capita schooling costs are higher in the French-speaking Community than in Flanders. At present, French-speaking Belgium faces higher unemployment rates, lower average income and more social deprivation than Flanders. Consequently, the share of students who take more time than needed for completing their primary and secondary education is higher than in Flanders. This pushes French Community expenditures above the national average.

Third, in Belgium, education is only partially provided in so-called Community schools. Notwithstanding the full subsidization of all school networks (thus, also the vast network of private, predominantly Catholic schools), public education is more cost effective in Flanders than in French-speaking Belgium. The dominance of the Catholic school network in that region leads to substantial economies of scale. By contrast, in French-speaking Belgium no single 'network' controls the public education system, which leads to reduced economies of scale (Henry, Pagano and Filleul 2000).

The fiscal worries of the French Community were an important element in the most recent round of constitutional reforms (2001). To relieve their worries, negotiators representing both language groups agreed to link Community revenues to changes in GNI growth and inflation, and not simply to adjustments in the consumer index. Although Flemish negotiators were not particularly keen on increasing Community funding, they were offered something in return. Next to more fiscal autonomy for the Regions, Flemish negotiators obtained agreement that from 2011 onwards 20 per cent of VAT transfers will not be devolved on the basis of student figures any longer, but on the basis of the derivation principle instead.

The funding of the Regions

Unlike the Communities, the Regions have some degree of fiscal autonomy. Although still limited, the 2001 reform package significantly increased the level of Regional fiscal autonomy. In 2003, they received 28 per cent of their revenue from fully 'regionalized' taxes. This percentage is still well below the 40 per cent that is derived from transferring part of PIT revenues. Following the 2001 fiscal reform, Regions have also been allowed to vary the PIT rate with 6.75 per cent in either direction. This turns PIT into a partially overlapping tax. Verdonck and Deschouwer calculated that if Flanders were to use the politically rewarding tax rebate, 8 per cent of its entire (Regional and Community) budget would be affected (Verdonck and Deschouwer 2003: 107). A small part of the Regional budget can be funded on the basis of a federal matching grant. Regions control labour market policy, although the federal government is in charge of social security and thus pays out unemployment fees. The federal government has agreed to pay out a subsidy for each unemployed person for which a Region finds a job. That subsidy would equal the amount of federal unemployment benefits which the federal government no longer has to pay out. Although the extra money comes

as a matching grant, it does not tie Regions to specific expenditure programmes. The Regions may use the money that is received accordingly as they see fit.

As it stands, the funding of the Regions and Communities is not without some form of equalization. Only the federal government engages in fiscal equalization. For instance, VAT and PIT revenues are not allocated on the basis of the derivation principle. When determining the initial base-line figures, the share of VAT and PIT revenues which accrued to Flanders was even lower than the Flemish share of the Belgian population. The fiscal reforms of 2001 project a gradual increase in the share of the Flemish pie of these tax receipts. Flanders's share would be made compatible with its demographic strength (per capita), but not with its contribution to the corresponding tax resource (derivation). Furthermore, federal equalization payments of an unconditional nature are made available to regions with a personal per capita income below the national average. At present, Wallonia benefits most from this arrangement. In 2003, such equalization payments represented 13.6 per cent of the Walloon Regional budget (Verdonck and Deschouwer 2003: 107).

In general, the fiscal equalization mechanisms that are explicitly tied to the funding of the Communities and Regions are relatively small. Therefore, the most profound mechanism of fiscal equalization comes in the form of social security and health payments. Social security and health policies (other than preventive health care) are entirely federally controlled. They are distinct from Regional and Community policies which rely on federal funding. Some Flemish actors have repeatedly demanded that at least part of social security (in particularly health care and child allowances, including some aspects of their funding) would be devolved to the regions (i.e. Communities or Regions). Without building in explicit equalization mechanisms, this would strongly reduce existing levels of interterritorial solidarity. Such a change would require the consent of both language groups in the federal parliament and would almost certainly be vetoed by the group of French-speakers there.

7.5. Spain

With the exception of the Basque Country and Navarra, the Spanish regions have relatively low levels of fiscal autonomy, despite some increase in recent years. After the most recent changes, the non-*fueros* decide on approximately only 15 per cent of their revenues (Ruiz-Amendral 2003; Quebec Commission 2001).

The Spanish centre controls the most relevant taxes, including PIT, VAT and corporate income tax. The revenue of these taxes predominantly or exclusively accrues to the centre. About three-quarters of regional revenues is made up of central grants. The largest share comes under the form of health and social service transfers, and the so-called PIE (participation of the

regions in the general taxes of the state). A national organic law determines how the resources will be distributed among the regions (also entailing a degree of horizontal equalization – in the wider sense of the word) and to what extent regions may be entitled to a limited degree of tax autonomy (for instance by varying tax rates on certain tax bases). Of particular importance in this regard is the LOFCA (Organic Law on the Financing of the Autonomous Communities). In many respects the size of the regional transfers is not only based on need but also on the outcome of bilateral negotiations between the centre and each of the regions individually. Bilateralism is not so much a reflection of asymmetry in competencies. In many regards the fiscal and policy asymmetry among the ‘non-federal’ regions has mostly disappeared. Instead, bilateralism results from a (long-term) lack in the capacity of the centre to develop an accounting system that contains widely accepted needs criteria (Pandiello 1999).

Unlike the position in Belgium, central transfers more often take the form of conditional grants. Central budget laws specify which regional departments should administer the grants, and in so doing implicitly determine the objectives on which they should be spent. Since 1997 the spending and/or tax autonomy of the regions has increased. This was primarily the result of *ceding* hitherto central tax revenues to the regions. *Ceding* taxes come in many forms (overlapping tax, shared taxes and fully decentralized or regional taxes). Personal income tax could be classified as a shared tax: a third of PIT revenues accrue to the regions and the tax itself is administered by the centre. Half the regional PIT share is devolved as an unconditional grant, but the other half takes the form of a partially overlapping tax. Regions can vary their rates on this portion of the tax (an option which no single region has put into practice so far). Since January 2002, revenues from VAT, excise duties and wine tax have also become shared between the centre and the regions, with the regional share comprising around 35 to 40 per cent of the tax receipts (Ruiz-Almendral 2003). Finally, the revenues of wealth tax, death and gift tax, gambling tax, gas and electricity taxes and a few other minor taxes *entirely* accrue to the regions. The regions are also responsible for administering these taxes and for determining their rates, bases or exemptions. Therefore, we can classify them as regional taxes. Taken together they only contribute to ‘regional tax autonomy at the margins’.

The Spanish regions also operate under some budgetary constraints. Regional borrowing must be tied to specific investment projects, or must cover transitory needs. Furthermore, the share of financial charges that is linked to borrowing should not exceed a quarter of their current income. The regions cannot borrow in foreign markets without the authorization of the central government. As part of Spain’s effort to qualify for EMU membership, the regions agreed to an annual debt and deficit ceiling which they may not exceed. In turn, the central government accepted its responsibility

to approve all outstanding regional borrowing operations (including foreign borrowing; see Pandiello 1999: 235–6).

Since regions are primarily funded by central revenue transfers, the centre alone is responsible for equalization. The regional share of the social security and health transfer as well as the PIT revenues are based on a list of weighted variables. Apart from demography, central policy-makers also take geographic (insularity), administrative and fiscal (wealth and fiscal capacity) criteria into account. In addition, regions with a per capita income that is below 75 per cent of the EU average are eligible to aid from the European Structural Funds (objective 1 ESF) and the interregional Compensation Fund (FCI). In this sense, the Spanish government applies the same criteria for paying out FCI funds as the EU. ESF and FCI transfers are tied to specific investment programmes. When deciding how to redistribute grants between the regions that qualify for ESF or FCI aid, the Spanish government first applies a formula in which population accounts for 87.5 per cent. Additional parameters (unemployment, net migration and population dispersion) make up the rest. These results are then weighted according to per capita income and insularity. Finally, a Solidarity Fund ensures that the growth rate of all the revenues (own source and transferred) of one region in a given year cannot be lower than 90 per cent of the average growth rate of all regional resources combined (Quebec Commission 2001).

Although all 17 regions have now gained almost identical policy competencies, in the field of taxation a significant form of asymmetry remains. This asymmetry cross-cuts the dividing line between historic and non-historic regions. It sets Navarra and the Basque Country apart from the other regions (including Catalonia and Galicia).

The 'foral' status of Navarra and the three Basque provinces (Bizkaia, Gipuzkoa and Alava) entitles them to an unusually high level of fiscal autonomy. Navarra and each of the three Basque provinces can pass legislation on the main Spanish taxes. As a result, they collect more than they spend. The result is a rare form of 'vertical fiscal imbalance' in which the regions must partly finance central competencies within their territory (for instance foreign affairs, customs, transport policy or defence). This system of 'upward revenue sharing' is also known as the *cupo*. For instance, in the case of the Basque Country, the central state only regulates VAT, excise duties and income tax of *non-residents*. The provinces administer these taxes and receive the entire tax receipts (they thus constitute a form of shared taxes; Ruiz-Almendral 2003: 59). Income tax of residents, inheritance tax and corporation taxes of residents are *entirely* regulated by the Basque (provincial) and Naverrese authorities. The tax regime for the Basque Country is different from that of Navarra. Navarra's fiscal status (*Convenio*) is constitutionally embedded, while the Basque Country's (*Concierto*) is up for renegotiation every five years (to be agreed upon by a

Joint Committee, composed of six central government representatives and six Basque representatives, one from each Basque province and three from the Basque government). As was specified in the previous chapter, the EU has questioned the legality of the Basque and Navarrese tax autonomy arrangements on the grounds that some elements may breach EU competition laws. In light thereof, the Spanish Constitutional Court has also questioned their constitutional nature, in particular their compatibility with the principle of solidarity.

7.6. United Kingdom

The scope of the legislative and/or executive competencies which have been devolved to Scotland and Wales is considerable. Yet, only Scotland has received limited tax-raising autonomy. For the time being Wales lacks any such autonomy. Therefore, both regions are mainly dependent upon central grants. These grants are very peculiar for two reasons. First, they are entirely unconditional: thus they generate substantial levels of regional spending autonomy. Second, changes in the size of these grants are dependent upon changes in corresponding public expenditure levels for England. Both aspects are considered in turn.

The Scottish Parliament alone has the right to vary the rate of income tax by up to three percentage points in either direction. This so-called 'tartan tax' is a partially overlapping tax. The politically attractive option, a tax rebate instead of a tax increase, would cost the Scottish government some 260 million pounds. This is a relatively small share compared with the 16 billion pounds that the Scottish executive was allowed to spend in 2003 (Heald and McLeod 2003). Thus far, Scotland has not made use of its tax capacity.

In addition to the tartan tax, the devolved authorities control fiscal transfers to the local governments. Unlike the situation in Spain, the central government cannot bypass the regions when transferring money to the municipalities. This means that, by lowering transfers, the Scottish or Welsh authorities can increase their own spending autonomy. Consequently, the municipalities would either have to increase their own taxes or to reduce their expenditures (Bogdanor 1999: 239–40). In 2003, central transfers made up 77 per cent of the Scottish budget. EU structural funding and public borrowing added a further 5 per cent. A further 15 per cent represented central grants on the basis of local council and business property tax revenues (Heald and McLeod 2003).

The grant that is used for financing Scottish, Welsh (and Northern Irish) expenditures should be interpreted as a massive, unconditional (general purpose) grant. In this sense, the spending autonomy of the Scottish (and when in place also Northern Irish governments) is substantial. The Welsh executive must take the primary legislative framework of the UK Parliament into account. The devolution settlement in its entirety, and thus also the

financing mechanisms, is organized by ordinary parliamentary law. This means that the size of the grant or the method determining which share Scotland, Wales (and Northern Ireland) should receive can be amended at the discretion of the UK Parliament. Thus far, the Scottish and Welsh governments have not lived on a collision course with the central government, but the presence of Labour-led governments in each of these regions and the centre has produced a gentle intergovernmental climate.

The size of the central grant is not determined as a portion of personal income, corporate income, or value added tax receipts. Instead, changes in expenditure for Wales or Scotland are pegged to expenditure changes for England. The so-called *Barnett* formula, named after Joel Barnett, a former Chief Secretary to the UK Treasury in the 1970s, determines that 'for each marginal increase of public expenditures for England with eighty-five pounds, the corresponding increases for Scotland, Wales and Northern Ireland amount to ten, five and two and a half pounds respectively'. The Barnett formula emerged in response to complaints that per capita public expenditures were much higher for Scotland and Wales than for England. Therefore, overall public expenditures were used as the baseline, and marginal expenditure increases would be redistributed among the three regions on the basis of Barnett. Because the distribution of these marginal increases was meant to be in tune with real population shares, 'Barnett' should produce a convergence of expenditure rates in the UK (Mitchell 2003). However, that objective has not been reached for two reasons. For starters, the growth of public expenditure was lower than expected. For much of the 1980s, Thatcher's Conservative government even trimmed public expenditure levels. This slowed down the pace of convergence. Furthermore, the demographic share of Scotland and Wales in the total UK population has fallen below the figures that were envisaged in the Barnett formula, requiring its adjustment in the early nineties.

The Barnett formula creates a number of problems. The expenditure mechanism is opaque and it is not entirely clear to what extent higher per capita expenditures for Scotland and Wales reflect genuine need differentials or represent historically grown artefacts. There is no objectively controlled needs assessment exercise, nor has there been until recently a study mapping regional expenditure differentials for England (however, see McLean et al. 2003). It does not take much imagination to realize that setting up an electricity network or constructing a motorway is more expensive in Scotland than in the South East of England, because of the nature of the landscape. However, does the same apply for different types of expenditures such as health care as well?

In time devolution could provoke the end of 'Barnett'. Fiscal intergovernmental relations could turn sour as a result of two scenarios. The first scenario would occur whenever a central government must cut overall public expenditures following a profound economic recession. Cuts for England would

then lead to corresponding cuts for Scotland and Wales. Without fund-raising capacity of their own, such cuts could provoke major discontentment in both regions. The second scenario materializes whenever the political parties which control the various levels of government represent radically different views on the role of government. For instance, a Conservative UK government may wish to privatize part of the National Health Service (NHS). This would trigger dramatic public expenditure cuts for England, Scotland and Wales. Labour-led (coalition)-governments in Wales and Scotland would then dramatically oppose such cuts. Different expenditure preferences between the centre and the devolved authorities may force the regions into negotiating a more durable fiscal settlement. If the Conservatives want to keep open some prospect for political power-sharing in Wales or Scotland, such a durable fiscal settlement may work in their own interest.

8. Conclusion

In this chapter I sought to clarify the distribution of competencies in Western Europe on the basis of a political economy approach. Of three alternative theories, the functional and regulatory theories seem to have the widest applicability in the West European context. All in all, the centre assumes the prime role in redistribution and in stabilizing the economy. For European states which take part in the European monetary union, stabilizing the economy (where it refers to setting interest rates) is now taken care of by an independent European Central Bank. By comparison the regions assume a more important role in developmental programmes, such as education. The regulatory theory of federalism only makes claims with regard to 'regulatory policies', that is, policies without direct redistributive or developmental implications, such as environmental policy. We find some evidence to support the thesis that such policies are frequently regulated at the central level, but also that in multinational states like Belgium the regions insist on controlling their regulation also.

Next, I sought to operationalize the concept of 'the scope of federalism'. Although we can discern some general patterns in the distribution of competencies, the group of federal or regionalized states displays a significant variation in their levels of expenditure and revenue decentralization. The regions assume a particularly high share of all public expenditures in Switzerland and in Germany. Belgium and Spain assume intermediary positions. Austria is relatively centralized. Although no separate data for Scotland could be found, we may assume that programmes which stem from the Scottish executive and Parliament represent a high level of public expenditure. Possibly, they may spend more on public expenditure programmes in Scotland for which the UK Parliament has remained responsible than the UK government. This is so because the Scottish executive controls cost-intensive programmes such as education and health.

The picture changes dramatically when focusing on the level of revenue decentralization. All the regions with the exception of the Swiss cantons and the Spanish *fueros* (Basque Country and Navarra) lack substantial revenue or tax-raising autonomy. Although in Germany most of the revenues come under the form of 'shared taxes', they cannot be conceived as regional taxes proper (in this sense, the high share of regional revenue autonomy that is listed in Table 4.4 for Germany is somewhat misleading). The German regions only have a collective input in codetermining the base, rate or the regional appropriation of these revenues. The discrepancy between the levels of expenditure and revenue decentralization is particularly high in Belgium, Spain (with the exception of the *fueros*) and Scotland. Austria appears as a relatively centralized federation on the basis of both of these criteria.

That the regions in the West European federal or regionalized state raise more money than they spend should not come as a surprise. In part this is in line with the functional theory of federalism. If the centre assumes the most redistributive functions, it should also control the most important revenue-raising instruments for it to pursue such policies. Or, although Keynesianism has long passed its heyday, there is still a strong belief that even in federal states public services ought to be of comparable standard throughout the regions of the federation. In this sense, with the partial exception of Switzerland, the monetarist approach which considers regional tax autonomy as an incentive to policy innovation and efficiency has not yet gained much ground. Furthermore, fiscal theory asserts that taxes with the most mobile base and the highest elasticity are better kept central. In this sense, many of the taxes that raise the most revenue, such as personal income, corporation and excise, tend to be kept central, at least as far as determining their base and rate is concerned.

Whenever vertical fiscal imbalances arise, the centre may step in to reduce them. Only the Swiss federal government plays a relatively modest role in this respect, because the cantons have substantial fiscal autonomy of their own. A central government may be purely concerned with funding the regions on the basis of their contribution to a federal tax resource (i.e. allocating money on the basis of the derivation principle). Yet, few central governments engage in vertical equalization without also involving some form of horizontal equalization. The discussion of each of the case studies made clear that the level of horizontal equalization is out of the ordinary in Germany. Furthermore, Germany is the only one of our cases in which not only the federal government but also the regions richest in resources take part directly in that equalization process.

Fiscal federalism is an ever evolving and potentially very contentious part of a federal arrangement. In Germany and Spain, disputes between the regions on fiscal matters have caused recurrent judicial litigation. In Belgium, the Flemish Region is keen on increasing its so-far modest levels of fiscal autonomy, but this puts it on a collision course with the less affluent Region

of Wallonia. In Britain, the Barnett formula which underpins the funding of the devolved authorities is not likely to survive much longer. Even in Switzerland, the first-ever referendum that was sparked by a group of cantons consisted of an attempt to halt the Swiss federal government's intent to harmonize and centralize certain taxes.

Certainly, in Germany, Spain and Belgium, these disputes pitted not only the regions against the federation, or some regions against some of the other regions. Often, they should be understood as battles between different parties controlling different levels of government or different regions. For instance, the fiscal equalization disputes which engulfed Germany in the 1980s reflected the discontent of many left-wing regional governments with the federal government's method for distributing specific tax resources. For instance, the Christian Democrats controlled the federal government and sought to favour the ideologically congruent regional governments when determining who should benefit from incorporating federal oil extraction revenues into the fiscal equalization scheme (Renzsch 1989). In Spain, the ethno-regionalist Basque parties have defended their privileged tax status against the opposition of the major Spanish state-wide parties. In this sense, party leaders, party organizations and party strategies play an important role in understanding the character of (fiscal) intergovernmental relations and the (de)centralizing character in which federal or regionalized states are heading. It is to these parties that I turn in the next chapter.

5

The Centre, the Regions and the Party System

1. Introduction

In the previous chapters, I explained how competencies are assigned or policed in a federal state and how this assignment is influenced by conflicting goals of redistribution, stabilization and allocation. Yet, so far, I have paid scant attention to the incentives that drive policy-makers in their quest for centralizing or decentralizing policy competencies. In order to do so, we must focus on the input-side of the political process. Here political parties play a crucial role. They reflect, absorb, construct, mould and channel political preferences into the policy process; they operate as an important interface between civil society and the political institutions. As such, an analysis of political parties, and the electoral process that legitimizes their *raison d'être* provides a first step in explaining *change* in federal systems.

Despite the prominent place of parties in Western Europe's parliamentary democracies, the interplay between the party or electoral system and federalism has been an under-explored domain by scholars of comparative federalism. William Riker was one of a few early authors writing on federalism to stress the relevance of parties for understanding the process of (de)centralization in a federation. 'When parties are somewhat decentralized,' so he claimed, 'then federalism is only partially centralized. Because of this perfect correlation ... the inference is immediate: one can measure federalism by measuring parties. The structure of parties is thus a surrogate for the structure of the whole constitution' (Riker 1975: 137). This chapter seeks to illustrate the relationship between federalism, the party system and the internal organization of the main political parties. It is divided into four sections.

The first section provides a descriptive overview of the (territorial) nature of the party system. On the basis of the most recent general (central) election results, I will illustrate variations in the regional support base for the most important state-wide and non-state-wide parties.

The second section takes a closer look at the *non-state-wide* parties, in particular the ethno-regionalist parties. Ethno-regionalist parties put the

quest for more regional autonomy at the forefront of their political programme. What drives their success and how homogeneous are they as a group?

In the third section I turn to the internal structure of the *state-wide* parties and seek to highlight the relationship between the territorial structure of the federal arrangement and the internal structure of the party on the basis of six hypotheses. To that purpose, state-wide parties are not only cut into vertical slices (separating the central from the regional and sub-regional party wings) but also into horizontal slices (separating the party's elected officials who serve in public office from the party officials who work in the party bureaucracy). Some examples are given to illustrate the channels of influence which have developed between each of these segments, for instance in candidate selection, party finance or drafting electoral manifestos.

In the final section I focus on the role of parties in the electoral arena. What is the importance of regional relative to general elections? What is the strategy of state-wide and non-state-wide parties in central and regional elections, and in the government formation process that follows upon it? In multinational federations, what is the campaign strategy of state-wide parties which face the competition of ethno-regionalist parties? Do such parties take on a more regionalist profile in regional elections in which they face strong competition from ethno-regionalist parties than in general elections where they must take the views of a more heterogeneous electorate into account?

2. Mapping the fragmentation of the party system: state-wide and non-state-wide parties

General election results can mask substantial territorial or regional differences. We can measure the territorial asymmetry of a party system by contrasting its state-wide result for a general election with its result in each region in the same election. Table 5.1 does that, albeit for state-wide parties only. We define parties as *state-wide* when they file candidates in *more than two-thirds* of the regions that comprise the state.¹ The Belgian Parliament does not contain a single MP who represents a state-wide party. Therefore, Belgium was omitted from the table. The second column displays the vote share of the *state-wide* parties for the most recent general (central) legislative election (lower house). Election data are updated until 1 June 2005. The third column lists the average *regional* deviation (ARD) from the general outcome. Regions in which a state-wide party has not filed candidates (and thus obtain an electoral result of 0) were not incorporated in the calculations. If party A gets 10 per cent of the state-wide votes, but the outcome is 7 per cent in region I, 13 per cent in region II and 9 per cent in region III, then its average regional deviation from the general outcome is $(3 + 3 + 1) : 3$ or 2.33. By dividing the sum of regional deviations by the total number of regions, I (purposefully) disregard differences in regional population. The figures in

Table 5.1 General election results for state-wide parties and their regional breakdown

Austria 2002					
	Federal result	ARD	RDI	Maximum (and region)	Minimum (and region)
Christian Democrats	42.3	5.83	0.14	51.9 (Tyrol)	30.5 (Kärnten)
Social Democrats	36.5	5.98	0.16	45.8 (Burgenland)	20.1 (Voralberg)
Freedom Party	10.0	2.98	0.30	23.6 (Kärnten)	6.4 (Burgenland)
Greens	9.5	3.03	0.32	15.1 (Vienna)	4.7 (Burgenland)
Others	1.7				
Germany 2002 (on the basis of list votes (<i>Zweitstimme</i>))					
	Federal result	ARD	RDI	Maximum (and region)	Minimum (and region)
Social Democrats	41.9	4.43	0.11	48.6 (BRE)	26.1 (BAV)
Christian Democrats	32.1	6.41	0.20	42.8 (BAWU)	22.3 (BRA)
Greens	5.6	3.9	0.70	16.2 (HA)	3.4 (SA-A)
Liberal	5.8	1.46	0.25	9.3 (NRW)	4.5 (BAV)
PDS	4.0	5.96	1.49	17.2 (BRA)	0.7 (BAV)
Others	10.6				
Spain 2004					
	National result	ARD	RDI	Maximum (and region)	Minimum (and region)
PP	37.6	9.51	0.25	57.5 (MURC)	15.5 (CAT)
PSOE	42.6	4.78	0.11	52.8 (AND)	27.2 (BAS)
IU	5.0	2.69	0.54	8.53 (AST)	1.77 (GAL)*
Others	14.8				
Switzerland 2003					
	National result	ARD	RDI	Maximum (and region)	Minimum (and region)
People's Party	26.6	9.97	0.37	43.6 (Schwyz)	7.6 (Tessin)*
Social Democrats	23.3	9.95	0.43	67.1 (Glarus)	11.1 (Luzern)*
Radicals/Liberals	17.3	9.78	0.57	88.1 (Nidwald)	7.3 (Geneva)*

Continued

Table 5.1 Continued

Switzerland 2003					
	National result	ARD	RDI	Maximum (and region)	Minimum (and region)
Christian Democrats	14.4	12.2	0.85	69.2 (Appenzell- Innerhoden)	2.3 (Bern)*
Greens	7.4	7.05	0.95	13.8 (Neuchatel)	2.6 (Valais)*
Others	25.4				
United Kingdom 2005					
	National result	ARD	RDI	Maximum (and region)	Minimum (and region)
Labour	35.3	3.9	0.11	42.7 (Wales)	35.4 (England)
Conservatives	32.3	10.3	0.31	35.7 (England)	15.8 (Scotland)
Lib. Dem.	22.1	1.67	0.07	22.9 (England)	18.4 (Wales)
Others	10.3				

*Minimum result for region in which party had filed candidates.

Abbreviations: AND = Andalusia, AST = Asturias, BAS = Basque Country, BAV = Bavaria, BAWU = Baden-Württemberg, BRA = Brandenburg, BRE = Bremen, CAT = Catalonia, HA = Hamburg, GAL = Galicia, MURC = Murcia, NRW = North-Rhine Westphalia, SA-A = Saxony-Anhalt

Sources: General Elections Results (as found on websites of Ministry of the Interior, central parliaments or National Office for Statistics in each of these countries).

the third column should be interpreted in the light of the overall state-wide election result. For instance, in relative terms the support for the Austrian Freedom Party is more uneven (ARD of 3 per cent relative to that party's state-wide result of 10 per cent) than that for the Austrian Christian Democrats (ARD of close to 6 per cent relative to that party's state-wide result of more than 42 per cent). Therefore, in column four the ARD for a party is divided by its state-wide result. The outcome reflects the regional deviation index (RDI). In the example just given, the RDI for the Freedom Party is 0.30 compared with 0.14 for the Austrian Christian Democrats. The final two columns list the maximum and minimum results for each of the parties in the regions *in which candidates were filed* and specify the region in which these were obtained.

Table 5.1 shows that the regional variations in electoral support for state-wide parties are highest in Switzerland and lowest in Austria.

In Switzerland, the ARD came close to 10 per cent for each of the three largest parties in the most recent Swiss federal elections. Furthermore, since

the smallest cantons elect only one delegate to the Swiss National Council (federal lower house) some of the major state-wide parties may decide not to put up regional candidates. This turns the electoral system in these cantons into a de facto plurality ('winner takes all') system. It stimulates some of the state-wide parties to join forces with a group of other (potentially state-wide) parties or not to put up candidates at all. Of the four parties that have been represented in the federal executive since 1959, the Swiss Christian Democrats have the most unevenly spread support. Traditionally, they score better in Catholic, and thus predominantly French-speaking, cantons. The Swiss Liberal Party and the Christian Democrats also attract a predominantly French-speaking electorate (Sciarini and Hug 1999: 136–7). Prior to its transformation into a right-wing Populist Party, the support of the Swiss People's Party was primarily confined to rural, German-speaking Switzerland as well. By now it has spread to the rest of Switzerland.

In contrast, in the most recent Austrian federal elections (2002), the two largest state-wide parties, the Christian Democrats (ÖVP) and the Social Democrats (SPÖ) displayed low regional deviation indices. The index for the German Social Democrats falls within the same range, but that of the German Christian Democrats is significantly higher. In relative terms, the German party system is not as symmetric as the Austrian one. For one thing, the support for the PDS, the successor party to the East German Communists, is regionally concentrated. Formally a state-wide party the PDS handsomely passes the 5 per cent electoral threshold in all five Eastern regions. In the 2002 general elections it assembled 16.9 per cent of the East German vote, but attracted only 2.2 per cent of the vote in Bremen, the Western region in which it performed best.

The data for the UK and Spain are similar to the German data insofar as one of the major catch-all parties has a much more regionally diversified support base than the other party. In Spain the Conservatives (Partido Popular) assemble more than half of the votes in some of the regions, but scarcely collect 15 per cent of the vote in the region of Catalonia. The PP's RDI is more than double the RDI for the PSOE, the Social Democratic party. Similarly, in Britain, the Conservative Party is substantially overrepresented in England. However, in the 2005 general elections, the party captured only 15.8 per cent of the vote in Scotland. By comparison, the support for the British Labour Party was less unevenly spread than that of the Conservatives.

Regional variations in state-wide party support can have many causes. For instance, a state-wide party may be able to build up a reliable regional support base because the party's general ideology corresponds with the socio-economic or religious profile of most of the voters who live in that particular region. For instance, in the last 25 years (1970–2004), the German Social Democrats performed particularly well in North-Rhine Westphalia and rather badly in Baden-Württemberg. Skilful party leadership, for instance, of Johannes Rau or Wolfgang Clement may explain some part of the success in

North-Rhine Westphalia. However, more important is that region's strong industrial background, comprising the densely populated Ruhr area which underwent a painful restructuring of its coal and mine industries. This certainly has created a more reliable pool of Social Democratic voters. In contrast, the more agrarian, religiously conservative profile of Baden-Württemberg, a region which after World War II quickly developed into one of the most powerful economic German regions, generates a broader pool of centre-right (Christian Democratic) voters.

Regional variations in the support for state-wide parties are not necessarily owing to the strength or weakness of the competing state-wide parties. Table 5.1 reveals striking variations in electoral support for the residual ('other') parties, that is for parties which do not qualify as 'state wide'. With the exception of the UK, these non-state-wide parties have collected more than 10 per cent of the popular vote. In Switzerland, they even represent about a quarter of the aggregate vote. Belgium was left out of Table 5.1 because the share of its non-state-wide parties approximates 100 per cent. Indeed, since 1978, all of the major party groups (Christian Democrats, Social Democrats and Liberals) have been split along linguistic lines. I now turn to an analysis of these non-state-wide parties.

3. Non-state-wide parties

3.1. Non-state-wide parties of a (predominantly) non-ethno-regionalist character

Non-state-wide parties come in various forms and shapes. For the purpose of our research, the most important non-state-wide parties are those which *prioritize* the quest for more regional powers or autonomy over any other issue. The comparative literature refers to them as *ethno-regionalist* parties. Many non-state-wide parties may not consider the strengthening of regional autonomy as the main rationale of their existence. Such parties may have emerged simply because the political system is conducive to their formation. For instance, Switzerland's non-parliamentary character and the recurrent use of referenda in that country increase the chances for a more heterogeneous and fragmented party landscape. The considerable heterogeneity of Swiss society in linguistic and confessional terms adds to this observation. Yet few of the Swiss non-state-wide parties consider the strengthening of cantonal autonomy as their first priority.

The same observation can be made with regard to some of the Belgian parties. The Christian Democrats, Social Democrats and Liberals have all split along linguistic lines and, with the exception of the electoral district of Brussels-Halle-Vilvoorde, they compete in monolingual electoral districts. The Greens, which did not enter the central parliament until 1981, campaigned as two separate linguistic parties from the outset. However, each of these parties has been willing to enter central government coalitions and

their Flemish, respectively French-speaking, identity is an important, but not necessarily their most relevant, identity-marker. Regional autonomy issues may dominate their political agenda from time to time, particularly in the wake-up of federal or regional elections or in the coalition-building process that ensues from them. Yet none of these parties owes its existence to the issue of regionalism.

The group of non-state-wide parties is in itself diverse and in some respects their classification cross-cuts that of the ethno-regionalist parties. A good case in point is the Flemish extreme-right wing 'Flemish Block' (Vlaams Blok, recently renamed Vlaams Belang or 'Flemish Interest'). The Vlaams Belang combines the profile of an extreme-right-wing, anti-immigrant and ethically conservative party with that of a party which seeks Flemish independence. In Switzerland, the Lega dei Ticinesi provides a similar mix or right-wing populist ideology with a quest for strengthening the Italian-speaking minority within the Swiss federation, particularly those who live in the canton of Ticine. To that purpose it campaigns for the formal recognition of the Ticinese dialect, seeks to reduce the linguistic rights of the German-speakers who live in that region and demands more fiscal returns from the centre, as the party perceives the current taxation system as favourable to the German-speaking cantons (Mazzoleni 1999).² In general, party scholars have separated these extreme-right-wing or populist parties from the group of ethno-regionalist parties, despite the fact that some of their voters may vote for them because of their regionalist agenda.

The Bavarian Christian-Social Union (Christlich-Soziale Union) exemplifies yet another type of non-state-wide party which, although not ethno-regionalist, seeks to strengthen some regional interests. Federally, it formed a de facto permanent alliance with the state-wide Christian Democrats (CDU or Christlich Demokratische Union). Both parties form one parliamentary party group in Berlin and they unite on a common Chancellor-candidate. The CSU is a major regional player. Helped by the pre-selection of a CSU candidate for the Chancellorship, it attracted 58.6 per cent of the Bavarian vote in the 2002 federal elections. The CSU electorate represents 9 per cent of the total German electorate and almost a quarter of the aggregate Christian Democratic vote. The CSU does not put up candidates outside Bavaria in federal (or regional) elections, and nor does the CDU within Bavaria. Consequently, the CSU has been relatively free to voice Bavarian interests. Given the region's socio-economically stronger position, CSU-led Bavarian governments have propagated a more competitive type of federalism. They have requested more regional fiscal autonomy and the devolution of additional legislative powers to the regions. The party also has taken a more conservative stance on a number of ethical or religious issues (abortion, crucifixes in classrooms, gay partnerships, immigration) than the federal CDU, reflecting the more traditionally agrarian and Catholic background of its electorate.

3.2. Ethno-regionalist parties

Definition and ideological variation

Ethno-regionalist parties are parties that put the quest for regional autonomy at the *forefront* of their political agenda. Ethno-regionalist parties reflect the aspirations of 'geographically [regionally] concentrated minorities which challenge the working order and sometimes even the democratic order of a nation state by demanding recognition of their cultural identity' (Müller-Rommel 1994: 183; 1998: 19). Usually, they emerge in so-called 'stateless nations', such as Catalonia, the Basque Country, Scotland and Wales.

Scholars have distinguished between various types of ethno-regionalist parties. Ferdinand Müller-Rommel has suggested a fourfold classification. He distinguishes between separatists, left-libertarian federalists, autonomists and protectionists (Müller-Rommel 1994: 184–5).

The *separatists* are the most radical group. They seek full sovereignty for the nation which they claim to represent and do not wish to give up their sovereignty for membership of the EU. They do not necessarily shun away from linking up with paramilitary or terrorist organizations. Herri Batasuna (later renamed Euskal Herritarrok), the presently outlawed Basque separatist party which maintains organizational links with the Basque terrorist organization ETA, is the best example of a separatist party.

Left-libertarian federalists aim for a strong degree of decentralization and popular representation and seek regional independence within a stronger European Union. Thus, they propagate a Europe *of* rather than a Europe *with* the Regions. Ideologically, they are left leaning. Their defence of regionalism is often combined with a demand for recognition of a minority language and an emphasis on 'new politics issues' such as environmental rights or minority rights. The Scottish National Party (SNP), Plaid Cymru (Party of Wales), the Basque Solidarity Party (EA – Eusko Alkartasuna) and the Republican Left of Catalonia (Esquerra Republicana de Catalunya) belong to this left libertarian strand of ethno-regionalism.

The third group, the *autonomists*, propagates regional autonomy within the framework of a mature federal state. At their most extreme, these parties pay lip-service to full-blown regional independence. They aim for the protection of historical territorial rights, for example, *fueros* in the case of the Basque country; or of a minority language. Ideologically they are positioned in the centre or right of centre. Their frequent links with Catholicism also put them in a more conservative position on ethical issues. The best-known examples are the Catalan Convergence and Union (Convergència i Unió) and the Basque Nationalist Party (Partido Nacionalista Vasco). The Flemish People's Union (Volksunie; recently renamed New Flemish Alliance) and the Democratic Front of Francophones (Front Démocratique des Francophones), a party which protects the rights of the French-speaking Belgians who live in Brussels and its adjacent areas, also belong to this group.

Finally, the *protectionists* seek to safeguard the link between an ethnic group in the periphery, of which they are the defendants, and the centre. They do not propagate a form of separatism. Generally, they aspire to a hegemonic position within their region and have transformed into catch-all parties. Protectionist parties position themselves around the ideological centre to achieve that aim. We do not find a clear example of a ‘protectionist’ party within our group of case studies. However, in Western Europe the South Tyrolean People’s Party (SVP or Südtiroler Volkspartei) is its best example. The SVP defends the rights of the German-speakers who live in the Italian province of Bolzano-South Tyrol (itself a part of Trentino-Alto Adige, one of five Italian regions with a special status).

Table 5.2 summarizes the results for the most important ethno-regionalist parties (i.e. those parties which have assembled close to or more than 5 per cent of the regional vote) in the regions in which they campaign. In order to make the table comparable with Table 5.1 I list the electoral strength for these parties in the most recent *general* elections. We should note that, particularly in Spain, ethno-regionalist parties perform much better in

Table 5.2 Ethno-regionalist parties and their electoral performance in the most recent general (and regional) elections

Spain (2004)	Belgium (2003)*	United Kingdom (2005)
Canary Islands	Flanders	Scotland
Coalición Canaria 23.5(30.8)	NVA 4.9(-**)	SNP 17.7(20.9)
Catalonia	Vlaams Blok***	Wales
CiU 20.8(37.6)	18.1(24.1)	Plaid 12.6(20.5)
ERC 16.0(16.4)		Cymru
Galicia		
BNG 23.5(22.4)		
Navarra		
Nafarroa Bai 20.8(41.3****)		
Basque Country		
PNV 33.7(42.7*****)		
Eusko Alkartasuna 6.5		

Note: Performance in most recent regional elections prior to June 2005 listed in between brackets.

*In Belgium, the FDF formed an electoral alliance with the French-speaking Liberals.

**NVA in electoral alliance with Flemish Christian Democrats in Flemish 2004 regional elections.

***Strictly speaking, the classification of the Vlaams Blok as an ethno-regionalist party is debatable.

****NB On a joint list with PP in regional elections of 2003; campaigned as UPN.

*****PNV-EA on a joint list in regional elections in 2001. Regional election data 2001: Basque Country and Galicia; 2003: Canary Islands, Catalonia, Navarra, Scotland and Wales; 2004: Flanders. Source: as for Table 5.1 for general election results; most recent Spanish regional election data provided by Liselotte Libbrecht; for Belgium: Ministry of the Interior; for the UK: BBC-Website (consulted on 8 May 2005).

regional than in general parliamentary elections. Therefore, the figures between brackets reflect the outcome for the same parties in the most recent regional elections.

Explaining the rise (and demise) of ethno-regionalist parties

The success of ethno-regionalist parties has been attributed to a number of factors. Ferdinand Müller-Rommel put forward two causal theories that are linked to widespread but contrasting views on the consequences of economic nationalism (Müller-Rommel 1994).

The first theory builds upon insights from Gellner, Lipset and Rokkan. It links the rise of ethno-regionalist movements to processes of modernization and nation-state building. These processes may have separated the main economic from the leading political centres. The growing strength of regionalist forces in the economically advanced, but politically more peripheral, Catalan or Basque regions confirm this tendency. Since Flanders and Bavaria have outperformed the other Belgian or German regions in the last three decades, the same argument has fuelled demands for stronger autonomy in these two regions. Arguably, the process of European integration has sharpened the conflict between economic and domestic political centres. The breakdown of national trade barriers facilitated cross-boundary economic cooperation between adjacent regions and enabled the latter to forge direct economic and political links with Brussels (Hooghe and Marks 2001).

The second theory, first developed by Michael Hechter, emphasizes the *congruence* between economic and political 'peripheries' as the main driving force of stateless nationalism. The more economic peripheries rely on fiscal and social support from industrialized centres, the more they may perceive that very dependence as the cause of their economic and cultural deprivation. The predictive value of this theory would have stronger resonance in Scotland, Wales and Galicia than in the other minority nations with ethno-regionalist parties (Hechter 1975).

Empirical research puts the relevance of this 'colonization' theory somewhat into perspective. For instance, Scotland achieved the status of a 'peripheral' nation in the *Hechterean* sense shortly after its heavy manufacturing industries went into decay. Although Scotland benefited from central welfare payments, the Scots were willing to profess their loyalty to the British state *because of*, and not *in spite of*, their central welfare dependence. The drastic retrenchment of the British welfare state under Margaret Thatcher's Conservative government reduced the fiscal largesse of England towards the rest of the UK. The *exposure* of this welfare dependence, rather than the dependence itself, and the impossibility of correcting it owing to a lack of Scottish policy autonomy at the time, triggered a sharp rise in Scottish nationalism (McEwen 2002). Similarly, the relatively weak socio-economic status of the Walloon region is an important factor for explaining

why at present the attachment to the Belgian state is stronger in Wallonia than in Flanders (De Winter 2002).

The discussion above made clear that theories of 'economic nationalism' cannot adequately explain why ethno-regionalist parties flourish better in some regions than in others. Therefore, it is said that ethno-regionalist parties owe their success more to the presence of a particular regional culture than to whether or not they are located in a region which is socio-economically and/or politically marginalized. A particular regional culture requires a feeling of 'regional belonging' that is often linked with specific 'socio-cultural' identity markers, such as a minority language or a distinct legal or church system (De Winter 1998: 214–35; Moreno 2001). In an era in which parties can no longer be assured of fixed support, voters may flock to ethno-regionalist parties or to new political movements, such as the Greens or extreme-right-wing parties. As argued above, new political movements can combine their ideological agenda with a demand for separatism. The *Vlaams Belang* in Belgium or the Catalan Greens, which is filed as a separate party from the Spanish Greens, exemplify this.

In his comparative study of ethno-regionalist parties Lieven De Winter raised a number of additional factors which may have contributed to the rapid rise or demise of parties. Some of these factors may be endogenous to the party's organization, profile and strategy; others are exogenous to it (De Winter 1998: 214–35).

For instance, among the endogenous factors, De Winter pointed at the relevance of skilful party leadership, centralized party organizational structures and strong linkages with civil society. Party leaders are important because, particularly during the formative years of the party, they represent the external face of the party. Skilful leadership can also help to bridge often widely diverging views on other issues, such as socio-economic policy making or ethical disputes. The best-known example of strong leadership is Jordi Pujol. Pujol served as party leader of the CDC (*Convergència Democràtica de Catalunya*), the predecessor of the CiU of which he also became the leader. Pujol headed all the Catalan governments between 1980 and 2003. His decision to retire from politics caused a leadership vacuum and contributed to the party's bad showing in the 2003 regional elections. Charismatic leadership has also contributed to the early successes of the Flemish People's Union, *Plaid Cymru* and the SNP. Relatively strong levels of organizational centralization may help to push through policy decisions where leadership alone cannot do the trick. Finally, the Catalan ethno-regionalist parties have a relatively broad social movement (spanning cultural and civic associations) to lean on. This provided them with a firm basis of support which the ethno-regionalist parties elsewhere are missing (De Winter 1998: 232; Keating 2001a on Catalonia and Scotland; Keating, Loughlin and Deschouwer 2003 on Belgium).

The success of ethno-regionalist parties is also determined by a number of factors exogenous to the party. A first factor relates to the presence of certain

institutional rules, such as the electoral system. Emerging ethno-regionalist parties may stand a better chance of success in states or regions which organize elections by a form of proportional representation (PR). PR is more likely to speed up their prospect of representation in parliament. After all, it took the SNP about 35 years after its formation before it first gained seats in a British general election (De Winter 1998: 219). British general elections use a plurality vote. The British example contrasts sharply with Spain, where elections use a PR formula. In Spain, ethno-regionalist parties quickly gained legislative representation although, at a state-wide level, they polled less than 15 per cent of the popular vote. This said, ethno-regionalist parties have a regionally concentrated support base. Some of them may even have specific subregional strongholds. Therefore, state-wide parties with a diffused electoral support may suffer more from a first-past-the-post system than ethno-regionalist parties. For instance, in Britain the parliamentary representation for Plaid Cymru has been more reflective of its overall electoral strength in the UK party system than that of the Liberal Democrats. This is so because the electoral support for Plaid Cymru is concentrated in the predominantly Welsh-speaking areas of Wales, whereas that of the Liberal Democrats is regionally dispersed.

The rise of ethno-regionalist parties in one region may generate a 'demonstration or snowball effect' on similar parties in the same or other regions. We can see this as a second exogenous factor for explaining the success of an ethno-regionalist party. The party politics of Spain and Belgium illustrate this snowball effect very well. For instance, in the first regional elections of 1981, non-state-wide Spanish parties (not all of which may be classified as ethno-regionalist) collected 16.6 per cent of the vote. They comprised absolute majorities in Catalonia and the Basque Country. By 1991, the vote share of these parties had increased further to 20.1 per cent. This was almost entirely due to their rising support in Aragon, the Canary Islands, Cantabria and Valencia (Pallarés and Keating 2003: 251–3). The combined support for the ethno-regionalist parties has stabilized or somewhat declined since (in the regional elections of 1999 they assembled 18.9 per cent of the vote). A large group of Spanish voters only vote for non-state-wide parties in regional elections, where they believe these parties matter most. Therefore, the corresponding vote share of the non-state-wide parties in general elections has increased from just 11.4 per cent in 1986 to 12.6 per cent in 1999 (Pallarés and Keating 2003: 251–3).³ In Belgium, the presence of the Volksunie (People's Union) – a Flemish ethno-regionalist party – contributed to the emergence of ethno-regionally inspired 'counter-movements' in Brussels and Wallonia. The Volksunie emerged in the late 1950s when Belgium was seeking to demarcate its internal language boundaries. The party propagated a federal Belgium, with a monolingual Flanders as one of its regions. The borders of Flanders would correspond with the borders of the present Flemish Region. In addition, the party defended the status of Brussels as a

bilingual city agglomeration (but not a Region), comprising the 19 municipalities which presently make up the Brussels Capital Region. Many French-speakers strongly objected to these proposals. Brussels is a predominantly French-speaking city region and some of its surrounding municipalities comprise sizeable French-speaking majorities as well. The Front of Democratic Francophones (Front Démocratique des Francophones) tapped into these feelings of discontent. It actively campaigned against the bilingual status of Brussels, but requested such a status for the surrounding suburban municipalities. In the same period, the Rassemblement Wallon emerged. Unlike the leading Flemish political elites of the day, it defended a more government-planned approach to restructuring Wallonia's decaying coal and steel industries. To that purpose it sought to regionalize some instruments of economic policy-making. Although in Spain and Belgium the presence of ethno-regionalist parties in one region has triggered the emergence of like-minded parties in other regions, similar dynamics have not yet developed in the UK. Citizens who live in (the border regions of) England identify with England in the first place and recognize its dominant position in the UK as a whole. They are happy to rely on state-wide party MPs for representing local or regional interests in Westminster.

The support for ethno-regionalist parties may be boosted also by some policy decisions of the state-wide parties or some scandals which undermine the legitimacy of the centre (De Winter 1998). For instance, Thatcher's Conservative government first introduced the highly unpopular and regressive poll tax in Scotland, a year ahead of the rest of Britain. The introduction of the poll tax drove many Scottish voters to the SNP and the Labour parties. Although beyond the scope of this book, in Italy widespread corruption and nepotism that was revealed after the fall of communism opened up a window of opportunity for some of the Northern regionalist leagues. In 1992, the Northern League (Lega Nord) constituted the strongest political force in the North, absorbing many votes which until then had flown to the centre parties (Christian Democrats and Social Democrats; Gold 2003).

Finally, the electoral strategies of the ethno-regionalist or state-wide parties against which they compete also play an important role for explaining why some ethno-regionalist parties succeed and others fail. Since I will take a specific look at the electoral dynamics in a multileveled arena in the final section of this chapter, I shall not touch upon it here.

4. The organization of state-wide parties

4.1. General overview

Although state-wide parties must seek to represent the view of a more diverse electorate than non-state-wide parties, they are not insensitive to regional concerns. One way for these state-wide parties to ensure that regional concerns are taken into account is to adapt their internal structure (and the

corresponding decision-making centres) to the multilayered organization of the state. As William Riker suggests, there is a correlation between the structure of a state and the structure of the parties (Riker 1975). A federation with strong regions is likely to generate more non-state-wide or loosely organized state-wide parties than a federal state in which the sociological and institutional position of the regions is rather weak.

When we cut a state-wide party into vertical slices, we discern various organizational levels that display the structures of a pyramid. At the lowest level, hundreds of local party branches exist from which supra-local and regional party branches are formed. At the highest level the various regional branches give way to a single overarching party structure. We can also cut the same party into horizontal slices. On that basis, we can distinguish between the party organization and the party-in-office or the parliamentary party. The parliamentary party brings together all the party members who have been elected to a position in public office, for instance, as municipal councillor, provincial, regional or federal MP. The party organization brings together all the party members. Party members who are elected to public office gather occasionally in local, supra-local, regional or state-wide party conferences or executives. The assembly or conference may be the statutorily highest-ranking party body which discusses and votes on party programmes and determines the (s)election of the party branch leader. However, the party executive usually plays a lead role in the daily management of the party. Normally, party rank and file and party conferences or assemblies are called upon in the wake of local, regional or national elections or whenever a party is contemplating major ideological or organizational change. Usually, there is a strong overlap between those who have been elected to public office and those who serve in the party conference or executive at the corresponding party level. Few parties maintain a strict separation between party organization and parliamentary party.

The party features that were discussed above are common to most state-wide parties, irrespective of whether or not they operate in a federal environment. What sets state-wide parties in a federal context apart from similar parties in a unitary environment is the relative strength of the regional party branches. Usually, in a federal state, the regional party branches coincide with the regions of the federation. The relative strength of the regional party branches can be brought to the fore in several ways. For instance, at the federal party level, regional branches may come to codetermine the composition of the general party conference or influence the general party ideology. Regional parliamentary leaders may not only serve as party organizational leaders at that level, but may have become active at the level of the federal party as well. Leaving aside some exceptions, a regional MP cannot also be a member of a federal parliament, but she can become a member of the federal party conference or executive.⁴ The strength of the regional party can be played out at the regional level also. For instance, the regional party leaders

may be relatively autonomous in drafting the party manifesto for regional elections, and in supervizing the process of candidate selection for regional and general elections. They may be free from federal interference in the formation of regional coalition governments after the regional elections.

Generally, we can formulate a number of hypotheses which predict the level of involvement of the regional party branches in the affairs of the central party and the autonomy of the regional party branches in running the regional party branch. Most of these hypotheses draw from collaborative research with Bart Maddens and Elodie Fabre. They were initially tested with the British and Spanish party contexts in mind (Fabre, Maddens, Swenden and Pogorelis 2005). These hypotheses take the following six factors into account: (1) the type of federalism (dual or more organic); (2) the scope of the decentralized powers and its direction (more or less centralizing); (3) the general party ideology; (4) the participation of the federal and regional party branches in (federal or regional) government or opposition; (5) the influence of certain institutional mechanisms (frequency of referendums, predetermined composition of the executive, electoral system) on the party organizational structure; and (6) the asymmetric nature of the federal arrangement. In the following section, I will formulate these hypotheses in greater detail and seek to provide empirical evidence from our cases studies to support, qualify or refute them.

4.2. Six hypotheses with regard to the relationship between party and state structure

Dual vs. organic federalism and the position of the regional party branch

A first hypothesis pertains to the relationship between a federation's positioning on the dual-organic framework and the territorial structure of a state-wide party.

Other things being equal, the more cooperative a federal design, the more the regional party branches will be involved in the central party executive and conference and vice versa. Or, to put it differently, we expect the intermingling of federal and regional party positions (in organization and public office) to be higher in federations with a more cooperative design. Also, regional party branches that are embedded in a less cooperative framework are more autonomous in organizing regional party affairs (staffing, finance and campaigning) as they see fit. This is so, because the outcome of regional elections does not affect the policies of the centre that much.

Of all our cases, the German federation has the most cooperative design. In line with the hypothesis, regional party leaders are strongly involved in co-determining federal party policy. Regional executive leaders usually assume a central role in the regional party executives and may even come to lead the regional party branch. Via their membership of the federal second chamber they can veto approximately 60 per cent of all federal bills. At times, the federal party executives of the two major state-wide parties (SPD and CDU)

have been composed from leading regional party branch members for approximately half of their membership (Lehmbruch 1998). Membership of a German regional executive can lead to a ticket in the federal party executive or presidium (almost *ex officio* if the person is a regional Premier). Consequently many regional Premiers who represented a party in federal opposition have used their seat in the federal party executive as a springboard to the federal chancellorship, the highest prize in German politics. Apart from Adenauer and Erhard, all German chancellors have served as regional premiers or ministers first. Before they were elected as chancellor, Kiesinger served as Premier of Baden-Württemberg, Brandt as Mayor of Berlin, Schmidt as Minister ('senator') of the Interior in Hamburg, Kohl as Premier of Rhineland-Palatinate,⁵ and Schröder as Premier of Lower Saxony. The list is even more impressive if one considers all the chancellor races that took place after 1972: Kohl (Premier of Rhineland-Palatinate) vs. Schmidt (1976), Strauß (Premier of Bavaria) vs. Schmidt (1980), Rau (Premier of North-Rhine Westphalia) vs. Kohl (1987), Lafontaine (Premier of Saarland) vs. Kohl (1990), Scharping (Premier of Rhineland-Palatinate) vs. Kohl (1994), Schröder (Premier of Lower Saxony) vs. Kohl (1998) and Stoiber (Premier of Bavaria) vs. Schröder (2002). In each of these races, the Chancellor's challenger was a sitting regional Premier. In most, the challengers already assumed the general leadership of the federal party, while continuing to serve as Premiers. Should Angela Merkel be elected Chancellor in September 2005, she would be the first federal parliamentary opposition leader in more than thirty years to become so without preceding experience as a regional Premier or minister.

Although the leaders of the regional party branches have played an important role in federal party politics, regional branches have retained substantial powers of their own. In this sense, the findings do not correspond with the hypothesis. All the German state-wide parties (even the PDS) display the elements of a federal party. They comprise roughly 16 regional party branches (although regional branches do not always correspond with Land borders) and have entrusted the largest fiscal and administrative autonomy to the subregional party branches (*Kreise* in the case of the CDU, *Bezirke* and *Unterbezirke* in the SPD; see Saalfeld 2002, for a general overview, and Schmid 1990; Lösche and Walter 1994; Vorländer 1992; Hopper 2001; Poguntke 1993; Müller-Rommel and Poguntke 2002 for overviews of the CDU, SPD, FDP and Greens respectively). Furthermore, members usually join the party at the subregional level first. At that level, the pre-selection of most candidates for federal and regional office takes place. Usually, the pre-selection of candidates takes place free from direct federal party influence. State funding primarily accrues to the federal party branch (which it can use to finance electoral campaigns), but membership fees largely flow to the regional or subregional branches.

Although the design of Austrian federalism is cooperative, Austria is also a more centralized federation than Germany. The institutional linkages

between the regions and the centre are weaker than in Germany. The Austrian Bundesrat is less powerful and its membership does not comprise the most important regional political players (Polaschek 2000: 403–22). Consequently, the Austrian regional party leaders play a less-prominent role in the central party, and the regional branches have also retained less autonomy (Dachs 2003). Regional party leaders may eventually end up in federal politics, but they rarely do so without having shifted level first.

Austria has three major state-wide parties; the Social-Democrats (SPÖ), the Christian Democrats (ÖVP) and the Freedom Party (FPÖ). If we leave aside the Freedom Party, the internal structure of the SPÖ and ÖVP approximates to that of a 'federal party'. The regional party branches of both parties have retained some autonomy in the pre-selection of candidates for regional and federal public office and in setting the agenda for regional policy matters. Yet, in both respects, the regional party branches assume a less-prominent position than their German cousins. For instance, when the regional branches stirred a revolt against the federal ÖVP leadership in 1989, the federal party organization responded by claiming a right to propose up to a tenth of all federal parliamentary candidates by the next parliamentary elections. The federal party chairman was given the power to cast a suspensory veto against the suggested ranking of candidates on the regional electoral lists for federal parliamentary elections. In turn, the regional party heads as well as the leaders of the functional party associations received some input in the selection of the federal party leader (Dachs 2003: 92–110).

Swiss federalism also approximates to the organic end of the continuum but, compared with German and Austrian federalism, it has remained more decentralized. Consequently, the regional party branches have retained more autonomy than the regional branches in Germany and Austria. That said, compared with the state-wide parties in the other states, the federal and the regional-party organizations are weakly developed.

Swiss state-wide parties are divided in more than 20 cantonal branches. Cantonal borders coincide with electoral districts for federal legislative elections. Cantonal party branches control most of the party financing, are almost fully autonomous in pre-selecting candidates for federal and cantonal mandates alike and register party membership. Cantonal party organizations spend up to three times the amount of money of the federal party organizations in *federal* election campaigns. Some cantonal party branches refuse to campaign under the federal party name, despite their ideological or organizational linkage to the state-wide party (Hadley, Morass and Nick 1989: 94–5). The weakness of the state-wide party organizations is stressed further by the presence of no less than 5,000 local parties, excluding the state-wide parties from controlling much of the powerful Swiss municipalities (Ladner 2001: 132).

Swiss parties are insufficiently endowed to pay for their political personnel and they employ a small party bureaucracy. In 1997, the four state-wide

parties which took part in federal government employed only about 120 full-time staff, 74 of which were active at the cantonal and only 45 at the federal levels. Parties receive hardly any state funding. In 1999, the four federal government parties received 9.4 million Swiss francs, slightly below the amount that accrues to their cantonal party branches. Party membership fees usually accrue to the regional party branches. Unlike in other federations, there is hardly any public funding available to tilt the overall fiscal party balance in favour of the federal branches (data taken from Ladner 2001: 133–6).

On paper, the federal design of Spain is less cooperative than that of Germany, Austria or Switzerland. On that basis, we would expect the regional branches to be less involved in central party affairs and vice versa. Yet, despite the rapid regionalization of the Spanish state, the two major Spanish state-wide parties have retained a relatively centralized structure. It seems then that the autonomy of the regional party branches is weaker than expected on the basis of the decentralized nature of the Spanish state.

Of the two major Spanish state-wide parties, the Partido Popular (PP or Conservatives) is the most centralized. The PP did not emerge in its present form until 1989, and its first president, later Prime Minister Aznar, invested much of his time in streamlining the organization and in recruiting more and younger party members (Gunther, Montero and Botella 2004: 252–3). The party has kept a strongly centralized organizational structure throughout. Two elements stand out when the PP is put in a comparative perspective. The first element relates to the strong position of the central party president. By statute, the president is acknowledged as the highest representative of the party with a decisive vote in each of the central party organs. The party president also presides over all the parliamentary party groups in the national and European Parliament and can nominate up to a third of the members of the central-party executive. The second element relates to the constraints which party delegates serving at a higher level can impose upon delegates serving at a lower level. Central-party delegates are also *ex officio* members of party decision-making bodies at these lower levels. Hence, national MPs representing the PP also hold a seat in the regional and provincial party councils in the region from which they originate (Biezen 2003: 100–1). Obviously, this constrains the freedom of these party branches in determining suitable electoral strategies and in nominating candidates for central and regional elections alike.

Although the Spanish PSOE (Social-Democrats) is an internally more decentralized party, it remains relatively centralized from a comparative point of view. Its central and regional party branches have a close grip on regional and local politics. For instance, the PSOE's central electoral committee can modify the candidate lists for all regional parliaments, as well as for all municipalities with a population of more than 50,000. Apart from vetoing suggested candidates, the Committee can 'propose' or rather

'impose' alternative candidates. Similarly, although the local party branches collect the bulk of membership fees and can determine their own spending priorities, they must return much of that money to the national party (Biezen 2003: 100). As is common for state-wide parties in other countries as well, state subsidies (funding electoral campaigns, for instance) largely accrue to the central party. As Biezen asserts, 'the national leadership elaborates the budget, establishes the membership contributions, decides on the salaries of party employees, administers party property and decides on electoral expenditures as well as the distribution of money over the organizational echelons of the party' (Biezen 2003: 100–1). Despite the party's centralized character some of the regional party bosses have retained substantive autonomy in crafting their own policies *and* in influencing general party policy. However, this influence is based more on patronage than on structure. For instance, next to being in Spain's most populous region, the PSOE has always dominated the regional government of Andalucia. As a result, regional party bosses there have used their power base to influence the selection of the central party leader, or, when the party was in government, to bargain for central grants. Shortly after it was stranded in central opposition (1996–2004), the PSOE sought to widen its membership base. As part of this process, party members were involved in electing the central, regional and local party leaders (Biezen 2003: 91). The first elections in 1998 along those lines resulted not only in the replacement of the central party president but also in that of 80 per cent of the regional and local party bosses (Gunther, Montero and Botella 2004: 246). In this sense, the influence of the central party branch in determining the regional party leaders has weakened.

Finally, in Britain, devolution is not only a young but also an asymmetric process. Because devolution affects such a small share of the British population, the pressure on the state-wide parties to adapt has been relatively limited. Furthermore, prior to devolution the British state-wide parties already accommodated the regional dimension to some extent. Devolution for Scotland is extensive, and also relatively dual. Yet the autonomy of the Scottish regional party branches is relatively limited, particularly in the Labour and Conservative parties.

Of the British state-wide parties, the British Liberal Democrats best accommodate the regional branches into their state-wide party organization and provide them with the largest level of autonomy (Fabre et al. 2005). For instance, the process of pre-selecting candidates for central and regional parliamentary office alike is entirely supervised by the regions. The Liberal Democrats is the only one of the British parties which not only mentions the powers of its regional branches in its party constitution but also gives them a veto in proposed amendments to the party constitution which affect their powers. Party representatives in the Scottish Parliament and Welsh Assembly take part in the central party conference and delegate a few members to

the central party executive. Finally, only within the Liberal Democrats half the membership of the central appeals body that is used to expel members from the party is appointed by members of the regional branches (Fabre et al. 2005).

Compared with the British Liberal Democrats, the Conservative and the Labour parties have kept a more centralized organizational profile. The British Labour Party is the only one that does not provide for any statutory form of regional representation in the party's executive. Regional delegates are poorly represented in the central party conference. The Conservative Party does not provide its regional branches with a significant voice in state-wide party organs either. However, the party's executive board contains two regional representatives and its members in the Scottish Parliament and Welsh Assembly are present at the central party's conference. In this sense, the Conservatives score higher in terms of regional representation than the Labour Party (Fabre et al. 2005). The Labour and Conservative party constitutions can be amended by a vote of the state-wide organs, generally the party conference or congress, or, in the case of the Conservative Party, a special Constitutional College.

The Conservative and Labour parties leave their regional branches with relatively limited autonomy. Both parties provide for a state-wide instead of a regional system of candidate selection. The Conservative Party is slightly more decentralized insofar as it has established a Scottish Candidates' Board (SCB), whose members are appointed by the Scottish party branch. The SCB overtakes the functions of the national selection committee in scrutinizing candidates for office. In recent years, the Labour and Conservative parties have sought to involve the rank and file more broadly in the pre-selection of parliamentary candidates for central and regional office alike (Hopkin 2001). However, in both parties, devolving powers to individual party members has effectively weakened intermediary party activists and prevented the emergence of alternative candidates that are less to the liking of the central party leadership (Hopkin 2001: 349). Furthermore, the central (not even the regional) party executives can veto proposed candidates for the regional assemblies.

The process of candidate selection, including the selection of a regional party leader has caused some considerable intra-party dissent. In 1999, the central Labour Party machine sought to push through its own candidates for the regional and local party leadership positions in Wales and London. The Labour National Executive Committee forced the nomination of Alun Michael as a candidate for First Minister for Wales, against the wishes of the regional party rank and file and activists. This caused a backlash in Labour Party support on the occasion of the first Welsh Assembly elections in 1999 (compared with the levels of Labour support in the 1997 general elections in Wales).⁶ The central Labour Party did not intervene so strongly any more in the candidate pre-selection process for the second Scottish parliamentary

and Welsh Assembly elections in 2003. Furthermore, the regional party branches were given more freedom to devise their own regional electoral manifestos. Rhodi Morgan, the Welsh First Minister (Labour), approved and co-devised an electoral manifesto which clearly deviated from the British Labour Party line. It proposed amongst other things, free breakfasts for primary school teachers, the abolition of prescription charges, free homecare for the elderly, and no top-up fees for Welsh universities. Each of these policies placed it to the left of the British Labour Party and established, in Morgan's word's, 'clear red water' between Cardiff and London (Baker 2004: 222). This example suggests that the consequences of devolution have not yet fully sunk in and that party structures and behaviour may gradually adapt in the light of the changing institutional context.

The scope of a federal arrangement and the relative strength of the regional party branches

In Chapter 4 I introduced the notion of the 'scope of federalism'. I assume that, as the scope of the regional powers increases, the involvement of the regional party branches in state-wide party affairs also increases. In parallel, the autonomy of the regional party branches (in staffing, finance and regional campaigning) should increase as well.

We can examine this hypothesis by taking a closer look at the role of the regional party branches in two countries at identical moments, say Germany and Austria. The scope of federalism is more extensive in Germany than in Austria. As indicated above, the German regional party branches wield more influence in the central party and have kept more powers to themselves than the Austrian regional party branches. If we expand the analysis to Switzerland, we would note that the Swiss regional party branches have retained the widest autonomy of all the state-wide parties. The path from which Swiss federalism developed featured very loose, decentralized parties.

However, we can also examine this hypothesis by considering how the centralization or decentralization of powers in any given country has affected the autonomy of the regional party branches. One of the most interesting cases for 'testing' this hypothesis is Spain. Spanish devolution has affected all of the Spanish regions and has been ongoing for more than twenty years. In line with the above hypothesis, we expect the Spanish state-wide parties to have become more decentralized in time.

The empirical data do not confirm this view. The UCD, the centre-right party which collapsed in the 1982 general elections, had a very centralized structure. The PP which emerged from the ashes of the UCD started off as a fragmented party of right-wing oligarchs with strong roots in Francoism. Through a series of mergers with small parties, as well as by absorbing several important figures of the UCD, the PP adopted a more centralist profile. However, there is little evidence to support the view that the PP has become more decentralized as the process of devolution continued. There may have

been periods when the party was willing to tolerate more internal dissent, but these are not necessarily the more recent ones. By comparison, although the Spanish Social-Democrats have retained a more decentralized structure than the PP, it has developed in a more centralizing direction. To some extent this makes sense. The party was outlawed during Francoism and party structures had to be created from scratch in more than half of the Spanish provinces. This required considerable mobilization at the grass-roots and regional levels, an effort which cost the party in ideological coherence and efficiency. The party only shed its Marxist legacy in 1979. However, this ideological change reduced the acceptable levels of regional party differentiation. In order to prepare itself for central government, the PSOE became almost as centralized as the UCD. The head of the central party organization, Alfonso Guerra, and the central party leader, Felipe González, used the federal party executive (Comisión Ejecutiva Federal) to scrutinize the candidate nomination process at all levels of government. Without the presence of some 'regional barons' the organizational structure of the PSOE would probably have become even more centralized (Gunther, Montero and Botella 2004: 245). Hence the continued devolution of the Spanish state is linked more strongly with the ongoing success of the ethno-regionalist parties and their pressure on the central government to devolve more powers to the regions.

Next to Spain, Britain would be a good case to study the above hypothesis, albeit that devolution is only six years old. As argued earlier, the regional Labour Party branches were given more of a free hand in devising regional election manifestos prior to the regional elections of 2003 compared with 1999. In contrast, the state-wide parties recognized some form of regional party autonomy *before* devolution kicked in. Scottish and Welsh party members and their MPs had been able to caucus in separate parliamentary gatherings for much longer. The politics of the UK, including the structure of the state-wide parties, provided some recognition of the Scottish and Welsh national characteristics long before devolution was implemented (Keating 2001a; Keating, Loughlin and Deschouwer 2003). The Conservatives and the Liberal Democrats already had separate regional branches which coordinated party activities in Scotland and Wales. In this sense, devolution has not yet made much of a difference other than that candidates and programmes must now also be devised for regional elections and that a new class of politicians has emerged which may not aspire to a role in central politics.

The relationship between the ideology of a party and its (de-)centralized character

Conservative, Christian Democratic, Liberal and Social Democratic parties may not share the same opinion with regard to the further decentralization of the state.

In general, we expect Conservative and Social Democratic parties to be less favourable to devolution than Christian Democratic or Liberal parties.

Conservative parties consider themselves as traditional defendants of the state-nation. They link their existence to important state-wide symbols, such as support for the monarchy (if there is one), the armed forces, a culture or language that can be associated with the majority nation (e.g. Castilian in Spain; English in Britain). Social Democrats may place individual solidarity ahead of territorial solidarity. Traditionally, they forge strong links with labour unions (rather than with territorially organized groups in civil society, although unions of course can have a territorial structure also). Since Social Democratic parties have been associated more closely with Keynesian policies, they propagate a coordinated, centralized approach to policy-making. Such views may even spill over into the organization of the party, for instance, leading to stronger programmatic unity and discipline. By comparison, one may assume that Liberal parties are generally more in favour of fiscal and political decentralization. Decentralization can bring politics closer to the people and strengthen overall levels of accountability. Finally, Christian Democratic ideology places considerable attention on the notion of 'subsidiarity'. The principle of subsidiarity, which is derived from Catholic theology, means that political decisions should be taken as closely to the people as possible (Kersbergen and Verbeek 1994).

Parties with a more favourable attitude to devolution or decentralization may also be more inclined to organize their party structures in a more decentralized way. Hence, such parties may give more autonomy to their regional branches and allow these branches a larger say in central party affairs.

In general, we find some confirmation for this hypothesis. For instance, in Germany, the CDU is considered the most decentralized of the state-wide parties (Schmid 1990). However, the SPD has become a more decentralized party as well. Deprived of federal power between 1949 and 1966, the Social Democrats used their regional electoral successes (and the growing prominence of a few regional minister-presidents as well as coming men such as Willy Brandt) to push through organizational and ideological reforms. Hence, by the 1960s, leading Social Democrats would no longer question the suitability (though not necessarily the design) of German federalism (Conradt 1996). Regional party leaders retained considerable influence in central party politics when the party ended up in federal government. Open party dissent has been more common after unification, reflecting the party's control of several regions with a very heterogeneous socio-economic profile. Contrary to our predictions, the small German Liberal Party is more centralized than the two major state-wide parties. The party's centralized character has been linked to its better performance in federal than in regional elections, as well as to its nature as an interest-based (pro-business) party with a small and homogeneous leadership (Hopper 2001; Saalfeld 2002). Unlike the Christian Democrats and Social Democrats, the small German Liberal party is more an elite and cartel than a mass or catch-all party (Mair 1997).

Of the two major Austrian state-wide parties, the Social Democrats are the most centralized and the Christian Democrats the most decentralized. In contrast with the Social Democrats, the regional party leaders of the Christian Democrats have been continuously represented in some of the federal party organs. However, until the mid-1960s, the party branches of Vienna and Lower Austria, as well as the so-called professional associations (unions, farmers and employers) clearly dominated the other regional party branches. Prior to its transformation from a Liberal into a right-wing populist anti-immigrant party the Freedom Party (FPÖ) was organizationally the most decentralized of the Austrian parties (Dachs 2003).⁷ Since Jörg Haider took the party helm, the Freedom Party has developed into the most oligarchic and centralized of the Austrian parties. Although Haider, the governor (Landeshauptmann) of Kärnten, serves as de facto president of the overall party (at present, his sister formally leads the party), the regional party branches have little influence on general party matters. On the contrary, the central party's resolve to impose unity on all the regional party branches was made apparent in 1998 (Höbelt 2002). When serious infighting between two FPÖ party frontbenchers paralyzed the entire party branch of Salzburg,⁸ federal FPÖ front woman Susanna Ries-Passer (nicknamed the 'kings cobra') was sent out to dismiss all 700 regional party functionaries, a step which no other Austrian party ever contemplated.

In Spain, the Social Democrats are internally more decentralized than the Popular Party. The PP is more a Conservative than a Christian Democratic party, so this does not contradict the general hypothesis. In Britain, the organizational structure of the British Liberal Democrats is more decentralized than that of the other state-wide parties. This is consistent with the prevailing party ideology of the Liberal Democrats on devolution which has been positive throughout. One could even make the case that the pro-devolution stance of the Liberal Democrats goes back to the late nineteenth century, when Prime Minister Gladstone profiled himself as a staunch defender of Home Rule for Ireland. Although the Labour Party has supported devolution it has also remained centralized in several respects, both in structure and in party strategy. In general, the Conservative Party has been less supportive of devolution than the Labour Party. Scottish Tory MSPs have been allowed to defend a more 'moderate' form of British unionism (Baker 2004: 218). Yet, in structural terms, the Conservative Party is at least as, if not more, decentralized than the Labour Party. Possibly then, the relative centralization of the Labour Party is linked to its present control of all central and regional British governments, an important factor to which I now turn.

Government vs. Opposition and its impact on the (de-)centralization of the party

The autonomy of regional party branches and their participation in central party politics is susceptible to change. Change may occur because intra-party

relations take on a different role when the central and regional branches of a party are in government or in opposition. Whether or not parties are in government or opposition may not affect the organization of the party as such, but it may affect the propensity of the central branch to intervene in regional party affairs. The autonomy of the regional party branches is most constrained when they, as well as their central party colleagues, participate in government. In this case, a critique against the general policy line may be interpreted as a critique against the central party. The central party branch may seek to counteract this by centralizing the party. When the regional party is in government, but the central party branch is in opposition, there is more room for criticizing their party colleagues at the central level. Less is at stake for the federal party. Furthermore, the involvement of the regional party branches in central party matters is likely to increase. When the regional party branches are in opposition, but the central party is in government, the central party may still seek to control the regional branches so as to ensure that its general policies are not undermined. Finally, when both the central and the regional party branches are in opposition, the need to coordinate party views is less compelling. However, the central and regional parties in government may seek to drive a wedge between the central and regional branches of the parties in opposition when their views could be interpreted as inconsistent.

In Germany, regional party branches gain influence at the centre when the federal party branch is in opposition. The federal second chamber incorporates regional executive leaders into the central policy process, and thus empowers the voice of the regional party leaders. Via their membership of the Bundesrat, members of the regional executives receive a preview of federal (government) legislation. Regional executive leaders are better informed to criticize the federal government than party colleagues in the federal lower house (Bundestag). As argued above, the federal party executives of the two major state-wide parties contain a higher share of regional executive members when the party is in federal opposition (Lehmbruch 1998).

The overall influence of the Austrian regional party leaders in federal party politics is lower than that of the German regional party leaders. However, as in Germany, Austrian regional party leaders have been able to leave a stronger mark when the party was in federal opposition. For instance, after the general elections of 1966, the Social Democrats were pushed into federal opposition for the first time in post-war history. Until then, the Viennese (and to a lesser extent also the Lower Austrian) branches dominated Social Democratic party politics. The federal party executive even appointed sub-regional party officers (*Bezirkssekretarys*) who operated as de facto 'espionage officers' at the (sub)regional levels. After the electoral defeat in 1966, the federal party allowed the regional party leaders a stronger say in the centre. All the regional party leaders gathered on a monthly basis and were offered a seat in the federal party executive. Consequently, when the Social Democrats recaptured the federal government in 1970 (single-handedly

until 1983) a majority of its members were rooted in regional party branches and politics (Dachs 2003: 73–92). Contrary to what we would expect, when the Christian Democrats were left in federal opposition (1970–86), the role of the regional party branches was *not* strengthened accordingly. However, in this period the Christian Democratic governors of Lower Austria and Tyrol negotiated bilateral deals with the federal Social Democratic government. By softening the harsher opposition policies of the federal party, these governors managed to secure regional interests from the centre (Luther 1999: 57–8). Austrian politics also contains examples which prove that a federal government may wish to constrain the autonomy of its regional party branches in regional government. For instance, federal chancellor Schüssel (ÖVP; 2000–) sought to block the creation of a parliamentary committee in Carinthia that was meant to investigate the illegal use of travel expenses by its regional governor, Jörg Haider. The presence of such a committee could have destabilized the federal government (Dachs 2003).

In Spain, the PSOE became a more centralized party while in central government (1982–96). However, in the same period some of its regional executive leaders strengthened their influence in the centre. Yet this influence is based on ‘patronage’ rather than on upward mobility within the general party structure (Colomer 1998: 46). As Jonathan Hopkin put it, regional party leaders, often representing socio-economically more deprived regions such as Andalucía and Extremadura, successfully used their grip on regional development and infrastructure programmes as a means ‘to control their own packages of votes’ (Hopkin 2003: 232). Thus, they forced the central party leaders into consolidating their influence within the central party organization, a feature that was upheld when the PSOE ended up in central opposition (1996–2004). For instance, Manuel Chaves, the long-time Social Democratic Prime Minister of Andalucía alongside his colleagues from Extremadura, Valencia and Castilla-La-Mancha, played a pivotal role in brokering the pre-selection of the current party leader and Prime Minister, Zapatero (Pallarés and Keating 2003: 243). The assumption that regional party leaders gain influence at the centre, when the central party branch is in opposition, finds more support from the situation of the Spanish Conservative Party. For instance, between 1982 and 1996 two former members of the Spanish central government, Manuel Fraga and Jauma Mates, retained substantial influence within the central party when heading the regional governments of Galicia and the Balears respectively (Gunther, Montero and Botella 2004: 320–1). Also, former Prime Minister Aznar captured the regional Premiership of Castilla y León before becoming the general PP president. In addition to Aznar, a further four ministers in his first central cabinet assumed important regional functions prior to taking up their central mandates. In his second cabinet (2000–4), Aznar appointed the former regional premiers of Castilla y León and Valencia to ministerial posts. Leaving aside such examples of ‘upward or downward mobility’, central and

regional politicians usually run on parallel tracks (Gunther, Montero and Botella 2004: 310–21).

Institutional features affecting the autonomy and participation of the regional party branches

The freedom of the regional party branches in carving out an autonomous strategy may also be affected by a number of institutional variables. I touch here upon four such variables: the referendum, the semi-autonomous relationship between the executive and legislature, the required 'inclusiveness' of central or regional government coalitions and the electoral system.

The referendum features prominently in the Swiss political system. Whenever federal referendums are organized, federal parties (by means of specially convened party conventions) issue recommendations as to how they want the electorate to vote. Yet, as Sciarini and Hug demonstrate, the cantonal party organizations nearly contest a third of the corresponding federal party branch recommendations. Cantonal party branches of parties in federal opposition (such as the Greens) are more obedient to the federal party line (Sciarini and Hug 1999: 148–9). From 5 to 10 per cent of the recommendations which cantonal branches of federal government parties issue are dissentient. The federal party organization cannot sanction the cantonal party branches, as even politicians who serve in the federal parliament have stronger links with the cantonal than with the federal party organizations.

A second element relates to the semi-independent relationship of the federal and regional executives vis-à-vis their corresponding legislatures. Once more, this is a specific feature of the Swiss political system, which, at the federal level, is not fully parliamentary. Once the federal executive has received the consent of the corresponding legislatures (vote of investiture) it cannot be brought down before the expiration of a full legislative term. At the cantonal level, each of the members of the executive is even directly elected in separate elections from the corresponding legislatures (Linder 1999: 153). Consequently, the need for overall party cohesion (and party discipline to achieve it) is lower than in a standard parliamentary democracy. Such a system opens up more space for intra-party dissent, and possibly also for more divergence between the central and the regional wings of a state-wide party.

A third element relates to the inclusiveness of federal or regional government coalitions. The more inclusive such coalitions the lower the pressure to coordinate federal and regional party views, because the dichotomy between government and opposition becomes less meaningful at each of these levels. Switzerland and Austria have widely inclusive coalitions. In Switzerland, such coalitions appear at the federal and regional levels. The 'magic formula' has been formed by convention and could be terminated at any point. Between 1959 and 2003 it resulted in two federal executive seats for the Christian Democrats, Social Democrats, Liberals and the agrarian People's Party. As a result of its exceptional score in the 2003 federal elections, the

increasingly right-wing and populist People's Party received an extra seat. Similar arrangements apply in most of the 26 cantons. In Austria, regions where the so-called *Proporz* rule applies are also inclusive. The *Proporz* rule implies that parties which have gained representation in a regional parliament can claim a number of seats in the regional executive that is proportionate to their electoral standing. This rule makes grand coalition governments almost a permanent feature in such regions. Consequently, a regional electoral loss would not necessarily lead to a loss of regional government responsibility. Hence electoral losses (or gains) in regions which apply the *Proporz* rule are less damaging (rewarding) for the corresponding federal party. The *Proporz* rule constrains the autonomy of the regional party branches in the coalition-building process that follows after the regional elections, but also provides them with some protection against federal party interference because less is at stake. For instance, Herbert Dachs has noted that the major electoral defeat of the Social Democrats in the 1974 Salzburg regional elections was not even touched upon in a subsequent federal party executive meeting (Dachs 2003: 85).⁹ At present, the *Proporz*-rule is practised in Lower and Upper Austria, Steiermark, Kärnten and Burgenland. Since 1998, Salzburg and Tyrol have adopted a classic parliamentary form of government. Vorarlberg adopted the simple parliamentary model much earlier, while Vienna still applies an unusual hybrid. The *Proporz* system is used for the composition of the city executive, but not all ministers receive genuine portfolios. Those without portfolio could thus be considered as belonging to a party in opposition (Pelinka and Rosenberger 2003: 226).¹⁰

The final variable with an impact on regional party branch autonomy is the electoral system, to which I shall turn in greater detail in sections 4 and 5. We should distinguish between the impact of the electoral system on the process of candidate selection and its influence on the acceptable levels of ideological divergence between the central and regional party branches. In majoritarian electoral systems, the process of candidate selection is more likely to be decentralized than in proportional electoral systems. This is so because constituency associations are located at a much lower level than proportional lists. For instance, in Britain (subregional) constituency associations play an important role in pre-selecting central and regional MPs, albeit that the central party can and does interfere in this process. Where PR elections use list votes, candidate selection is centralized at a higher level. However, in most federations, the regional and not the central party plays the most important role in composing the list for regional and possibly even federal elections. In this sense, the influence of the electoral system on the (de)centralization of candidate selection is not clear cut and each of the cases must be studied individually.

There seems to be a clearer relationship between the electoral system and the acceptable levels of policy divergence in campaigning and policy-making. As I will explain in section 4, PR environments allow for the expression

of a more diversified platform of opinion than majoritarian electoral systems. PR elections are less dominated by only one or a few issues. Therefore, the expression of regional party views that are partially inconsistent with the central party line is less harmful to the overall party. As PR is more likely to lead to coalition government, parties have to be willing to depart from the viewpoint that was expressed in the preceding election campaign. In this sense, if a regional coalition government is to survive, regional party branches may be forced to express a different view from that which is taken by the central party, and the central party may have no choice but to accept it.

Asymmetric federalism and asymmetric party decentralization

When federal or regionalized states have an asymmetric state format, we would expect to find traces of that asymmetry in the organization of the state-wide parties. For instance, regional party branches which are located in more autonomous regions may have a disproportionately large input in determining central party policy. Possibly they may be relatively free from central interference in putting together a manifesto for regional elections and be more autonomous in pre-selecting candidates for central and regional elections.

Spain and Britain have the most asymmetric forms of decentralization. In Spain, that asymmetry is reflected in the internal organization of the Spanish Social Democrats.¹¹ The PSOE does not operate through its own party branch in the Basque Country and in Catalonia. In the Basque Country, the PSE is responsible for campaigning and pre-selecting candidates for regional elections, but, at the central level, the PSE constitutes one party group with the PSOE (Hopkin 2003: 234). In theory, the Catalan PSC is even more autonomous than its Basque counterpart. The special status of the PSC has its origins in 1978, when the Catalan party branch of the PSOE merged with the PSC, itself the amalgamation of small socialist parties in that region. Officially, the PSC is not a part of the PSOE, but it cooperates with the latter by means of a 'federal agreement' (Roller and Van Houten 2003: 10–11). In this sense, the PSC relates to the PSOE in similar ways as the Bavarian CSU to the CDU. In contrast with the PSOE, the PP has adopted a symmetrical party structure. Although the party does not campaign under its own name in the Basque Country and Navarra, the parties which operate there could be perceived as regional party branches.

The asymmetric nature of devolution in the UK has occasionally resulted in a greater degree of autonomy for Scottish party branches than for Welsh party branches. However, the extent of asymmetry is less extensive than one may suspect. For instance, in the Conservative Party, the process of candidate selection for national parliamentary mandates is supervised by a nation-wide committee. In Scotland, however, a separate Candidates Board assumes this function, free from central interference. Likewise, in Scotland,

the implementation of disciplinary matters against Conservative Party members is controlled by a Scottish Disciplinary Committee. In the rest of the UK it is left in the hands of a state-wide party body. This form of asymmetry is unique to the Conservative Party (Fabre et al. 2005). There is of course a larger scale of asymmetry if we were to extrapolate the analysis to England. English MPs do not caucus in separate meetings, and there is no English Labour or Conservative Party. Because of the absence of an English regional parliament, the whole machinery that was put in place to pre-select Scottish MSPs or Welsh Assembly members is missing from the English context.

4.3. Belgium: the odd fellow in party organizational terms

All Belgian parties with representatives in the federal parliament are non-state wide. Yet, only a few of them, in fact representing less than 10 per cent of the vote, can be classified as ethno-regionalist. Because they are non-state wide, these parties do not have separate federal and regional party branches. Instead, they have only one encompassing party decision-making body that coordinates federal and regional elections, supervises the pre-selection of candidates for federal and regional parliamentary office and drafts party manifestoes.

Belgian parties only have one party leader who must coordinate overall party policy in the federal and regional arenas. Party leaders can have an elected position at the regional, federal or even European levels. Although Belgium is a federation of three Regions and Communities, in party-political terms it is a dyadic federation. The French and Flemish party systems exist alongside each other. With the exception of Brussels(-Halle-Vilvoorde), parties from both linguistic sides do not compete against each other. Since the French-speaking population of Brussels makes up a sizeable proportion of the French-speaking electorate, most of the French-speaking parties have set up separate branches for Brussels and for the rest of French-speaking Belgium (Wallonia). In comparison, owing to the tiny share of the Flemish electorate (less than 5 per cent) who live in Brussels, the Dutch-speaking parties have not set up separate party branches to accommodate the Dutch-speakers who live in Brussels (Deschouwer 2004a). In this sense, the internal structure of the Belgian parties is consistent with the asymmetric structure of the Belgian state. In Flanders, Region and Community have merged, in French-speaking Belgium a French Community exists that is separate from the Walloon and Brussels Capital Regions.

The absence of separate federal and regional party organizational branches blurs the demarcation line between the federal and the regional parliamentary parties as well. As a result of the former, the single-party executives and conferences comprise a mixture of politicians who are active at either level. As a consequence of this, politicians who serve in one parliament do not hesitate to put themselves forward for public office at a different level. If elected, they may decide to 'hop' to that level, rather than to

complete the full legislative term in the parliament to which they were first elected (Fiers 2001).

We can illustrate the mixed composition of the single-party executives by considering the regional ministers or MPs as a share of all federal and regional ministers or MPs represented there. In 1998–99, this share was as high as 60 per cent for the French-speaking Liberals, and 65 and 38 per cent for the French-speaking Social Democrats and Christian Democrats respectively (Biondi 2001). Within the group of the Dutch-speaking parties, the comparable shares in 1999–2000 stood at 50 (Social Democrats), 50 (Greens), 46 (Vlaams Blok), 40 (Christian Democrats) and 36 (Liberals) per cent (Noppe: 2001: 429–501; Swenden 2002). The same pattern appears at the level of the general party presidents, who are members by virtue of the party executives. In 2001, the party presidents of the Flemish Liberal Democrats and Greens as well as the party president of the French-speaking Social Democrats served as regional MPs. The party presidents of the Flemish Christian Democrats and the French-speaking Christian Democrats served as federal MPs. The party presidents of the extreme-right-wing Flemish nationalists and the French-speaking Liberals represented their party in the European Parliament. The French-speaking Greens have a rotating presidency. Finally, the Flemish Social Democrats recruited their party president from outside (he was the former head of a private marketing office).

We can illustrate the extent of ‘level hopping’ by stipulating that in 2000, 18 of Belgium’s 55 federal and regional ministers did not serve at the level in which they were first elected (Fiers 2001). More examples can be given. Shortly before the federal elections of May 2003, the then Flemish Minister-President announced his pending transfer to the federal government (in which he served as Vice Minister-President after the federal elections). In the lead up to the regional elections of June 2004, the then president of the Flemish Social Democrats specified that all the Flemish Social Democratic ministers in the federal government should be considered as potential future ministers in a regional government (despite the election of the federal parliament less than a year earlier). Obviously, such practices are questionable from the viewpoint of democratic accountability, but they fit into the Belgian method of steering a dyadic federation with a bipolar party system (Deschouwer 1999; Swenden 2002).

5. Parties in the electoral arena

5.1. Party strategies in a multilevelled electoral environment: general observations

Parties seek to maximize votes and most of them also aspire to executive office. Party strategies on how to woo the electorate before and to deliver on its promises after the elections are important for consolidating and expanding levels of political credit. In federal or regionalized polities, parties must

devise strategies for central and regional elections. These strategies are determined by a number of factors, which are summarized here in brief.

Regional elections as first- or second-order elections

The differences in profile that state-wide parties adopt in central and regional elections depend on whether or not the regional elections are perceived as 'second-order' elections. The more regional elections acquire the character of 'second-order' elections, the smaller the differences in profiles between state-wide parties in both types of elections. Two questions arise: first, how do we recognize second-order elections; second, why are certain elections second order?

Second-order elections are characterized by lower turnout levels and a greater willingness among voters to experiment and turn to lesser parties than in 'first order elections'. It has been said that European Parliamentary elections as well as regional elections are generally second order relative to national/general parliamentary elections (Reif and Schmitt 1980). Regional elections are second-order when parties in central government are systematically losing votes compared with the nearest preceding general elections and when the opposite holds for parties in central opposition (Jeffery and Hough 2003: 199–200).

For instance, testing the 'second-order character' of regional elections in Germany and four Spanish regions (amongst which were the historic regions of Catalonia and Galicia), Jeffery and Hough found supporting evidence for the second-order character of the German, but not of the Spanish, regional elections. In Germany, parties in federal opposition performed on average 10 per cent better than one would expect on the basis of averaging their vote share in the preceding and ensuing federal elections. For small parties, the 'second-order bonus' came even close to 27 per cent. As expected, turnout for regional elections was also much lower than in federal elections. Small parties as well as opposition parties perform best if the regional election falls mid-way in the federal electoral cycle (Jeffery and Hough 2003: 202–4).

By comparison, in Spain, all the major state-wide parties (in central government and opposition) performed badly in regional elections, since most of their votes flocked to the ethno-regionalist parties. Considering the regional elections in *each* of the Spanish regions, Pallarés and Keating came to a different conclusion. Turnout rates for regional elections are markedly lower than for general elections. On average 66.3 per cent of the voters show up in regional elections, 10 per cent below the average turnout levels in central elections. Contrary to what one would expect, turnout levels are generally higher in the non-historic regions. This is so because with the exception of the three historic communities and Andalucía the elections in all the other regions are held on the same day (Pallarés and Keating 2003).

The instruments for measuring second-order elections focus on turnout and electoral outcomes. But one could make a case that second-order

elections could also be defined on the basis of the *issues* that are at stake in the electoral campaign. In this sense, regional elections that are absorbed by *central policy issues* or that revolve around the capacity to thwart the agenda of a central government are for that reason also 'second order'. For instance, the regional elections in Lower Saxony in the spring of 1998 attracted unusually high turnout levels. However, this was so because the outcome of that election determined who would be the next SPD Chancellor candidate, Gerhard Schröder, or the then Premier of Saarland, Oskar Lafontaine. Hence, that election was 'second order' because 'regional issues' hardly received any importance.

In Germany, the design of federalism contributes to the second-order character of regional elections. When the federation tends towards the organic end of the continuum, regional elections are more likely to be second order than when the central and regional powers are more disentangled. Even German regional elections which do not determine a future candidate for the Chancellorship may have a profound impact on the steering capacity of the central government. The outcome of regional elections could tilt the balance of powers in the second chamber in one direction or another. As a result, some federal party leaders may be actively involved in regional election campaigns (a strategy that may provoke resentment from the regional party leaders when the federal party branch is unpopular), or stimulate the making of particular coalition-governments afterwards. Hence, much is at stake, and what is at stake often affects federal politics as much as or even more than regional politics.

If we accept that the 'second-order' character of elections should be measured by considering issues and electoral behaviour rather than turnout, then the higher turnout levels in the non-historic Spanish regions do not indicate that regional elections are of 'higher order' there than in the historic regions. On the contrary, the regional elections in Andalucia coincide with the Spanish general elections, and the regional elections in all of the non-historic regions coincide as well. Therefore, the preceding electoral campaigns, the considerations of the voters as well as the interpretation of the results are more likely to be affected by the central political framework.

The higher the frequency of coinciding (central and/or regional) elections, the more state-wide parties will seek to devise a uniform strategy for all these elections and the more likely the regional elections will turn into 'second-order' elections. Generally, a distinction is made between vertical and horizontal simultaneity (Deschouwer 2003: 223). The Andalucian example illustrates a form of '*vertical simultaneity*': central and regional elections coincide. Although the regional elections of Andalucia coincide with the Spanish general elections it takes only a single early dissolution of either parliament to break that cycle. Until May 1999, Belgium practised vertical (and horizontal) simultaneity: the federal and all the regional elections coincided. Since 2004, federal and regional elections are no longer held on the same

day. In this sense, we are not left with any significant examples of vertical simultaneity in Western Europe.

The simultaneous election of all the other non-historic regional parliaments in Spain constitutes an example of *horizontal* simultaneity. Horizontal simultaneity is more common. For instance, some of the Austrian and East German regional elections coincide (Tyrol and Upper Austria; Carinthia and Salzburg; and the election of a few East-German regional parliaments). The elections of the Scottish Parliament and Welsh Assembly coincide as well (but the Northern Irish Parliament, should it be reinstated, would not be elected on the same day as the Scottish or Welsh Parliament/Assembly). Once more, Belgium is unique. It is the only one of our cases in which *all* the regional elections coincide (and coincide with European Parliamentary elections). The non-state-wide character of all the Belgian parties diminishes the difference between federal and regional election campaigns. Federal and regional election campaigns are coordinated by identical party branches, they involve the same core party leaders, they address identical electoral markets, and they use the same (linguistically split) media. In such a context, elections are even less focused on issues that fall within the specific domain of the level of government that is contesting the elections. This is so, despite the more 'dual' blueprint of Belgian federalism. The outcome of the first uncoupled regional elections (June 2004) was largely interpreted through the lenses of the preceding federal election result (disaggregated at the regional level). The next federal elections (no later than June 2007) may be equally interpreted in light of the most recent regional electoral outcome. The wide-spread practices of double-candidate listing and level hopping which were discussed above are not conducive to devising different campaign strategies for both types of elections either.

Apart from the institutional design of federalism and the degree of simultaneity, the first/second-order nature of regional elections is also influenced by the heterogeneity of the federal or regionalized polity. Other things being equal, regions which qualify as nations are more likely to feature 'first-order' than second-order elections. The presence of ethno-regionalist parties, as in Catalonia, the Basque Country, Scotland or Wales underlines such heterogeneity, but it is not a prerequisite. For instance, comparing expected and effective outcomes for regional elections, Jeffery and Hough noted that German regional elections have turned much less into 'second-order elections' after than before German unification (Jeffery and Hough 2003).

Differences in strategy related to the relative importance of regional elections

Irrespective of the issues at stake, their timing or the federal design in which regional elections take place, not all regional elections are equal. Some regional elections are more important than others. This may be because the regions in which elections are held carry more political, demographic or economic weight. Some regions may have more symbolic significance as

traditional party strongholds. For instance, the German Social Democrats were upset by their dismal electoral performance in the May 2005 regional elections in North-Rhine Westphalia. North-Rhine Westphalia had been a party stronghold for more than twenty years and carries important weight as Germany's most populous region. It was also the last of the German regions that was still fully controlled by an SPD-Green majority. As a result, the CDU majority in the Bundesrat was so large that it could effectively block all federal government bills (the government would need a two-thirds majority in the lower house to overturn a Bundesrat veto which could be easily cast with a two-thirds majority). Similarly, a Spanish Conservative government may care more about the outcome of the regional elections in Catalonia than in Extremadura. This is so because it may rely on the support of some of the Catalan ethno-regionalist parties in the centre and it has never been particularly strong in Extremadura anyway.

The more a state-wide party cares about a regional election, the more its state-wide party wing may seek to influence the campaign or the government formation process which follows upon the regional election. However, when a central party performs badly in state-wide opinion polls, it may deliberately wish to keep a low profile in the regional election campaign, or regional party leaders may seek to distance themselves more explicitly from the central party branch.

Differences in strategy related to party ideology and government responsibility

In line with their more centralized organizational structure, we expect the central party machines of the Social Democratic and Conservative parties to intervene more in the regional election campaigns than the corresponding party bodies of the Christian Democratic or Liberal parties. However, state-wide parties in central government have a stronger incentive to steer the election campaigns of their regional branches than state-wide parties in central opposition. For the former, a lack of coordination comes at a potentially higher political cost, while a diverging strategy for parties in opposition may maximize their regional electoral returns without compromising the overall consistency of the party. For instance, as long as Labour holds the political strings in London, Edinburgh and Cardiff it cannot tolerate as much internal divergence. This may change if it were to lose power in London. In that scenario, the regional Labour Party branches can gain from radicalizing their opinion (not necessarily with regard to devolution per se, but also with respect to policies in matters that have been devolved already, such as health and education), without risking embarrassing the central party too much.

Differences in strategy related to the electoral system

Whether elections take place in a proportional or majoritarian electoral environment can influence the campaign strategies of state-wide parties in two important respects. The choice of electoral system affects (1) the number and

scope of issues that are discussed in the regional election campaign and (2) the potential need to interfere in the post-electoral phase (government formation). Both aspects are discussed in turn.

Other things being equal, systems of proportional representation produce a more fragmented party landscape than majoritarian electoral systems. In a multiparty environment, the elections are more likely to focus on a multitude of issues, such as economic development, environmental policies, criminal policy or the regionalist issue. In contrast, when a majoritarian electoral system produces a *de facto* two-party environment, the election is more likely to concentrate on fewer issues. If the two regional players are regional party branches of state-wide parties (say a Conservative against a Social Democratic party), the campaign may almost exclusively focus on socio-economic issues. The regional party branches will be left with fewer opportunities to emphasize the regionalist issue.¹²

With the exception of the UK, central and regional elections are usually organized under the form of a proportional electoral system.¹³ In the UK, general elections still use 'first past the post', but the election of the Scottish Parliament and Welsh Assembly use a 'mixed member proportional formula'. A majority of MSPs or Welsh Assembly members is still elected by 'first past the post'. However, that result is 'topped up' by adding a share of members who is elected by PR (on the basis of proportional list votes). Consistent with the assumption formulated above, we would expect parties to take on more divergent profiles in regional than in general elections. To investigate this Pogorelis et al. have analysed the party manifestoes which the British parties, including the ethno-regionalist parties, prepared for all of the general and regional elections between 1997 and 2003 (Pogorelis et al. 2005). The analysis measured differences in salience for a variety of issues including the so-called 'regionalist issue', that is, manifesto sentences that emphasize a call for more (or less) devolution. In line with our expectations, regional party branches emphasized more and different issues in regional elections than their corresponding state-wide parties in general elections. Such differences also appeared with regard to the regionalist issue. In this sense, the multiparty environment of the Scottish and Welsh party system did allow for more issue divergence, and thus also some autonomy from the central party. Interestingly, in the 2003 regional elections, the second only of its kind, the ethno-regionalist parties gave a lower salience to the regionalist issue than in the 1999 elections. Hence, the difference in campaign strategy between the state-wide party branches and the ethno-regionalist parties on the regionalist issue was narrowing. One potential explanation is that in order to open up themselves for participation in a regional coalition government, the ethno-regionalist parties not only moderated but also de-emphasized their views on regional autonomy (and possibly, though this was not researched, will emphasize it more strongly in subsequent general elections when their participation in government is not normally a possibility let alone an objective).

The brief analysis of the party dynamics in the Scottish and Welsh elections suggests that PR brings in a second dynamic of its own. The likelihood that coalition governments are required after the elections is much higher than in elections that are held under a majoritarian formula. In this regard, the preferred option of which party should be taken into a coalition government after the elections can turn into an electoral theme. Furthermore, the central branches of state-wide parties may seek to influence the formation of regional coalition-governments after the elections.

Germany serves as a good example. In Germany, the federal party branches of the state-wide parties generally prefer the formation of regional coalitions which replicate the federal government–opposition divide.¹⁴ From the viewpoint of a federal opposition party, regional coalitions that would hand back a majority to the federal government parties in the Bundesrat, or at least would remove its majority in the second chamber, should be avoided. From the perspective of a party in federal government the opposite logic applies. Yet the federal branches of the state-wide parties may not be able to push through the regional coalition governments of their liking. For starters, they must accept the verdict of the regional voters. Furthermore, the regional and not the federal party executive may have the strongest input in determining who is to enter a regional coalition government. Formally, only the federal party executives (presidiums) of the Liberals and Social Democrats have the power to intervene in the making of regional coalitions (Jun 1994; Kropp and Sturm 1998; Kropp 2001).

In the mid-1990s, William M. Downs conducted survey research among an extensive sample of German regional MPs. When asked who they believed most strongly determined coalition strategies during and after the regional elections – the federal or regional party leaders – no less than 94 per cent of the respondents opted for the regional party leaders. Nonetheless, with the exception of the Greens, a slim majority of the Liberal and Social Democratic respondents identified the influence of the federal party leadership in regional coalition bargaining as strong. The corresponding share of the Christian Democratic respondents who reported strong influence even hovered around 80 per cent. Although the reported response for the Christian Democrats is at odds with its profile as the most decentralized of the state-wide parties, the result may be attributed to the presence of the CDU in federal government at the time of the survey (Downs 1998: 195).

5.2. Party strategies in a multilevel electoral environment with ethno-regionalist parties

Faced with a relatively homogeneous electorate, state-wide parties may pursue similar strategies in the central and regional electoral arenas. Faced with a territorially divisive electorate, parties may be keen on differentiating their strategies between both levels. Electorates are territorially most divisive

where they feed strong ethno-regionalist parties. Such parties may directly undermine the legitimacy of the state and force the state-wide parties to take a position on 'the regionalist issue'. As the presence of such sizeable ethno-regionalist parties brings in a dynamic of its own, I treat the strategies of state-wide parties vis-à-vis the ethno-regionalist parties and vice versa in a separate section.

State-wide parties and two potential explanations for how ethno-regionalist parties will be treated

When state-wide parties face the competition of one or several ethno-regionalist parties, they must seek to find a stance that maximizes their vote share without compromising the overall ideological cohesiveness of the party. Ethno-regionalist parties owe most of their existence to their demand for regional autonomy (possibly secession). They are certain to ask for more regional autonomy than the state-wide parties are willing to concede. The presence of this so-called 'regionalist issue' in the campaign is absent from a context which only involves (regional party branches of) state-wide parties. Political science has devised two sets of approaches for explaining the likely strategy of the state-wide parties (Maddens and Swenden 2002).

A first set takes the distribution of the voters on the ethno-regionalist issue as its starting point. It borrows from the *proximity theory of voting* (Downs 1957). Assume that voters are not polarized on the regionalist issue, that is, cannot be divided into two radically opposing camps, one seeking a more centralized state structure, the other propagating regional independence. Instead, both of these options merely serve as two outliers. A majority of the voters are distributed around a middle position which reflects support for a modest departure from the status quo into the direction of more regional devolution. Faced with such an electorate, state-wide and ethno-regionalist parties may well converge towards that middle position. Alternatively, when the electorate is divided in two equally large but radically opposed camps with respect to the regionalist issue, moving towards that middle position may be too costly for the state-wide and the ethno-regionalist parties. State-wide parties may be punished for not being centrist enough. Ethno-regionalist parties may be subject to sanctions for being insufficiently supportive of regional autonomy.

A second set of explanations borrows from the *directional theory of voting*. It argues that irrespective of the distribution of the electorate and the type of election, the regionalist party will intensely emphasize its pro-autonomy stand (Raboniwitz and Macdonald 1989; Maddens 1996). Predicting the position of the state-wide parties, in contrast, is more complex. In regional elections, directional theory would normally expect the state-wide parties to remain silent on the regionalist issue and to focus on alternative issues instead. Yet the feasibility of such a downplaying strategy will probably depend on the strength of the regionalist party. The stronger the

ethno-regionalist party, the more difficult it will be to ignore the regionalist issue and the more state-wide parties will be forced to opt for an intense centralist or anti-separatist stand. In their choice of strategy, state-wide parties are likely to be influenced by many elements that were already extensively touched upon in the previous section. What is the corresponding view and influence of the central party branch and how much divergence from the prevailing state-wide party view does it tolerate? What view do the other state-wide parties take on the regionalist issue? Are the ethno-regionalist parties sufficiently strong to form a regional government?

Spain offers the ideal environment in which to test these assumptions since ethno-regionalist parties have popped up in several of its regions. In general, the attitudes of the Spanish electorates with regard to the regionalist issue are not 'frozen'. As indicated earlier, Spain has a relatively large share of 'dual voters', that is, voters who vote differently in central and regional elections. For instance, between 1986 and 2000, the mean result for the ethno-regionalist parties in *central* elections which were organized in the Basque Country, Galicia and Catalonia was respectively 49.2, 12.6 and 35.6 per cent. The corresponding results for these parties in *regional* elections were much higher. They stood respectively at 62.0, 19.4 and 51.4 per cent. In the whole of Spain, non-state-wide parties attract a vote share that is roughly 7 per cent higher in regional than in general elections (Pallarés and Keating 2003: 247, 250–1). Dual voters may argue that their regional interests are best served by voting for ethno-regionalist parties in regional elections. At that level, ethno-regionalist parties may be strong enough to form a regional government. By comparison, in general (central) elections, these parties are not likely to be strong enough to influence the composition of the national government (notwithstanding the exceptional situation from 1993 to 2000, and again since 2004 when their influence at the centre was decisive for taking the federalization process a few steps forward).

The presence of a significant group of dual voters indicates that parties must not take a polarized attitude on the regionalist issue. Yet, as identity surveys document, public opinion is more polarized on the regionalist issue in the Basque Country than in the other historical regions (Catalonia and the Basque Country; Moreno 2001; and Chapter 7). Therefore, a polarized campaign strategy may pay off more in the Basque Country than in Catalonia. Since the ethno-regionalist camp represents a sizeable share of the electorate, the state-wide parties cannot downplay the regionalist issue so easily. The legacy of terrorist activities forces the state-wide parties to address the Basque question head on, not only at the regional but also at the national level. Many of the terrorist attacks take place outside the Basque Country and proposed changes to the Basque autonomy statute require the consent of the centre. With these observations in mind, the 2001 Basque elections require some further attention.

Despite the relatively polarized electorate on the regionalist issue some of the Basque regional governments had been made up of a coalition of state-wide and ethno-regionalist parties (PSOE/PSE-PNV). However, since January 1999 the Basque regional government had been composed of PNV and EA representatives, initially even with the legislative support of Euskal Herritarrok (EH), the political arm of ETA. An ethno-regionalist coalition had been made possible after all three parties signed an agreement in 1998, the so-called *pact of Lizarra* which ruled out the use of any future violence. ETA reopened its terrorist attacks in 2000, in part because Spanish Prime Minister José María Aznar (PP) refused to recognize a Basque minority government which relied on the support of EH. The PP also protested against the Basque government parties' intent on organizing a referendum on Basque sovereignty after the elections.

In its campaign prior to the Basque elections, the regional branch of the PP adopted a harsh-line attitude of non-cooperation vis-à-vis the ethno-regionalist parties, hoping to secure an absolute majority of votes. Clearly, the central party's strategy was meant to polarize the electorate on the issue of regional autonomy, and to drive most voters to the PP. In turn, the EA, the most radical of the two largest ethno-regionalist parties took on a harsh attitude against the PP, despite the fact that it formed an electoral cartel with the more moderate PNV. The Basque Social Democrats (PSE) adopted a more moderate profile as well. In the end the 'harsh-line view' of the PP paid off but only insofar as the party increased its vote share compared with the previous regional elections. The PP did *not* capture an absolute majority of the votes as hoped for. Consequently, the ethno-regionalist parties could prolong their coalition-government (Gunther, Montero and Botella 2004).

According to the *directional theory*, the relative size of the ethno-regionalist parties – which until then were strong enough to form a regional government by themselves – forced the PP to put the regionalist issue high on the political agenda. The direction which the PP would take could be the opposite of that which was expressed by the ethno-regionalist parties. However, the outcome of the elections suggests that the PP campaign strategists overlooked the alternative option of taking a more moderate stance on the ethno-regionalist issue. Hence, in tune with the *proximity theory*, the electorate was less polarized on the ethno-regionalist issue than was assumed.

A central branch of a state-wide party may not always seek to reduce the regionalist campaign rhetoric of its regional party branches when it faces the competition of an ethno-regionalist party. In fact, in the mid-1990s, the central PP removed its party secretary in Catalonia, because his views on the organization of the state were too centrist. Such a strategy was believed to harm the party's electoral fortunes in the regional elections (Hopkin 2003: 232). Within Catalonia's regional party system, the PP is a small player. Also in this example, the *proximity theory* seems to have a stronger predictive value for explaining the actions of the central PP. According to the

directional theory, the PP would have to emphasize the regionalist issue (as the ethno-regionalist parties command too large a share of the regional vote), but in differentiating themselves from these parties only a radical centrist campaign would be a viable one. However, such an option runs against the opinion of a vast majority of the regional electorate, who do not wish to return to a more centralized state structure.

Apart from illustrating the predictive value of the proximity or directional theories, the Basque and Catalan examples also demonstrate that state-wide parties can adopt more pro-regionalist views when they are not in central government. In the case of the Catalan example, the PP was not in central government and thus could more easily push its regional party branch into accepting a 'relatively' pro-autonomy stand. In the Basque example, the PP ruled the centre and imposed a hard-line attitude that was consistent with the central party ideologies of that time. Similarly, the PSC, the Catalan Social Democrats, was allowed less freedom in the centre and at home so long as the PSOE controlled the Spanish government. For much of the period when Felipé Gonzalez was central party leader, the PSOE intensely scrutinized the strategies adopted by the PSC, and even forced the party to give up its 'separate parliamentary party group' in the general parliament, a privilege which it regained only after the Socialists ended up in national opposition again (i.e. in 1996; Roller and Van Houten 2003: 12–13). Furthermore the PSOE prevented the PSC from taking a more regionalist stance in regional elections, thus attracting a share of the voters who prefer to vote more 'regionally' in regional than in central elections. The PSC was only allowed to carve out a more autonomist role for itself and to convey the image of a 'quasi-regionalist' party in regional election campaigns after Pascal Maragall (the former mayor of Barcelona) was elected to the PSC's leadership and some party scandals had weakened the central party branch (Roller and Van Houten 2003). Whether such 'divergence' can be maintained now that the PSOE and PSC are controlling the central (2004–), respectively Catalan (2003–), regional governments remains to be seen.

The radical approach of the formerly Belgian state-wide parties

Of all the state-wide parties, none responded more drastically toward the rise of the ethno-regionalist parties than the Belgian parties. Not only did they absorb many of the issues that the ethno-regionalist parties stood for, but in the process they themselves split up along linguistic lines. The break up of the state-wide parties started in 1968, when the Christian Democrats disagreed on a decision to split the bilingual Catholic University of Louvain into a Dutch- and a French-speaking university and to move the latter to a newly built campus across the linguistic borderline. Once the Christian Democrats split, the Liberals (1972) and Social Democrats (1978) followed suit. From the outset, the Greens entered the electoral stage as two monolingual parties. By breaking up along linguistic lines, the former state-wide

parties could sharpen their regionalist profile, establish their own party organizational structures and party programmes, and select a party leader of their choice.

Arguably, the ethno-regionalist parties were too successful. As Belgium turned into a federal state (policy success) and most of the ethno-regionalist parties actively participated in negotiating this transformation, their original rationale evaporated. The only alternative was to radicalize their opinion even further. This dilemma, in some sense comparable to the ambiguous attitude of the SNP towards devolution, has contributed to the break up of the Flemish People's Union (VU) into several ideological wings. In 2002, the New Flemish Alliance (NVA) emerged as the ideological heir to the Volksunie, but unlike the former it propagates a *confederal* Belgian state. In order to secure their electoral survival, the two long-standing ethno-regionalist parties, the NVA and the Front Démocratique des Francophones (FDF) even had to forge electoral alliances respectively with the Flemish Christian Democrats and the French-speaking Liberals on the occasion of the most recent regional elections (June 2004). By itself, the NVA might have failed to surpass the 5 per cent electoral threshold at the provincial (subregional) level that is needed to enter parliament. Similarly, the FDF might have been excluded from any federal or regional (Brussels) coalition negotiations. The third regionalist party of historical significance, the Rassemblement Wallon has long disappeared, while some of the moderate and left-wing sections of the Flemish People's Union joined the Flemish Social Democrats. For reasons explained in the introductory section, the Vlaams Blok/Vlaams Belang is more often classified as an extreme-right-wing rather than an ethno-regionalist party. Survey data reveal that such a classification is partially justified. In 2003, less than half of the Vlaams Blok voters identified exclusively or more with Flanders than with Belgium (compared with 68 per cent of the NVA voters). About 47 per cent of the Vlaams Blok voters defended the view that the regions (Flanders) should get more powers. That percentage represents about the mean score in the electorate and is significantly below the reported shares among the Flemish Christian-Democratic (53 per cent) and the NVA (78 per cent) voters (Billiet 2005).

In many ways, the Belgian party system does not reflect the attitude of the Belgian public with regard to the regionalist issue. As I will discuss in Chapter 7, only a sizeable minority of the Flemish public prefers an independent or confederal Flemish state. Attitudes are even more outspokenly pro-Belgium within the French-speaking electorate. Public opinion surveys suggest that, as in Spain, there should be sufficient scope for a few Belgian parties to compete against one or several ethno-regionalist parties (Van Houten 2004). Yet, the split of the Christian Democrats gave a short-term competitive edge to one party group which stimulated the other parties to follow its path. Once linguistically split parties emerged that could build up their own human resources management and strategies that path was

difficult to reverse. Or, to cite Paul Pearson's neat analogy: 'you can stir jam into your yoghurt, but you cannot stir it out' (Pierson 2004). Arguably, the consociational mechanisms at the central level (no decisions can be taken without the consent of both linguistic groups) serve as an institutional brake (though not corrective) to this centrifugal logic. However, such brakes can generate frustrations when politicians are quickly faced with the impossibility of delivering on their electoral promises. In order to narrow this 'credibility gap' they are left with the option of toning down their centrifugal campaign rhetoric or, more drastically, to question the sustainability of a *consociationally* governed Belgian centre. In a context of split parties and split media, the second option may be the easier to pursue (despite its potentially radical consequences for the institutional status quo). If we accept that political leaders and opinion makers can mould public opinion, it may only be a matter of time before larger shares of public opinion embrace the confederalist, possibly even the secessionist, option.

Ethno-regionalist parties and their strategies with regard to the state-wide parties

Just as state-wide parties must find a suitable approach to tackle the ethno-regionalist parties, so ethno-regionalist parties must find the right strategy to compete against the state-wide parties. Here, I focus on only one strategic dilemma that is connected to the proportional electoral environment in which most of these parties operate. As a result, ethno-regionalist parties rarely command a majority of seats in the regional (the Basque Country or Catalonia are exceptions) and a fortiori also the central parliaments. In order to gain access to executive power they must enter coalition governments. Faced with this necessity, ethno-regionalist parties may opt for various strategies which maximize the chances of seeing some of their policy objectives realized while securing their electoral survival in the future.

Ethno-regionalist parties can shun participation in any government. They may prefer to retain their ideological purity and to exert pressure on the other parties. Alternatively, they may choose to participate in a regional government only. Finally, they may also enter a central coalition. This may be a potentially attractive option, as in Belgium and Spain measures which seek to devolve additional powers to the regions are largely or exclusively decided at the central policy level (at least formally speaking). Hence, the electoral concerns that drive the ethno-regionalist parties are similar to those that influence the state-wide parties. Yet they are different insofar as ethno-regionalist parties do not necessarily aspire to office-seeking when it would require coalition-making with a (regional branch) of a state-wide party.

Each of the above strategies is not without risks. Ethno-regionalist 'whiplash' parties may lose their electoral appeal if they do not at some point participate in or support a government. For instance, should the SNP aspire to a role in Scottish government, it would have to attenuate its claims for an

independent Scotland. The goal of independence should be given less weight as long as the SNP cannot attract a majority of the Scottish electorate on that issue. By refusing to soften its ethno-regionalist appeal, the SNP cannot prove that it is capable of governing as a modern left-of-centre catch-all party. This dilemma certainly helps to explain why repeated leadership crises have cost the party in electoral fortunes since the Scottish Parliament was first elected.

By comparison, ethno-regionalist parties that have taken up governmental responsibility may have been forced to soften their ideological purity. The need to compromise may always drive away some hard-core supporters and members to other, more radical ethno-regionalist parties.

Ethno-regionalist parties that participate in a central government coalition may have to compromise more than ethno-regionalist parties which only take part in a regional government. In the latter case, they may share office with members who represent the regional branches of state-wide parties. In general, they are more sensitive to regional concerns, because they must take the opinion of the regional voters, and not the state-wide electorate, into account. However, the decision to govern exclusively at the regional level may weaken the input of ethno-regionalist parties in contributing to the further devolution of the state, as it is the centre that may have to (co-)decide on that issue.

In Belgium, the People's Union (Volksunie, the present NVA) and the Democratic Front of Francophones (DFD) have participated repeatedly in central governments or offered their legislative support to the further devolution of the state. Yet, on nearly every occasion, both parties lost a share of their electorate because they could not deliver on their (too radical) promises. The alternative option, to participate in regional government only, but to function as an opposition party federally, proved cumbersome as well. When the Volksunie pursued it (1999–2003), some of the party's federal MPs expressed more radical ideas with regard to the regionalist issue than their counterparts in regional government. The regional, unlike the federal, MPs had to take the opinion of the more moderate Flemish Social Democratic, Green and Liberal coalition partners into account (Swenden 2002).

Finally, in Spain ethno-regionalist parties have not yet participated in central coalition governments. Between 1993 and 2000, they provided the Social Democratic and Conservative central governments with sufficient support to secure a national parliamentary majority. Between 1993 and 1996 the Social Democrats required the support of the Catalan CiU; the ensuing Conservative government (1996–2000) needed the support of the Basque and Catalan nationalists, as well as the ethno-regionalist party representing the Canary Islands (Colomer 1998: 48). The dependence on regionalist parties was successfully used to extract more regional autonomy from the centre (for instance in the field of taxation and policing). Furthermore, the need for a dialogue between the centre and one or more of the ethno-regionalist

parties also reduced the desire for taking intergovernmental disputes to court (Agranoff and Ramos Gallerin 1997). Normal politics replaced court politics. Relations between the centre and the ethno-regionalist parties soured rapidly after the PP had captured an absolute majority in the 2000 general elections. Since 2004, the PSOE parliamentary majority has relied on the support of the Catalan ERC and PSC-PSOE. Arguably, for the ethno-regionalist parties, the option of a minority government which requires their support is preferable to direct participation in central government. Their share of the overall pool of PSOE or PP votes would be too small to result in several important ministerial portfolios. By supporting a government from the sidelines, ethno-regionalist parties may be sufficiently powerful to extract policy concessions. At the same time, they are protected against central policy mistakes and may even shift the blame for policy failure onto the government.

6. Conclusion

In this chapter, I sought to illustrate the relationship between the party system and the decentralization of the state. The chapter somewhat provocatively started with a quote from William Riker, who asserted that we can measure the decentralization of the state by measuring the decentralization of the party system. In order to investigate this proposition, we have to specify how we wish to measure the decentralization of the party system (having already introduced concepts to measure the decentralization and character of a federal system in the two previous chapters).

One way of putting the decentralization of the party system into operation is to look at variations in state-wide party support across the various regions of a territory. In the first part of the chapter, I sought to map such differences on the basis of the outcome for the most recent general elections (until June 2005) for each country of this study. On this basis, Switzerland has the most territorially fragmented party system; Austria has the most centralized one. These findings correspond with the general propositions in Chapters 3 and 4: Switzerland is the most decentralized federation; Austria is among the most centralized of our cases. Germany, Spain and the UK assume intermediate positions. The electoral support for at least one of their state-wide parties is not distributed very symmetrically across the state. In the most recent general elections, this seemed to hold in particular for the German Christian Democrats, the Spanish and the British Conservatives.

In addition, efforts to make the decentralization of the party system operational must take into consideration the strength of state-wide parties in relation to non-state-wide parties, in particular to ethno-regionalist parties. The latter put the quest for more regional autonomy at the forefront of their political agenda. In other respects, however, ethno-regionalist parties make up a very heterogeneous group. For instance, some parties are left leaning,

others are right wing. Some seek full-blown independence; others merely propagate the emergence of a federal framework. Some aspire to a participation in a regional or central government, others see themselves as 'whiplash' parties instead. In Switzerland, the state-wide parties do not amass a very large share of the total vote, but the non-state-wide parties are not ethno-regionalist. The countries in which the ethno-regionalist parties are strongest in relation to the state-wide parties (at least when election results are aggregated at the regional level) are Spain and the United Kingdom. In Spain, several central governments have relied on the support of ethno-regionalist parties for obtaining a central parliamentary majority. In Britain, ethno-regionalist parties do not present a significant force within the party system as a whole, but they are relevant players in the Scottish and Welsh party systems. In Belgium, the ethno-regionalist parties were so successful in the 1950s and 1960s that state-wide parties have almost entirely disappeared. Yet only few of these non-state-wide parties owe their rationale to the quest for more regional autonomy. In this sense, most of the Belgian non-state-wide parties are non-ethno-regionalist.

In the second part of the chapter, I considered the relationship between the decentralized character of the state and the internal structure of the state-wide parties. State-wide parties are multilayered and the regional party branches may have retained much autonomy 'at home' (i.e. the regional level) and gained substantial influence in the governance of the central party branch. In this sense, we found that the regional party branches of the Swiss and German parties are significantly strong. The Austrian regional party branches are weaker, but they have retained more influence than the regional party branches of the Spanish or most of the British parties. Arguably, the Swiss cantons and the German or Austrian *Länder* have been operating for a long time, and, certainly in Switzerland, federal party branches have emerged from the bottom up. In this sense, they have retained a larger influence in campaigning, party financing and candidate selection than the regional branches in the other countries. In Germany, the strongly cooperative nature of the federal state is reflected in the wide-spread participation of the regional party leaders in the governance of the central party. The analysis also revealed that Spanish state-wide parties (in particular the Conservatives) have a much more centralized party structure than expected on the basis of the overall decentralized nature of the Spanish state. In contrast, British parties, while they have remained quite centralized, also allowed for some expression of regional autonomy, even before devolution kicked in. Alternative hypotheses were suggested with regard to the linkage between party decentralization and party ideology, government participation and the asymmetric nature of the state.

The final part of the chapter looked at the behaviour of state-wide and ethno-regionalist parties in the electoral arena. It first put forward a number of factors which determine the campaign strategy of the state-wide parties.

In general, central party issues will dominate regional campaigns where the outcome of regional elections directly affects the governing capacity of the parties in the centre. This is often the case in Germany, where the Bundesrat provides an institutional linkage between the centre and the regions that is missing from the other countries. The analysis also revealed that the autonomy of the regional party branches in regional campaigning is affected by a number of additional factors. For instance, regional branches are less free to do what they want when the central party branch participates in a central government. Regional elections are not equally significant: parties may take specific interest in some regions for demographic or purely historical reasons (is the region a traditional party stronghold?). Different electoral systems create different incentives, etc.

Electoral strategies of a party and the autonomy of the regional party branches therein are not fixed, but vary with the context in which the elections are held. This is most explicit in multinational states, where state-wide parties compete against ethno-regionalist parties and vice versa. Two alternative theories were formulated to predict the strategy of both sets of parties in regional elections. The Basque Country was used as an example to demonstrate how party leaders may seek to polarize the electorate as a means to strengthen or consolidate their support. However, the Basque example also made clear that as a consequence of their behaviour party leaders may reduce the prospects for peaceful co-existence between various nationalities.

Parties and party leaders are perhaps the single most important political actors for determining how the decentralized structure of a state evolves. They form the interface between civil society and the political institutions of the state, including those that govern the relationship between the centre and the regions. For instance, they determine to what extent a second chamber with all the necessary powers and compositional features to function as a 'regional second chamber' will produce policy outcomes that effectively reflect differences in regional opinion. In this sense, they codetermine the nature of intergovernmental relations and their policy outputs in a multilayered state.

6

Intergovernmental Relations and Public Policy

1. Introduction

The centre and the regions require mechanisms to cooperate. This is self-evident in federations that tend towards the organic end of the continuum, such as Germany. But cooperation is even required in federations with a more dual blueprint, for instance when a region constructs a road which leads into the territory of another region. Or, when the centre regulates and pays out unemployment fees, but the regions legislate and fund social assistance policies for the long-term unemployed. In the literature of comparative federalism, the interaction which takes place via these channels is known as 'intergovernmental relations' (hereafter referred to as IGR). Robert Agranoff has defined IGR as 'those transactional activities and interactions between government units and within the nongovernmental sector of all types [parties, interest groups or civil society] and levels [central, regional, local]' (Agranoff 2004: 29).

Although IGR are common to all federal and regionalized states, they come in many forms and guises. In the first part of this chapter, I document the variety of intergovernmental channels which have developed in the federal or regionalized case studies. IGR can bring the centre and some or all the regions of a state together. Sometimes they only involve a few regions. IGR can entrust the regions with a collective veto right in the centre, but occasionally the regions may only gain a right to be heard there. Sometimes, intergovernmental forums prescribe unanimity-voting, but from time to time intergovernmental decisions can be made with a simple majority. In Chapters 3 and 4 I specified that certain federal or regionalized designs require higher levels of intergovernmental cooperation than others. This raises the question whether states which *require* more intergovernmental interaction will effectively *provide more and adequate* mechanisms for IGR.

In the second part of the chapter I make the link between IGR and policy change. For discussing how IGR affects policy change, I rely upon a neo-institutional framework (Scharpf 1997a, 1997b; Tsebelis 2002; Pierson 2004).

For instance, I argue that where IGR take a binding character and require the consent of all the actors involved, changing policies which necessitate common action is difficult. Conversely, where IGR are non-binding or only require a majority vote, changing policies which need common action is much easier. Federal designs that tend towards the organic end of the continuum usually contain more decisions which require common action. Hence, one could argue that as a corollary the capacity for policy change must be lower than in federal structures which adopt a more dual design. However, in some federations of the former type, the centre and the regions must decide on issues of common interest by mutual consent. When no agreement can be reached, a non-decision may be the outcome. In other 'organic' federations, the centre may be left with more room for manoeuvre and keep certain 'escape routes' in mind. I briefly illustrate the influence of intergovernmental structures on policy change in the field of welfare policy (Obinger, Castles and Leibfried 2005; Moreno and McEwen 2005). For each country of this study, the most important regulatory aspects of welfare policy are centralized. However, the extent to which the regions can utilize veto points in the centre varies substantially from one country to another.

In the third part of the chapter, I touch upon the issue of regional policy divergence. In this case one can expect a much clearer link between the scope for policy divergence and the degree of cooperation that is required between the centre and the regions. Where the regions have substantial policy and fiscal autonomy, there is also a much wider potential for policy divergence. To illustrate this, I take a brief look at education policy, a competence area in which the regions usually have retained a substantial degree of autonomy.

2. Intergovernmental relations (IGR) in federal or regionally devolved states: a framework for analysis

2.1. The actors and institutions of intergovernmental relations

IGR takes on many forms. We can distinguish IGR on the basis of several criteria. A first criterion considers *who* is involved in IGR. The actors who dominate IGR can be legislators, members of the central and regional core executives, or civil servants. Interest groups and the people may play an additional role.

A second criterion relates to the difference between *intrastate and interstate* IGR. Ronald Watts and Donald Smiley have referred to *intrastate federalism* as a 'set of devices and processes ... which [channel regional] interests ... into the operation of central government' (Smiley and Watts 1985: 27). Thus, in parallel, *intrastate IGR* refer to the mechanisms which allow regional political actors to participate in central decisions which can affect their levels of autonomy. Intra-state IGR thus always involve a form of vertical cooperation (i.e. cooperation between the centre and at least one of the regions).

For example, (in)formal mechanisms may exist to ensure that the composition of the central executive reflects the territorial make-up of the country. Party groups may sometimes convene along regional lines in the lower house or the second chamber, to discuss specific issues of regional interest. Central and regional executive leaders or civil servants may meet to discuss central bills (federal tax bills for instance) or international matters which directly affect the competencies of the regions. Perhaps the best-known institution for channelling regional interests into the centre is that of the second chamber. By comparison, *interstate IGR* do not directly involve the central government, but bring together representatives from the various regions, either at the executive, legislative, party political or administrative level. In this sense, they always involve a form of interregional or horizontal cooperation. In this chapter I focus almost exclusively on intrastate IGR.

IGR can also be distinguished by looking at the *decision-making rules* that prevail within these intergovernmental forums. Some intergovernmental decisions require the consent of all the participants; some require only qualified or just simple majorities. Sometimes, the centre just contributes one vote, next to the vote(s) of the regions. Occasionally, the votes of the regions are weighted according to regional population, sometimes they all count the same.

Finally, a fourth criterion distinguishes IGR on the basis of the *robustness of the decisions* that emerge from these intergovernmental discussions. Some decisions may have a binding character, others are just consultative. Sometimes dissenting regions have a right to opt-out from an otherwise binding arrangement, occasionally they have not. In the following sections I will pay further attention to the character of IGR by considering the various elements of distinction that were touched upon above.

Who dominates IGR: the executive dominance of IGR in parliamentary states

Table 6.1 summarizes IGR for each of six case studies. One element that typifies the pattern of IGR for all of the cases (with the partial exception of Switzerland) is the dominant role of executives therein. This corresponds with the parliamentary character of Austria, Belgium, Germany, Spain and the United Kingdom. The essence of a parliamentary regime, so Strøm, Müller and Bergman assert, is a 'system of government in which the Prime Minister, and his or her cabinet are accountable to any majority of the members of the parliament and can be voted out of office by the latter, through an ordinary or constructive vote of confidence' (Strøm, Müller and Bergman 2003: 13). Yet, most party leaders in a parliamentary setting aspire to a seat in the executive. Unlike legislators, executive members have a large supportive bureaucratic apparatus to assist them in drafting legislation. This gives parliamentary executives an important legislative 'agenda-setting prerogative' vis-à-vis the lower house and often also in relation to the second chamber. Indeed, in parliamentary systems, a majority

Table 6.1 Patterns of IGR and their effects on policy change in six West European states

	Austria	Belgium	Germany	Spain	Switzerland	United Kingdom
Dominant actors in IGR	Executives	Executives	Executives	Executives	Executives, legislators and the people	Executives
Institutional veto player	Bundesrat (weak) Constitutional Court (moderate)	Senate (intermediate) Constitutional Court (moderate). Parity, language groups (executive and parliament) (strong)	Bundesrat (strong) Constitutional Court (strong)	Senate (weak) Constitutional Court (strong)	Ständerat (strong) Constitutional Court (moderate) Referendum (strong)	House of Lords (weak) Constitutional Court (Privy Council) (weak)
Partisan veto players in the centre (political parties only)	Weak	Strong, linguistically split parties in central institutions	Strong, in the case of bicameral incongruence	Strong only in case of pivotal role of ethno-regionalist parties	Moderate, weakly disciplined parties, but strong veto potential	Untested
Dominant decision-making patterns in IGR	Majority in Bundesrat, consensus in some inter-executive IGR By default hierarchical control	Consensus by default non-decision	QMV or majority in Bundesrat or consensus (in joint-planning or IGR conferences). Tight coupling	No collective regional veto; hierarchical control, bilateralism and litigation	Consensus by default Loose coupling	Consensus by default Hierarchical control
Pace of policy change in IGR policy-making	Swift	Slow	Slow	Moderate to swift	Slow to moderate	Swift

of the approved bills originates with the executive. Similarly, the most relevant interest groups are likely to approach the executive, rather than the legislative branch. In this sense, the formal interdependence between legislature and executive frequently masks a genuine power asymmetry in which the executive members pull the strings. In most of our cases, similar institutional forms are adapted at the central and regional levels of government. Therefore, the executives are prevalent in public policy-making at the central and regional levels of government and assume a lead role in IGR. Thus, the combination of parliamentarism and federalism results in what Donald Smiley has called 'executive federalism' (Smiley 1980; Smiley and Watts 1985).

Compared with Germany, the role of the executives is less paramount in Swiss intergovernmental relations. However, Swiss executive actors still play a more important role in IGR than legislators. This is so despite the mutual independence of the Swiss cantonal executives and legislatures (both are directly elected in separate elections). For instance, the Swiss conference of cantonal executives and the Swiss conference of cantonal directors (top civil servants) have played the most important role in horizontal (intercantonal) policy coordination and in preparing cantonal viewpoints on federal policy (Vatter 2002). Arguably, since the cantonal executives comprise several members (each with a directly elected mandate) of different parties, they are in a better position to bridge the party political divisions within the corresponding cantonal legislatures. Furthermore, most cantonal legislators combine their political job with other activities. Although this frees them from party discipline, it also reduces the amount of time which they can invest in intergovernmental policy coordination. Finally, the recurrent organization of referendums strengthens the role of interest groups and the people and weakens the disciplinary potential of political parties.

The (limited) role of the second chamber: general observations

The executive dominance of IGR in six of the seven West European federal or regionalized states has major implications for the potential contribution of the second chamber in regional representation. Federal theory asserts that the 'second chamber' is the body 'par excellence' for channelling regional interests into the centre, but few federal upper houses live up to that role (Russell 2001; Swenden 2004b). Either second chambers are not sufficiently powerful, or their membership does not contain the regional political elites of the day.

Many parliamentary second chambers fall short on the first criterion alone. The logics of parliamentarism and strong bicameralism do not fit well together. Parliamentary executives require the support of a legislative majority, but that majority is usually provided by the lower house which is directly elected on the basis of 'one person, one vote'. Consequently, parliamentary executives are politically accountable to the lower house in the first place

and on that basis they can claim to have received 'a mandate' to govern. A parliamentary executive is not normally held accountable to the second chamber in the sense that the upper house cannot trigger early elections by approving a vote of no-confidence in the executive. Yet, even without that power, second chambers could still give parliamentary executives a hard time; for instance, when they can veto most federal bills and all or most constitutional amendments. Gridlock is most likely when the federal second chamber has that power and when it is composed in such a way that a majority of its members may represent different (party) political interests from those that dominate the lower house and executive.

In many parliamentary systems bicameral gridlock is not really an issue. Either the second chamber is made so weak that it has little effective veto powers, or it is composed in such a way that it is likely to generate similar (party) political interests as those which dominate the lower house (Swenden 2004b: 46–52). From the viewpoint of comparative federalism this is problematic. A relatively powerful second chamber that is composed on a different basis from the lower house will not *necessarily* fulfil its role as a chamber of regional representation. Yet, without sufficient powers and without a method of composition which sets it apart from the lower house it certainly will not play that role. Table 6.2 summarizes the powers and composition of the six second chambers. In the following paragraphs I will explain in greater depth how the composition and the powers of the second chamber affect its ability to operate as a second chamber.

The composition of the second chamber

Second chambers are composed in different ways: some of them are directly elected, others have an indirectly elected basis, and others are entirely nominated. Federal second chambers also vary in the extent to which they over-represent the smallest regions in the federation. The way in which a second chamber is composed affects its suitability as a territorial or regional second chamber.

A second chamber that is *directly elected and elected simultaneously* with the central lower house on the basis of *roughly comparable electoral systems* is not likely to contribute much in terms of regional representation. The campaign for the election of the lower house is likely to overshadow that for the second chamber. Following their election, members of the second chamber can be divided easily into party groups. Most members of the Belgian and Spanish Senates and of the Swiss Council of States are directly and simultaneously elected with the lower house.

For instance, 40 Belgian senators, or a clear Senate majority, are directly elected. Twenty-five senators are elected by a Dutch-speaking and 15 senators by a French-speaking electorate.¹ An additional 21 senators are delegated by and from within the Community legislatures. These are the so-called Community senators. An additional 10 senators are 'coopted'

Table 6.2 Composition and powers (with regard to ordinary legislation) of six federal/central second chambers

	Composition	Suitable for regional representation	Powers (in legislation)	Sufficient for regional representation	Overall suitability for regional representation
Austrian Bundesrat	Weighted RR Members appointed by regional legislatures	Yes, but members can sit by party	Suspensive veto	No	Not well suited
Belgian Senate	Proportional RR Mostly directly elected + community senators	No	Mostly suspensive veto, but absolute veto in special majority legislation	Sufficient when interests of language groups are at stake	Not well suited
German Bundesrat	Weighted RR Members of regional executives	Yes, regional block voting required	Absolute veto against 2/3 and suspensive veto against 1/3 of bills	Yes	Well suited
Spanish Senate	Weighted RR Mostly directly elected + regional senators	No, members sit by party, share regional senators is too small	Suspensive veto	No	Not well suited
Swiss Ständerat	Equal RR Directly elected	Yes, although members can sit by party	All bills require consent of the SR	Yes	Well suited
UK House of Lords	Nominated	No	Suspensive veto	No	Not well suited

(elected) by the directly elected and the Community senators. However, the party-political affiliation of these 'Community and co-opted senators' is determined by the outcome of the election of the first group of senators. Hence, Senate seats are extrapolated to the Community and coopted senators as if all (not just the 41 directly elected) senators stood in the same election.

Like the Belgian Senate, the Spanish Senado is directly elected for most of its composition. At present, the Spanish second chamber comprises 257 members, 208 of whom are directly elected and 49 of whom are appointed as regional representatives. The first group of senators is elected on party lists in each of Spain's 52 provinces. Their election concurs with national lower-house elections. Only 49 senators represent the regions proper. Like the Community senators in Belgium, they are appointed by the regional parliaments.

Finally, 41 of 46 members of the Swiss second chamber are directly and simultaneously elected with the lower house. However, the number of delegates per canton is markedly different from the lower chamber. Furthermore, senators (as members of the lower house) are much less subject to party discipline than in each of the other cases. In this sense, the direct election of the Swiss Council of States does not reduce its potential for regional representation as much as that of the other directly elected second chambers.

At present, the UK House of Lords is *entirely nominated*. Formally, British Prime Ministers have power to nominate whoever they want. They are certainly under no obligation to appoint a few Scots or Welshmen. Although they are nominated for life, and thus are free from any form of party discipline, the Scottish or Welsh members of the House of Lords are not accountable to the Scottish or Welsh regional institutions or the people. In this sense, the composition of the UK House of Lords is not conducive to regional representation.

Austria is the first of a set of two countries among our cases with a second chamber that is for most of its composition *indirectly elected*. In Austria, the members of the second chamber are *elected by the regional legislatures*. This form of indirect election creates a more straightforward link between the centre and some of the regional political institutions. Regional elections occur at irregular intervals and do not normally coincide with federal elections. The themes that dominate regional elections campaigns leave open more room for the discussion of regional items than if these elections were to coincide with federal elections. However, the composition of the Austrian Bundesrat does not guarantee that the second chamber will take up a role in regional representation. The members of the Austrian second chamber are selected according to party political strength in the corresponding regional legislatures. Once they become a member of the Austrian Bundesrat, they are not subject to recall. Consequently, members are free to convene along party rather than regional lines (Fallend 2000). As we have seen, the Austrian parties are relatively disciplined and centralized.

This leaves us with only one parliamentary second chamber that is relatively well suited to the task of regional representation: the German Bundesrat. Like its Austrian counterpart, the German second chamber is also *indirectly* elected. The German regional parliaments are also elected at irregular intervals. Their election does not normally coincide with lower-house elections. However, unlike the Austrian second chamber, the German second chamber is entirely composed of members of the *regional executives who must vote by region*. This makes the members of the German Bundesrat more senior within their party organizations. As members of regional executives they have gained better access to federal law-making. By comparative standards, they have received extraordinary privileges in previewing federal legislation. They can participate directly in lower-house committee and plenary meetings. Because of their party seniority they *can* withstand the pressure of party discipline which emanates from the party groups in the federal lower house. As leaders of the regional executives, they exemplify 'executive federalism', and therefore can be thought to bring regional administrative interests to bear. However, since most of the members of the German Bundesrat represent (regional branches of) state-wide parties, they can also pursue narrow party interests. Further down, I will discuss the tension between both of these logics and demonstrate how it affects the capacity for policy change in Germany.

Next to their method of selection, second chambers also vary according to whether they *overrepresent the smallest regions*. We can distinguish between equal, weighted or proportional regional representation (in Table 6.2 these options are abbreviated respectively as ERR, WRR or PRR). By itself, the overrepresentation of the smallest entities does not make the second chamber a better upper house from the viewpoint of regional representation. Yet, when second chambers act as territorial upper houses, that overrepresentation can serve to balance the dominant viewpoint of the lower house and executive. The latter may side regularly with the largest regions in the state. Even when the second chamber does not act as a house of the regions, the overrepresentation of the smallest regions can have an impact on the party balance between both chambers. For instance, in Switzerland, the bourgeois parties collect a disproportionately large share of the votes in the small, rural cantons. Since each of the (full) cantons delegates two members to the Swiss second chamber, the Conservative parties have been able to capture large majorities there. That majority has served them well to curb some proposed welfare reforms (Obinger, Armingeon et al. 2005).

The Swiss second chamber is the only second chamber which is composed on the basis of ERR. In Austria, Belgium and Spain, the representation of the regions approximates proportional regional representation, although the smallest regions may be slightly overrepresented still. For instance, Upper Austria has 12 seats, Lower Austria and Vienna have 11 seats each, but the smallest regions of Vorarlberg and Burgenland have

only 3 seats each. By comparison, in Belgium, there are as many French- as Dutch-speaking Community senators (There is also one German-speaking Community senator). However, their number is too small to generate a significant element of regional disproportionality: the number of directly elected and 'coopted senators' reflects the demographic strength of the two major language groups in Belgium. In Spain, each of the mainland *provinces* elects 4 senators, irrespective of their population size. To some extent this element of disproportionality is worked away by adding the group of *regional* senators to the equation. The latter are represented according to the principle of weighted regional representation. Each region is entitled to at least one regional senator plus one extra senator per million inhabitants. For instance, Madrid, with 5.6 million inhabitants has 6 regional senators. Yet, regional senators are much smaller in number than provincial senators. Thus, the relatively proportional nature of the Spanish Senate is primarily a consequence of the relatively small inter-provincial discrepancies in demographic terms (Stepan and Swenden 1997; Lijphart 1999). The German Bundesrat provides the most clear-cut example of weighted regional representation. Irrespective of their population size, regions are entitled to at least three representatives in the Bundesrat (currently the case for Bremen, Hamburg, Saarland and Mecklenburg-Pomerania). Regions with more than 2, but less than 6 million inhabitants have 4 votes (Berlin, Brandenburg, Rhineland-Palatinate, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia). Regions with more than 6 but less than 7 million votes are entitled to 5 votes (Hessen). Finally, regions with a population of at least 7 million have 6 votes (Baden-Württemberg, Bavaria and North-Rhine Westphalia).

The powers of the second chamber

Next to its composition, the powers of the second chamber are a determining factor in explaining whether the second chamber will assume a lead role in the machinery of intrastate IGR. Once more the Swiss Ständerat stands out as the most powerful second chamber. It can veto all federal bills. Indirectly, the composition and powers of the second chamber may have contributed to the long-time inclusiveness and collegiate nature of the Swiss executive. By making the latter as inclusive as possible, the smaller cantons may not have used their veto potential (via the second chamber or referendum) as often as could have been.

Among the group of *parliamentary* second chambers, the German Bundesrat is the most powerful second chamber. It cannot bring down the executive and it can only cast a suspensory veto against the federal budget. However, it can still veto approximately two-thirds of all federal bills and cast a suspensive veto against the remaining third. Furthermore, the second chamber must approve federal administrative rules containing guidelines for the administration of federal law. Arguably, from the viewpoint of regional

representation, a second chamber need not have the right to veto all the aspects of a federal budget; certainly not those sections which determine federal expenditure programmes (other than grants to the regions). Furthermore, a second chamber should not be able to veto federal bills which relate to issues in which the regions lack any legislative or implementing authority. Therefore, the German second chamber is a more than sufficiently powerful channel of intrastate IGR. For the same reason one could argue that the Belgian Senate is sufficiently powerful as well. Like the German Bundesrat, it cannot vote on votes of (no) confidence. Federal budget bills only require the consent of the lower chamber. The Senate can veto about a third of all federal bills and must agree to all treaties, constitutional amendments and special majority laws. Although this makes for a less-powerful second chamber than the Bundesrat, the less cooperative framework of the Belgian federal system also generates a lower level of federal bills in which central and regional interests intersect.

The remaining second chambers lack sufficient powers to perform adequately as chambers of regional representation. The powers of the Spanish Senado are relatively limited. It has a rarely used power of legislative initiative and it cannot veto most national legislation (Börzel 2002: 96–9). The Senate's powers are stronger in relation to votes on constitutional amendments, international treaties, authorizing cooperation agreements between the regions and approving the distribution of resources from the Inter-Territorial Compensation Fund which flow to the regions (Juberías 1999: 268). It is also involved in declaring a state of emergency, and it is exclusively responsible for approving coercive measures against regions which act against the general interest of Spain. The latter power has never been put to use (Agranoff and Gallarín 1997: 7). In other matters, the Senate only has a suspensory veto. As we have seen, organic laws or changes to regional statutes of autonomy may have major consequences for the levels of regional autonomy. Yet, although they must pass the central parliament, they do not need the consent of the Senate.

The powers of the Austrian Bundesrat are even weaker than those of the Spanish Senate. It took the Bundesrat until 1984 before it gained a right of veto in constitutional amendments which alter the distribution of competencies between the federal and regional levels of government. The Bundesrat only has a suspensory veto in ordinary legislation, which it does not use frequently (Obinger 2005).

Finally, the House of Lords is probably the weakest second chamber of all insofar as it cannot veto any central bills. However, it can delay the approval of non-fiscal bills for up to a year. In this sense, the Lords can wield significant pressure because a year is a significant time-span in politics. That these powers are not frequently put to use is more a consequence of the Lords' limited legitimacy which ensues from its entirely nominated character.

Towards reforming the second chamber?

The previous section made clear that many second chambers are not well suited to serve as prominent channels of intrastate IGR. This is so because they either lack the necessary powers and/or they are not composed in a way that is conducive to regional representation. Yet in Belgium, Spain and even in the UK, the relatively limited role of the second chamber in regional representation has been increasingly perceived as a weakness. Therefore, politicians and constitutional engineers in these countries have suggested proposals to reform them. Reform proposals affect vested interests. Where they require certain categories of senators to be removed from the second chamber, resistance can be high, particularly so if the second chamber must agree to its own reform. Alternatively where they aim to increase the relevance of the second chamber relative to the lower house and executive, resistance may emanate from these corners in the first place. In the following section, I briefly review some of the proposals for reforming the second chamber, but only focus on those elements which seek to strengthen it as a house of the regions.

At present, proposals to reform the second chamber are most advanced in Belgium. As it stands, the Belgian Senate has not been successful in bridging two roles, that of a house of review and that of a house of the regions. To be a more effective house of review, the Senate may require more than forty directly elected senators. To be a more effective house of the regions, the group of so-called Community senators should be larger and their appointment should be linked more strictly to the composition and renewal of the Community legislatures. At present, Community senators do not contribute much in terms of bringing specific regional views to bear (Vanhee 2003). Two reasons explain this. All federal MPs (thus also members of the lower chamber) are elected on monolingual party lists within monolingual electoral districts (with the exception of MPs who are elected in Brussels-Halle-Vilvoorde). Furthermore, confirming the hypothesis of executive federalism, members of the regional executives assume key positions within the party executives of their parties. Hence, intergovernmental tensions are more likely to be addressed within the party executives. To the extent that parties participate in the federal and regional governments, such issues may find their way to forums which bring together party and executive leaders from both levels.

Taking these criticisms into consideration, federal Prime Minister Verhofstadt launched a plan for Senate reform (Chancellery of the Belgian PM 2001). He proposes the enlargement of the lower house from 150 to 200 MPs and, following the Norwegian example, its division into two sections (Lijphart 1999). The first section would comprise the 150 current lower-house MPs who are elected within provincial (subregional) districts. The second section would consist of 50 MPs who are directly elected within a Dutch- or French-speaking electoral college. These 50 MPs would consist of

the 40 directly elected senators, who simply would switch chambers, and in number equal the sum of the current directly elected and coopted senators. The latter would play the role of a 'house of review' within the lower house. They would engage in a second reading of legislative texts that received prior consideration by the first section. The 'transfer' of these 50 'senators' from the second to the lower chamber paves the way for the reform of the second chamber as a regional chamber.

To that purpose, the Prime Minister has suggested that the Senate be transformed into a federal council. The second chamber would consist of 75 members, 35 of whom would represent the Flemish Community, 34 the French Community and 1 the German-speaking Community (Chancellery of the Belgian PM 2002). The Community legislatures would designate all 'federal councillors'. However, unlike the present Community senators, federal councillors would no longer have to be members of the Community legislatures. They could as well be members of the regional executives. Such a change could strengthen the Senate's role as a regional chamber, as the most important regional political actors would now gain a seat there. Next to a change in its composition, the powers of the second chamber would be reduced further. Constitutional amendments, special majority laws and 'mixed treaties' (i.e., treaties that partially touch upon regional competencies) would still require the Council's consent. Suffice to recall that many important matters, such as the financing of the regions, are specified in special majority laws. Therefore, one could argue that the second chamber remains sufficiently powerful from the viewpoint of regional representation.

Two practical obstacles still lie ahead. Senate reform requires a two-thirds majority in the Senate. It is questionable whether the envisaged transfer of the directly elected senators to the lower house will suffice to buy their support. Furthermore, without a sufficiently high number of representatives from the regional executives, the federal council may not become a more important channel of intrastate IGR. Leaders of the regional executives may treat the Council as an institution which de facto conceals decisions that were taken in executive-dominated channels of IGR. Further, a reformed Federal Council would not take away the 'double majority' requirement that is needed in the lower house (and Senate) for endorsing all federal bills which affect the interests of the two main language groups. Because representatives in the lower house are also elected on monolingual party lists, one could argue that the added value of the Senate/Federal Council in regional representation is always bound to be limited.

Many proposals have circulated about reforming the Spanish Senate. The quest for Senate reform somewhat disappeared between 2000 and 2004, when the Conservatives controlled an absolute majority of lower-house seats. However, the Social Democrats who were elected into power in 2004 have been more supportive of Senate reform throughout. Furthermore, they rely on the support of the ERC, a Catalan regionalist party which has

championed Senate reform. Therefore, it is likely that some proposals may emerge in the near future.

The first genuine attempt to strengthen the role of the Spanish Senate as a regional chamber came in 1993, when the Senate established a General Committee for the Autonomous Communities. In 1994 and 1997, symbolic gatherings brought together all the regional executive leaders (with the exception of the Basque president who refused to participate in the 1994 meetings). Working committees were established to discuss improved coordination mechanisms between the centre and the regions. Yet, Senate reform has stalled for various reasons.

For the historic regions, reforming the Senate only makes sense if it does not harm their privileged relationship with the centre. Hence, the historic regions would object to any reform if they risk being outvoted on matters in which they presently can negotiate directly with the central government.

Furthermore, the two major state-wide parties, whose combined support is likely to be needed to change the structure of the Senate, disagree on the future composition and powers of a reformed second chamber. The Social Democrats (PSOE) agree that the composition of the Senate should be changed, and are willing to grant the Senate some additional powers of veto. However, like the Conservatives (PP), they refuse to grant the historic regions any special recognition. The Conservative government has not been particularly keen on Senate reform throughout. A reformed and probably stronger Senate would have undermined its grip on central policy-making. The Conservatives promoted the institutional status quo, or even suggested the further reduction of Senate powers to a right of suspensory veto in all matters. At one point, the Conservatives proposed that Senate sessions could be attended by the presidents of the regional executives. However, unlike the Social Democrats they would not grant them a right to vote. They argued that the opening of the Senate to the regional presidents would make an annual Senate debate on the state of the regions redundant (Roller 2002a).

The UK House of Lords has been profoundly reformed in recent years, but its current composition remains largely unsatisfactory from the viewpoint of democratic legitimacy and regional representation. At present the Lords are similar in composition to the Canadian Senate: the bulk of its members are appointed by the Prime Minister. The potential future of the British second chamber as a regional chamber is intertwined with many other questions which require clarification first. For instance, will the Lords eventually be elected, and, if so, will they be elected on the basis of a similar or different electoral system from the Commons? What will happen with the Law Lords, will they be moved to a future potential supreme court? What will become of the life peers who can bring in relevant technical baggage from a previous working experience (such as that of European Commissioner or CEO) of a multinational? What incentives does the Labour Party have to reform the

second chamber when a more legitimately composed House of Lords is more likely to make use of its powers (Bogdanor 1999; Kavanagh 2000)? These questions need to be addressed before some consideration can be given to the potential role of the Lords as a regional chamber. Yet, even then, the large internal asymmetry of the UK, in which England alone counts for 85 per cent of the population may not justify a right of legislative veto for Scotland and Wales. In this sense, these minority nations may act like the Spanish historic regions, and cherish their bilateral executive relations with the UK centre instead.

Alternative channels of intrastate IGR: interexecutive meetings

Since many parliamentary second chambers are not well equipped to serve as significant regional chambers, alternative mechanisms of intrastate IGR have developed. In parliamentary states, these come mostly under the form of (in)formal or paraconstitutional forums in which ministers or civil servants from both levels assume a key role. In this sense, they exemplify executive federalism. I turn to those parliamentary federations or regionalized states which lack an appropriate second chamber for regional representation first.

For instance, in Austria, interministerial conferences bring together the Landeshauptmänner, or, at the level of the civil servants, the Landesamtsdirektoren and Landesreferenten of all the regions. In Spain, sectoral conferences assemble high-ranking officials and executive representatives of the central and regional governments (Grau i Creuss 2000). Sectoral conferences generally convene on issues that fall primarily within the legislative remit of the central government such as utilities (water), infrastructure and telecommunications. The first sectoral conference (on fiscal and financial policy of the autonomous communities) was established in 1982. By 1999, 24 such conferences had developed, spanning wide issues such as agriculture, education, European affairs, public housing, telecommunications and energy policy (Moreno 2001: 139). In Belgium, the Concertation Committee is a more important body for streamlining IGR than the Senate. It comprises the federal Prime Minister, six federal ministers and six ministers representing the Regional and Community governments. The Committee convenes whenever a meeting is called for by the Prime Minister (chair) or a regional (Community or Regional) minister. On average, eight meetings a year are reported. In the UK, the first Joint Ministerial Committees (JMC) developed shortly after devolution was implemented. JMCs bring together the relevant ministers of the central and each of the devolved authorities to discuss matters of common interest. JMCs have been held on European policy (e.g. prior to sessions of the European Convention or a council meeting on fisheries in Brussels), health, poverty and the knowledge economy.

Sometimes, policy matters are not of interest to all the regions. This is particularly so for asymmetrically devolved states. For instance, in Spain, the

unclear position of the historic regions as privileged actors within the framework of the Spanish regionalized state has limited the number of sectoral conferences in which all the regions are involved. Instead of pursuing strategies of joint decision-making, central governments and the regions have more frequently engaged in methods of bilateral or limited multilateral cooperation (i.e. involving only a few regions). Such bilateral cooperation agreements have emerged between the centre and the regions for the coordination of welfare policies, culture, health, education, labour and social services in a more binding way (Agranoff 1999: 94–112). In reality, most of these agreements stipulate central (co-)funding of programmes which may fall within the legislative remit of the regions (as is the case for aspects of health policy and culture). In Belgium, the federal government can sign cooperation agreements with one or several of the regions. They have a legal affect, that is non-compliance with an agreement can result in the annulment of a federal or regional law or administrative decision by the Court of Arbitration (Constitutional Court) or Council of State (highest administrative court). Cooperation agreements clarify ambiguous zones in which the federal and regional governments operate. As such they change the *de facto* nature of the distribution of central-regional competencies (Poirier 2002). Finally, in the UK, regional ministers prefer a bilateral strategy to the multilateral JMC framework. As a result of the strongly cooperative character of devolution in Wales, the Welsh First Minister and the Secretary of State for Wales are said to meet on a weekly basis. Such meetings are much less frequent between the Scottish First Minister and the Secretary of State for Scotland. For most of the time, bilateral contacts assume an informal character. Informal contacts avoid exposing major conflicts of opinion between the centre and one or several regions in public (Trench 2004: 178–81).

The German and Swiss second chambers are well suited to the task of regional representation. Yet, they possess a wide array of intergovernmental consultation or decision-making bodies which operate in parallel to the second chamber. Most of them involve representatives of the executive branches at the various tiers of government. In Germany, the Bundesrat stands at the apex of a large number of forums that bring together federal or regional ministers and civil servants. The most visible of these is the Prime Ministers Conference which brings together the federal Chancellor and the regional Premiers. A smooth functioning of the joint policy programmes requires regular meetings of competent technocrats, expert and planning committees (Leonardy 1999a; Scharpf 1988). More generally, some 950 discussion and working groups have been noted which bring together administrative experts from the centre and/or the various regions within particular subject areas (Kramer 2005: 132). The Swiss federal government, whenever it prepares a legislative bill will set up 'expert committees'. As in Germany, numerous such expert committees are at work. Usually they are manned by members of the executives or their representatives (Federal and cantonal

civil servants). For instance, a study revealed that, between 1970 and 1977, the cantons were asked to participate in 152 out of 200 extra parliamentary expert committees (Germann cited in Wälti 1996: 12). The constitution requires that federal government will consult with all the relevant interest groups and cantonal representatives (executive members or civil servants) which are implicated by the proposed legislation. This procedure is known as the *Vernehmlassungsverfahren* (Article 45 Swiss constitution). The remarks of the cantons must be taken into account when the federal government prepares the final draft of the bill for submission to parliament. In about 9 out of 10 cases (again measured in the same period), the cantons effectively participate in such consultation procedures, albeit that they often reproduce the viewpoints of some of the leading interest groups (Wälti 1996: 13).

Alternative settings of intrastate IGR: central executive and regional parliamentary party groups

Apart from the second chamber or interexecutive meetings, alternative mechanisms may be at work which can be perceived as examples of intrastate IGR. For instance, (in)formal rules may prescribe that the members of a central executive or constitutional court are drawn from as many regions of the country as possible. Or, from time to time, the members of the central lower house may caucus in special regional groups. In the following paragraphs I briefly review some of these mechanisms.

Sometimes the composition of the central executive respects a regional balance or reflects the presence of some territorial minority groups. No other federal country has entrenched the position of its regions in the central institutions more firmly than Belgium. However, where they apply, such mechanisms are mostly based on language (Community), not on region. Furthermore, they only protect the French-speaking minority language group (but not the tiny German-speaking Community) against the overall Dutch-speaking demographic majority. The Belgian constitution prescribes linguistic parity in the federal executive (with the exception of the Prime Minister) and requires that its decisions are taken by consensus. Hence, the federal executive does not introduce bills that face strong opposition from one language group. In Switzerland, the collegiate federal executive comprises a number of Italian- and French-speakers. Unlike in Belgium, however, it is not a formally prescribed rule. The constitution only prescribes that not more than one member from the same canton is allowed. In the other countries, the participation of representatives from different regions follows more by convention. For instance, in Spain, a few prominent Catalans or Basque representatives can usually claim a limited number of seats in the central executive (a possibility given that the voters in each of these historic regions still delegate a few state-wide party members to the central parliament). In Britain, the central cabinet has contained separate secretaries for Scotland and Wales long before devolution was implemented. The secretaries are

liaison officers, transmitting the specific interests of the devolved regions to the various ministerial departments at Westminster, but also communicating central policy proposals to the regions. Even after devolution, they remain responsible for a few programme responsibilities, for example, organizing elections of the devolved parliaments or assemblies (Trench 2004: 182). However, despite the presence of regional secretaries, no guarantees exist to ensure that cabinet is composed from a sufficient number of ministers representing constituencies in Scotland, Wales (or Northern Ireland). Since British state-wide parties do not operate in Northern Ireland, secretaries of state for Northern Ireland have not represented Northern Irish constituencies. Even the secretaries of state for Wales did not always represent a Welsh constituency. The Conservatives have turned increasingly into an 'English' party. Between 1997 and 2001 they lacked a single Scottish MP. Had they been in government, they could not have provided 'a Scottish' secretary for Scotland.

Next to some form of representation in the central executive, regions may find additional protection via procedural rules which apply in the central parliament or their overrepresentation in the central lower chamber.

In Belgium, the first form of protection is provided. In Belgium, as we have seen, the members of both federal legislative chambers are divided into language groups. Language-sensitive legislation must be approved by double majorities: two-thirds of the members in each of the federal legislative chambers comprise majorities within each of the language groups in each of the chambers. When no special majorities are required, but one language group (in principle the French-speakers) feels that its interests are threatened it can pull the legislative 'alarm bell'. Consequently, the matter must be dealt with by the federal executive. The presence of separate language groups in the federal parliament and executive and the correspondence of these groups with a unique set of monolingual parties means that the Belgian federal centre is governed more in a *confederal* than a federal fashion. Both language groups hold each other in check and, as I will discuss in greater detail in Chapter 7, similar mechanisms operate in the Brussels Capital Region where they serve to protect the Dutch-speaking minority. At the federal level, these *consociational* or power-sharing mechanisms also extend into the administrative and judicial arenas (see Chapter 7).

No other central parliament has comparable guarantees to protect the interests of its smallest regions or language groups. However, one may recall that until the most recent UK general elections (May 2005), the contingent of Scottish and Welsh MPs in the central lower house was disproportionately large. As a result of devolution, the size of the Scottish and Welsh delegations has been brought back to proportionality.

In Switzerland, no specific institutional rules apply to protect the cantons in the federal lower house. However, the Swiss constitution does not rule out that some members of the lower house simultaneously reside in a regional parliament, possibly even a cantonal executive (Wälti 1996).

Where regions are not protected in the lower house in a procedural or representational manner, MPs are always free to caucus in regional party groups there. This is evident of course for (ethno-)regionalist parties, even when they form an alliance with a (state-wide) party in the central parliament. For instance, in Germany, the CSU (Bavarian) members of parliament occasionally meet separately, although they form a single parliamentary group with the CDU. Occasionally, Länder-groups bring together all MPs from a particular region. Additional meetings bring together all the East German MPs (Leonardy 2002). In Britain, Scottish and Welsh MPs have convened occasionally in separate Scottish or Welsh 'Grand Committees'. Prior to devolution, the Welsh Grand Committee was the weakest. It met irregularly (possibly only twice a year) and only held second-reading debates on legislative matters which exclusively or primarily concerned Wales. The Scotland Grand Committee convened more often – frequently in Scotland, could engage in second- and third-reading debates of bills on Scotland and could even report on them. Furthermore, Scottish ministers who served in the UK government could be questioned openly on their policies. Yet, because 10 MPs (not necessarily from Scotland or Wales) could halt the referral of bills to either Committee, they primarily served as forums for debate, without being able to decide on controversial issues (Bogdanor 1999: 115, 163). Both Committees have been kept alive after devolution, but their relative significance, in particular that of the Scottish Grand Committee, has declined. This is not necessarily the case for the parliamentary select committees (Commons) which exclusively deal with devolution issues, particularly the Welsh Affairs Select Committee. The members of the latter must closely cooperate with the members of the Welsh Assembly in scrutinizing 'draft Wales only bills' because the Assembly cannot enact primary legislation (Lodge, Russell and Gay 2004: 196). However, most Westminster bills apply to England and Wales. Parliamentary bills normally contain a territorial extent clause. So far, the British government has not acted upon the Welsh Affairs Committee's request to split up bills in separate Wales and non-Wales affecting parts. The isolation of 'Wales only affecting clauses' is considered to be 'technically unfeasible' (Lodge, Russell and Gay 2004: 203).

Intraparty IGR

In addition to the formal or informal political institutions that shape IGR (collective decision-making in executives, parliaments or interexecutive forums), IGR can take place *within* a party, involving its various territorial branches. The likelihood for this to happen is particularly high when parties participate in the central and regional governments. For instance, that relatively few Joint Ministerial Conferences have been convened in Britain or that the Privy Council has not yet ruled on devolution disputes is largely due to Labour's control of the central and regional executives.

Similarly, the German federal second chamber was relatively inactive between 1982 and 1988 (Ziller and Oschatz 1998). The second chamber cast few suspensory or absolute vetoes and it did not regularly ask for sessions of the bicameral Concertation Committee to be convened. The Concertation Committee comprises 16 members from each federal legislative chamber. It discusses bills on which both chambers disagree and can suggest amendments. Amendments must be subsequently endorsed by both chambers if a bill requires the consent of the second chamber. The Concertation Committee played such an invisible role between 1982 and 1988 because the then CDU-FDP federal government controlled comfortable majorities in both chambers. Consequently, intergovernmental disputes could be resolved between CDU Chancellor Kohl and the CDU-CSU Premiers before they had to be taken into the Concertation Committee.

Alternatively, the character of IGR can be influenced by the inclusiveness of the governments that are formed at the various levels of government. For instance, in the post-war era Grand Coalition governments dominated the Austrian federal and regional levels of government. The so-called *Proporz*-rule has played an important role in fostering such coalitions at the regional levels (see Chapter 5). In Switzerland, the 'magic formula' has not been confined to the federal level, but has been widely practised at the cantonal levels as well. All in all, these features have served to broaden the appeal of parties as channels of IGR, and to keep certain matters out of the interexecutive or judicial circuit. Even in Spain, where formal channels of IGR are weakly developed, the levels of judicial litigation remarkably decreased when the central government relied on the support of some of the ethno-regionalist parties (1993–2000). Party politics replaced court politics (Agranoff and Gallarin 1997). In Belgium, we may expect a higher visibility of the interexecutive channels of IGR. Until June 2004, the regional governments were mainly composed of parties which also participated in the federal government. Following the 2004 regional elections, government coalitions between both levels are no longer congruent. Therefore, a deal between the parties of federal coalition government does not guarantee a deal with the regional governments. As is common practice in most mature federal states, explicit negotiations are needed between the federal and the regional executive branches.

Interest groups, civil society and the people

Interest groups (civil society) play a crucial role in translating policy preferences into policy outputs. This is particularly so if certain interest groups have a privileged association with specific parties. Traditionally, business or farmer associations link up with liberal or conservative parties, trade unions forge links with Social Democratic parties and cultural or literary associations may be closely linked to some of the ethno-regionalist parties. Sometimes, interest groups may even come to play the role of public

agencies. For instance, in Belgium, trade unions pay out unemployment fees, and Catholic school networks assume a dominant role in providing education in Flanders.

In a multilayered environment, interest groups may be stronger in some regions than in others. In line with Morton Grodzin's 'multiple-crack hypothesis', the presence of several government layers increases the number of access points for interest groups (Grodzin as discussed in Coleman 1987: 172). Although multiple access points may always generate some influence at one policy level or in one or several regions, that influence is also more fragmented. This is particularly so if the groups which have privileged access to a government at one level or one region are representing different interests from the group(s) which gained such access to government(s) at a different level or different region. In this sense, labour unions may push for welfare expansion with their Social Democratic colleagues in the federal government, but face the opposition of Conservative regional governments who are advised by powerful business associations.

Second, interest groups may have a federal organization structure themselves. In this sense, they may be divided on certain issues, for instance when various regional branches phrase contradicting demands (Coleman 1987 for a discussion). In order to comprehend their influence fully we should also consider whether interest groups have only an advisory role, whether they are systematically involved in certain functions of the state (collective wage bargaining for instance), whether they can veto party policy proposals or are entitled to a share of a party's eligible candidates in parliament. Although a detailed study of their internal organization falls beyond the scope of this book, we should acknowledge that interests groups can influence the shape of policies as well as the (de)centralizing direction in which they unfold.

The people may generate the same effect in a more direct and transparent way. This is most obvious in Switzerland, where many changes in the direction of a policy including its envisaged (de)centralization have been made subject to popular consent.

2.2. The decision-making and enforcement rules of IGR

Intergovernmental decisions can be made in various ways. When they require unanimity, each region is in a theoretically strong enough position to exercise a veto right. In contrast, individual regions are in a much weaker position when the regions contribute only half of the total votes and a common decision can be made with the consent of a regional majority.

Apart from the prevailing decision-making rule (unanimity or consensus, qualified majority, majority, double majority etc.), the input of the regions depends on the binding character of intergovernmental decisions or the rule which prevails by default. Obviously, the worst position for a region is to be involved in an intergovernmental decision that is merely consultative

and which, by absence of agreement, leaves the centre in a situation of hierarchical control. When, in contrast, intergovernmental negotiations lead to agreements which can be enforced in court, regional interests are much better protected.

Occasionally, regional interests might be better served by agreements which leave the regions with an opportunity to opt out. For instance, not all regions may be interested in signing up to a shared cost programme for which they have to pay half of the costs. By being able to opt out or to shift expenditures to other, more interesting cost programmes, a region may not have to wield its veto power, but can allow other regions to benefit from such programmes.

The federal or regionalized states in this study display a considerable variety in the rules and the binding character of their intergovernmental rules. Mostly, several of these rules coincide, for instance, binding majority decisions in the second chamber with non-binding, but consensual decisions in an interministerial conference. In the following section, I briefly review some of the relevant existing rules.

For instance, in most matters other than constitutional amendments, the Swiss and German second chambers have absolute veto powers. However, in Switzerland the upper house decides with simple majorities, in Germany with absolute majorities. The remaining second chambers normally decide with simple majorities. Their decisions can be overruled by the corresponding lower house. In Belgium, *all* federal policies, irrespective of whether or not they partially interfere with legislative or executive powers of the regional levels require the *implicit* consent of the two major language communities. The consensus rule in the federal executive, the division of parliament in language groups and the possibility to pull the alarm bell serve to foster consent between the Dutch- and French-speakers.

The differences in the decision-making rules and the binding character of intergovernmental decisions are even more striking when we move to the so-called 'paraconstitutional' or alternative forums for intergovernmental decision-making. For instance, many of the planning and expert committees which prepare joint decision-making programmes in Germany decide by unanimity (Scharpf 1994). The Austrian interministerial conferences also normally decide by consensus (Obinger 2005). In Belgium, the Concertation Committee which brings together representatives from the federal, Regional and Community governments takes its decisions by consensus. Note that, in contrast with the federal executive and lower house, Regional and Community actors (including a representative from the German-speaking Community) are represented. In the absence of an agreement (Belgium, Germany), the outcome can only be the status quo (or a 'non-agreement'). In Austria, the executive could revert to hierarchical control, but in reality overturning a decision which received unanimous support of the regions can be politically harmful (Obinger 2005: 197).

By comparison, in Switzerland, the federal executive is not compelled to take the opinion of all the regions into account when drafting federal legislation (cf. the *Vernehmlassungsverfahren* specified above). However, if the federal executive fails to consider the opinion of a significant number of cantons, it may be faced with a referendum. When they do not pertain to constitutional amendments, such referendums only require a simple popular majority (of those deciding to vote). Similarly, many of the Spanish sectoral conferences produce non-binding agreements, and may be sidelined in importance by bilateral *Convenciones de Colaboración* (cooperation agreements) between the central government, the historic and (to a more limited extent) the nonhistoric regions. Therefore, in the view of Grau i Creus, sectoral conferences should be understood as mechanisms of ‘institutional courtesy’, with a valuable role in exchanging information but with a relatively limited problem-solving and decision-making capacity (Grau i Creus 2000: 61). In the UK, the outcome of Joint Ministerial Committees is non-binding. They are meant to clear out inter-governmental frictions. However, as long as the results of JMC meetings are not translated into binding legislative texts, no opportunity for judicial litigation exists. In the end, the UK government could exercise hierarchical control, as the regions hold their autonomy at the behest of the British centre.

2.3. Channels of IGR and regional autonomy

In Chapters 3 and 4 I set out a typology which allowed me to identify which of our cases require more mechanisms of IGR. Having summarized the actors and procedures of IGR in the previous pages, we can now consider whether the federal or regionalized states which require more of these mechanisms also possess the necessary equipment.

The presence of IGR mechanisms is paramount in Germany. With its high share of concurrent and framework laws, its administrative form of federalism and the shared nature of the most important tax resources we would not have expected otherwise. The Bundesrat, but also the various interministerial conferences in which representatives of the central and regional executives or administrations participate, serves that purpose. The second chamber can only represent the collective interests of a group of regions which are strong enough to mobilize a majority there, but the many inter-executive meetings which run parallel to it often operate on the basis of unanimity. In Switzerland, too, there is plenty of evidence to support the assumption that its relatively organic federal design is paralleled by sufficient channels of IGR. Such channels focus less on executive or administrative links, and do not mostly operate on the basis of consensus. Requiring consensus would be too much of a burden in a federation with only 26 cantons. Intergovernmental mechanisms are weaker in Austria; they are primarily confined to intraparty linkages or to interexecutive meetings.

Although the latter operate on the basis of unanimity, the federal government can circumvent them and revert to hierarchical control.

Although Belgium more closely approximates to the dual model of federalism, mechanisms of IGR are paramount. However, the *consociational* mechanisms which operate at the federal level protect the French-speaking minority against the Dutch-speaking majority there. In this sense they do not provide explicit guarantees for the protection of the smallest Region (Brussels Capital Region) or the tiniest Community (the German-speaking Community). The Brussels Capital Region is nonetheless fully represented in the inter-executive intergovernmental circuit, such as the Concertation Committee. Here the consensus rule applies.

By comparison, in Spain and the UK, institutional mechanisms do not sufficiently accommodate the need for IGR. In Spain, IGR often assumes a bilateral character, and where they involve all the regions decisions may not be binding and may not require unanimity. The Spanish historic regions can only be assured that their interests will be taken seriously, when the centre requires the support of some ethno-regionalist parties with a stronghold in those regions. Finally, in the UK, the second chamber does not act as a territorial chamber and JMCs are relatively little used. So far this has not threatened the autonomy of the regions, because the Scottish and Welsh executives can utilize their privileged party links with the centre. However, the necessity for better IGR channels which provide the regions with a more secure input may come to the fore once the UK and devolved governments are controlled by different political majorities.

3. From IGR to public policy: policy change

Toward a theory of IGR and policy change

The previous overview of IGR can now be linked to public policy-making by formulating the following three propositions.

First, where IGR are frequent and provide the regions with a collective or individual veto right in intergovernmental decision-making, the risk of policy gridlock is high and the capacity for policy change is relatively small. Conversely, where IGR are relatively infrequent the overall capacity for policy change is much higher.

Second, where IGR do not provide the regions with a collective or individual veto right in intergovernmental decision-making, the centre may be in a position to push through its own view ('hierarchical control'). The centre may only refrain from acting accordingly when the projected political (electoral) costs of its actions outweigh the potential political returns (Padgett 2004: 360–83).

Third, where IGR are less frequent, and the regions are left with a larger capacity for autonomous action, the potential for regional policy divergence (i.e. the adoption of different policies in areas of autonomous

regional policy-making) is higher. The regions may refrain from acting accordingly, when the party leaders and the population at large are hostile to divergences in the quality of public service delivery.

The first of these propositions speaks for itself. It largely builds upon theoretical insights which have linked the presence of institutional *veto points* to the possibility of policy change. Prominent work in this field has been done by George Tsebelis (1995, 2002), and a similar framework underpinned much of Fritz Scharpf's thinking on federalism (1988, 1994, 1997a, 1999).

In his analysis of 'veto players', Tsebelis makes a distinction between *institutional* and *partisan* veto players (Tsebelis 2002: 2). The former are specified in the constitution. In our overview of IGR they consist of the second chamber, but also of the constitutional court (see Chapter 3) which can play an important role as an adjudicator between the centre and the regions. We may also consider the various interexecutive meetings and planning committees which supplement or replace the role of the second chamber in IGR as institutional veto players. In Tsebelis's view, *partisan veto players* are primarily conceived as political parties. Interest groups could be added to this group, for instance when they have a privileged link with political parties, or when they are explicitly involved in socio-economic decisions such as wage bargaining. Similarly, in Switzerland, the people constitute vetoplayers of their own. They can curb federal or cantonal policy initiatives.

According to Tsebelis's analytical framework, the capacity for policy change is not only reduced as a consequence of the sheer number of veto players, but also of their ideological cohesiveness and the ideological distances between them. Policy change is less likely when the ideological distances between the veto players are *large* and each of them is *internally* cohesive. To illustrate the impact of large ideological distances we only need to think of the following example. In Germany, the ideological distance between the Social Democrats and Greens on issues of socio-economic reform is smaller than the ideological distance between the Greens and the market-reform Free Democratic Party. Hence, finding a compromise is much easier if IGR only require the consent of the two former parties than if IGR must bridge the ideological distance between the Greens and Free Democrats as well. However, when ideological cohesiveness is low, the partisan veto players are weaker and some scope for compromise building may exist. For instance, assume that a Red-Green German federal government wishes to push through a deal on fiscal equalization but faces a Bundesrat in which the Christian Democrats control a majority of the seats. The ideological distance between the Christian Democrats and the two parties in federal government is large. However, the Christian Democrats control relatively affluent regions such as Bavaria and Baden-Württemberg, but also some of the relatively poor ones, for example, Thuringia and Saxony. As fiscal equalization issues touch upon some core territorial interests, the federal government may have sufficient room for manoeuvre in luring the resource-poor but CDU-governed

regions into a compromise. In this example, the 'lack of internal cohesiveness' of the CDU-governed regions has reduced the leverage of the CDU as a collective veto point in the political process.

Expanding his analysis, Tsebelis also points at the influence of the prevailing *decision-making rules* and at the role of the *agenda setter*. For instance, where IGR require consensus or unanimity, policy change is more difficult than when they only require a simple majority. We could add that IGR are much less an impediment to change if the outcomes are not binding on all the partners who are involved in the negotiations. With regard to the role of the agenda setter, the following examples can be given. In parliamentary contexts, most successful legislation stems from the executive. This gives parliamentary executives a strategic advantage vis-à-vis the members of the corresponding legislatures. Or, to adjust this example to a more federal context, federal bills which pass a second chamber have usually been prepared by the federal executive. The federal government can set the frame within which intergovernmental discussions may unfold. However, a federal executive's advantage which derives from 'setting the agenda' shrinks when the number and the ideological distance between the veto players increases.

In the following section I will seek to test the validity of all three propositions by turning to the concrete case studies and by bringing in some examples of particular policies. Much of the following observations are explorative only. For instance, the issue of interregional policy divergence in Western Europe's federal or regionalized states has only come to the attention of comparative public policy analysts in recent years.² However, the overall discussion should illustrate the pros and cons of strongly organic or more dual types of federations. Within the group of organic federations, I pay particular attention to Germany because its federal structure has been the subject of much criticism in recent years.

Policy-making in organic federations: consensus or gridlock?

Tight coupling: the case of Germany. Germany is the 'joint-decision' federation par excellence. The 'joint-decision' character of German federalism relates to two conditions: (1) the federal government requires the consent of the regional governments for the bulk of its legislative programme; (2) often the regions must consent with more than a simple majority. On some occasions unanimity is required, if not formally, then almost certainly de facto (Scharpf 1994; Lehmruch 1998). Hence, it is said that German federalism is a system of 'tight coupling' (Armingeon 2000).

The German federal framework combines a multitude of veto players. Prominent examples of institutional veto players are the strong second chamber, the consultation or planning bodies which prepare joint-decision making programmes, the multitude of interministerial conferences and the federal Constitutional Court. Even if each of the political institutions were controlled by the same political party, change could not be taken for

granted. The actors in federal or regional government may not prefer to change policy without consolidating the overall strength of their institution. Federal and regional ministers consider themselves as guardians of the ministry which they represent. Many mechanisms of IGR operate on the consensus rule, which makes change even harder.

Executives and legislatures are manned by political parties who can operate as veto-players as well. In a strongly politicized setting, parties in regional government may act as opponents of federal policies when the federal government is controlled by a different political majority. Feelings of party hostility may further a regional minister's instinct of protecting the interests of the ministerial department or the regional government which she represents (Lehmbruch 1998). Party political hostility is most obvious when the federal executive faces a 'hostile' political majority in the federal second chamber. Hostile political majorities come in two forms. The weakest form occurs when a few regions with a so-called 'mixed' political composition hold the balance of power in the second chamber. Mixed regional coalitions arise when at least one party in the regional government represents a federal government party and at least one party represents a party in federal opposition. Since the 1970s, federal governments have frequently relied on the support of such mixed coalitions. However, the strongest form of hostility occurs when regions with an entirely different political composition from the federal executive are strong enough to mobilize a Bundesrat majority of their own. Such instances have occurred for most of the time in the period between 1976 and 1982, 1994 and 1998, and 2002 and 2005. For instance, after a number of disastrous defeats in a sequence of regional elections which were held since 2003, the Social Democrats and Greens eventually held firm to less than a third of the seats in the second chamber. The pivotal outcome of the regional elections in North-Rhine Westphalia in May 2005 gave the political majority (CDU/CSU-FDP) in the second chamber the option of blocking all federal government bills (SPD-GRÜ). This is so because a two-thirds majority is needed in the lower house to overrule a 'suspensive' Bundesrat veto of that magnitude. The Chancellor and his team barely controlled a majority of seats in the lower house. Therefore, the federal Chancellor resorted to the 'draconian measure' of asking his party MPs to give up confidence in his own government, paving the way for early federal elections. The Chancellor, so he claimed, had lost a mandate to govern.

Does tight coupling produce gridlock? The above events demonstrate that policy paralysis is most likely when the partisan and institutional veto points reinforce each other. In the case of strongly bicameral incongruence, the partisan logic of antagonism overtakes the more pragmatic logic of administrative problem-solving which is needed to make the intergovernmental mechanisms work (Lehmbruch 1998). Policy gridlock can be

the outcome. Policy entangling is currently perceived as one if not the main cause of the German *Reformstau* (i.e. policy gridlock or immobilism). Yet, despite recurrent efforts – the most recent one under the form of a failed federal commission on federal reform – no genuine efforts have been made to disentangle the federal and regional levels. Alternative routes to formal *policy* disentanglement have been contemplated. For instance, as early as 1973, the ‘Ernst commission’ on territorial reform suggested that (West) Germany should only retain seven regions (Leonardy 1999b). This would reduce the number of potential veto players. In practice such reforms require the consent of the people who live in the affected regions. That support may be hard to find. A much more modest proposal to merge Berlin with adjacent Brandenburg failed in 1996 on such grounds. The unification of Germany was too weak a structural shock to spark off substantial federal reform, at least in the short term. At best, some marginal changes were implemented. For instance, the votes of the largest regions in the Bundesrat were slightly increased and the constitutionally required ‘equality of living conditions formula’ was somewhat relaxed. Remarkably, new joint policy programmes were set up to benefit the Eastern regions despite the wide-spread criticism which these programmes had encountered since the 1970s (Jeffery 1995; Wachendorfer-Schmidt 2003). Similarly, the basic principles of the fiscal equalization scheme were left intact.

In general, there are two major views on the contribution of German federalism to the so-called ‘German *Reformstau*’. One set of authors tends to argue that federalism is perhaps the single most institutional variable for explaining policy gridlock. Authors who have taken this view have even argued that *without* radically opposed political majorities in both federal chambers, ‘joint-decision-making traps’ are bound to emerge. This is inherent for federations which have adopted a system of ‘tight coupling’. Perhaps Fritz Scharpf is the best-known and most astute defendant of this point of view. His criticisms have focused on four structural defaults which are linked to joint-decision-making (Scharpf 1988, 1994).

First, the prevalent role of the Bundesrat means that the central government is not free to respond creatively to external demands, or to anticipate future consensus. Its actions are determined directly by the immediate self-interests of regional governments (Scharpf 1988: 255). Federal governments are almost constantly concerned with their popularity since regional elections are recurrent. Therefore, they do not dare to change policies or to take policy measures which could harm their electoral performance at these levels in the short run (see also Zohlnhöfer 2004: 106–31).

Second, joint-policy programmes increase public expenditures beyond levels that would be politically acceptable within a unitary or dual federal setting. Most joint-policy programmes rely on joint-financing formulas (matching grants). This means that their cost, as well as the accountability

for these programmes, is diffused across two or more levels. Inefficiency gains and overspending are the result.

Third, joint decisions, because they are difficult to arrive at, generate a strong path-dependent logic. Without unanimous agreement on how to amend a running programme, the 'default condition' is to continue an existing one, rather than to disentangle it. The consequence for public policy is that 'existing policies are likely to become sub-optimal even by their own original criteria. Under the unanimity rule, however, they cannot be abolished or changed as long as they are still preferred by even a single member (Scharpf 1988: 257).

Finally, the growing territorial heterogeneity of Germany, coupled with the recurrent control of the federal second chamber by federal opposition parties, reduced the capacity for problem-solving. Compromises are the outcome of a long bargaining process instead of a problem-solving logic (Scharpf 1988: 265). Bargaining processes lead to the emergence of non-cost-effective lowest-common-denominator solutions. In order to strike a deal, the 'pie' is enlarged rather than the shares among the actors redistributed.

However, another set of authors do not consider the strong level of policy entanglement as the main cause for the current German *Reformstau*. These 'more optimistic' observers put forward the following three examples to sustain such claims.

First, some authors have pointed at the possibility of finding 'escape routes' to circumvent the paralyzing effects of the joint-decision-making trap (Benz 1998, 2000). Often these 'escape routes' have taken the form of paraconstitutional practices which may yet have to find their way into a constitutionally entrenched reform of federalism. For instance, although joint-policy programmes are still in place, the share of total public expenditures which they represent has significantly decreased since the mid-1970s. Hence, public money that was channelled into these programmes moved elsewhere, that is, to programmes with less-stringent planning requirements and with the possibility of taking decisions by qualified majority instead of unanimity voting (Jeffery 1999: 331). Similarly, according to Arthur Benz even the much criticized joint-task programmes have not always suffered from a joint-decision-making trap (Benz 2000-). In such programmes that coordinate regional economic policy-making, decisions effectively shifted to technical experts, representatives from the federal and regional ministries of economics and independent analysts. They formed closed-knit epistemological communities in which a cooperative spirit prevailed. In order to minimize political conflict, its members frequently devised rational norms that were grounded in economic instead of political objectives. Admittedly, such 'technocratic forms of decision-making' are not conducive to transparency, and they have not been able to prevent a spilling over of contentious issues into the political arena (Benz 1998, 2000: 26-7). Yet they have enabled joint-policy programmes to adapt when necessary, for instance as a result of

domestic economic crises (1970s), political shocks (unification) or EU regulatory requirements.

Second, the German Bundesrat is not always the main veto player for which it is often taken, even when the federal government does not control a political majority there. Because the second chamber is indirectly elected and is only incrementally renewed, it cannot generate the same level of legitimacy as the federal government. The latter can normally lean on the support of a legislative majority in the directly elected federal lower house. Therefore, a coalition of regional governments is not likely to *reject* a proposal that emanates from the federal government *outright* unless it believes that its obstructive behaviour carries sufficient support from the public. Statistics reveal that between 1976 and 1980 – that is the legislative period in which the Bundesrat was at its most obstructive – 2.5 per cent of all bills that passed the lower house failed because of a veto of the second chamber. Furthermore, partisan and institutional vetopoints may not necessarily reinforce each other. One veto type can also ‘neutralize’ the other. For instance, the federal opposition may control the numbers in the second chamber, but a coherent federal opposition strategy cannot be played out because the group of ‘opposition-controlled regions’ is internally divided (low internal cohesiveness). This may be the case, because a proposed bill directly affects the administrative or fiscal capacity of the regional governments. In 2003–2004, SPD Chancellor Schröder successfully wooed some of the poorest regions in order to gain their support for the amended fiscal equalization bills or his federal tax reform package.

This said, the relatively low occurrence of outright Bundesrat veto cannot account for those legislative proposals which a federal government may have refrained from introducing in the second chamber owing to an anticipated lack of support there. Furthermore, in the same period as referred to above (1976–80), the bicameral Concertation Committee deliberated on no less than one-fifth of all legislative proposals (Bundesrat 1999). Hence, important bills have been amended on the request of a majority of second-chamber delegates, either to accommodate specific party political, or specific, regional concerns (Swenden 2004b: 286–95).

In general, one can make the case that a federal opposition is most likely to use the Bundesrat as a tool of opposition-making when six conditions are met: (1) the issues at stake are of high political salience, yet do not strongly affect territorial interests (for instance, when the second chamber is asked to consider a law legalizing abortion); (2) the German federation as such is not marked by important socio-economic cleavages with a territorial basis; (3) the government has a very slim majority in the lower house; (4) the opposition in the federal lower house is not only small in number, but also weak in profile; (5) the balance of power within the entire federal opposition group is such that its most prominent members serve as regional premiers and as leading members of the federal party executive; and (6) the opposition

group controls the second chamber and thus does not have to rely on the support of politically mixed coalitions (i.e. as in strongly incongruent bicameralism; Swenden 2004b: 283–6).

The party political use of the Bundesrat was highest between 1972 and 1982, when a federal coalition government composed of Social Democrats and Liberals sought to push through an ambitious social-liberal reform agenda but faced a second chamber which complied with the above conditions for most of the time (Fromme 1981). The Bundesrat was also used for political purposes between 1982 and 1986, albeit in a very different way. Since the governing Christian Democrats controlled a vast majority of the Bundesrat seats, Chancellor Kohl successfully took intergovernmental disputes into the party room and minimized the need for public sessions of the bicameral Concertation Committee. The federal government could use its agenda-setting prerogative to the full.

It has been argued that the bicameral relationships that applied between early 2002 and the federal elections of 2005 (September) were similar to those that prevailed between 1976 and 1982. In the Spring of 2002, the Christian Democrats captured an absolute majority of seats in the second chamber, the Social Democrats and Greens controlled a narrow majority in the lower house and the CDU/CSU governed alone in five of nine regional governments in which it participated. Furthermore, two regional party leaders, Edmund Stoiber (Bavaria) and Roland Koch (Hesse), played a prominent role within their federal party executives. For some time, they even seemed to threaten the position of party president and leader of the party in the federal lower house, Angela Merkel. Stoiber was allowed to run for Chancellor on a CDU-CSU ticket in the general elections (September 2002). Schröder's remark that his federal government 'lost its mandate to govern' after the Social Democratic defeat in the 2005 regional elections in North-Rhine Westphalia is seen as further evidence of the blocking potential of the Bundesrat.

Yet that view needs 'nuancing' in several respects. In the most recent legislative period (2002–5) the Bundesrat certainly put a hold on health reform, forced the government into resubmitting a controversial immigration bill, influenced the nature of labour market reforms and left its mark on tax reform. However, the level of territorial heterogeneity is now much larger among the group of opposition-controlled regions than it was in the 1970s. The coalition of CDU/CSU-controlled regions comprises some of the richest (Hesse, Bavaria and Baden-Württemberg) and some of the poorest German regions (Thüringia, Meckelenburg-Vorpommern). Consequently, pulling all the regional Christian Democratic noses into the same direction on aspects which directly affect their regional budgets, such as health care, is a more difficult task, a weakness which the federal SPD-Green government has been able to exploit. For instance, for as long as the federal government could still buy off some support of the mixed coalitions, breakthroughs were possible

against the wishes of the Christian Democratic party tenors. After all, substantial tax reform did occur. The federal government also managed to steer a pension reform plan through the Bundesrat by offering the mixed governments of Berlin and Brandenburg 1,000 new jobs in administering the new private pension schemes (Zohlnhöfer 2004: 118).

Furthermore, the Bundesrat does not have a veto power in labour law, eco or green taxes, and even in aspects of health care and pension legislation. Yet, even in those areas major disagreement within the Social Democratic majority on the best course ahead prevented or postponed a coherent legislative package from arising (Zohlnhöfer 2004: 118). In this sense, the Bundesrat may occasionally have been used as a scapegoat for things which went wrong within the governing coalition.

Finally, in a recent study of the German welfare state, Philip Manow has argued that 'the tax, pension, health and labour market reforms of the first and second Schröder governments *cut much deeper* into the existing structures of the German welfare state and political economy than did all the reforms enacted during the sixteen years of CDU-FDP rule' (Manow 2005: 257, my italics). Such developments occurred despite the presence of hostile bicameral political majorities for most of that period. In the view of Manow, the radical reforms of the Schröder government should be attributed to the nature of the bicameral party constellations. When Chancellor Kohl (CDU) lost a majority in the Bundesrat, the second chamber was increasingly used to *moderate* or block proposed tax and health-care reforms. Oskar Lafontaine, the then-SPD party leader and Premier of Saarland, deliberately used the second chamber accordingly. However, because the Christian Democrats favour *more radical* labour-market and social-policy reform than the Social Democrats, their party political control of the Bundesrat has helped to *advance* or *radicalize* government reform proposals in these areas. Hence, 'what before 1998 was a situation of mutual stalemate has turned into an overbidding game in which the CDU attempts to top the reforms of the red-green coalition with even more radical proposals' (Manow 2005: 258).

If policies can change, why then does German federalism need structural reform? Veto points may not prevent necessary reform from happening, but that does not mean that all is well with German federalism. There are two major defaults.

First, the almost perpetual electoral climate turns painful federal policy reforms into an unavoidable masochistic exercise. Of course, regional elections affect the fortunes of central governments in most states, even in unitary decentralized states such as France. However, in no other state are regional elections so directly intertwined with federal politics. Hence, federal governments may resort to policy reforms which obfuscate and dilute costs to the largest possible extent. For instance, in seeking to control its

social-policy expenditures, Philip Manow remarks that federal governments have 'shifted social spending obligations out of the public budget into the special budgets of the social insurance funds and ... accepted (automatic) contribution hikes as substitutes for legislating unpopular and politically deadlocked tax hikes' (Manow 2005: 256). By reducing the tax-funded component of social spending and relying more on private contributions instead, federal governments opted for a less politically painful, but inferior form of social spending from the viewpoint of social equity.

Second, the structure of German federalism illustrates that too much interlocking may lead to overspending and reduce the chains of political accountability. Joint-decision-making and mixed funding can generate 'overspending'. As was discussed at greater length in Chapter 4, regions have little incentive to be innovative and cost efficient when they risk having to contribute more to the total pool of fiscal resources. This may lead to an 'overgrazing of the fiscal commons' (Manow 2005: 260). Furthermore, when the centre and the regions share collective responsibility for the success or failure of anticipated reform, policy failure can always be blamed on any of the other political actors who participated in the collective decision-making.

This said, structural reform is on its way. To some extent it has already happened if one does not take a narrow institutional focus on the working of German federalism. So far, the support of the relatively poor regions for more centralization has been contingent upon the centre's willingness to finance centralized policy programmes. However, as the federal government is running short of cash, central legislative retrenchment may become an unavoidable and mutually desired option. As Jeffery put it, 'east-west differences have had as their result a re-calibration of relationships between federation, western Länder and eastern Länder, with the latter entering a new and asymmetrical relationship with the federation, and the western Länder increasingly inclined – or left with no choice but – to go it alone' (Jeffery 1999: 333). The inevitable consequence of that approach is that the western regions in particular have been asking for the devolution of some *legislative* powers in those areas from which the federal government has fiscally retrenched. The fiscally strongest regions also want more fiscal autonomy to go with such regained legislative autonomy.

A federal commission that was made up of 16 members from each chamber, 13 members without voting rights (representing the federal government, regional parliaments and the municipalities) and 12 (academic) experts nearly adopted a proposal along those lines. Established in October 2003, the committee was meant to report at the end of 2004. However, the proposals which the committee was considering were too radical and arguably at odds with the incremental character of German federal reform. The federal government would retreat from a number of concurrent legislative powers and entirely so from some joint-policy programmes, most

controversially, in the field of higher education. The federal minister for education represented a different opinion on this matter than some of the regional ministers, most notably Roland Koch, the Prime Minister of Hesse. Many see the disagreement between both ministers on the future delimitation of competencies in education policy as the immediate cause of the Commission's failure (Renzsch 2005). Had the proposal been approved, the specific fiscal needs of the eastern regions and Berlin would have found some explicit constitutional recognition. As a result of the expanded regional policy portfolio, the Bundesrat could only express a veto against a third of all federal bills. This would make the second chamber 'half as powerful' as presently is the case (Baum 2004). The regional parliaments would gain influence at home, at the expense of the regional ministers in Berlin. No follow-up meetings have been planned for the time being, but it is likely that some proposals will reemerge in the future and may be implemented in a more piecemeal fashion. However, the inevitable cost of such reforms is a larger degree of interregional policy divergence, possibly also in social policies. Such divergence is at odds with the constitutional guarantee that Germany should not only be governed as a federal state but also as a *social* federal state.

Loose coupling: Switzerland. At first sight, the Swiss political system contains as many (if not more) veto-points as the German political system. The Swiss multiparty executive decides by consensus. The federal second chamber is more powerful than the German Bundesrat and all cantons are equally represented there. Various actors can trigger a referendum, and on the whole referendums have put a brake on policy reform.

As is the case in Germany, academics somewhat disagree on the consequences of these veto points for the potential of policy change. The so-called 'optimists' argue that Switzerland is not in danger of a *Reformstau*. They list several reasons. In socio-economic terms, the discrepancies between the poorest and richest regions are smaller in Switzerland than in post-unification Germany. Furthermore, although the level of policy entanglement is considerably higher in Switzerland as well, the linkages between the various layers are less tight than in Germany.

To compare Swiss with German federalism is to contrast a more *loosely* with a more *tightly coupled* system of multilevel governance (Benz 2000; Armingeon 2000). In a tightly coupled system, negotiators have no choice but to cooperate or to accept the status quo. In contrast, in loosely coupled systems of multilevel governance, 'policy-making in one arena does not determine, but sets the context for negotiations in other arenas' (Benz 2000: 37). In a system of loose coupling, the risk of no-agreement can be avoided by offering the possibility of exit. Patterns of interaction are relatively informal, cooperation takes place in networks, rather than in constitutionally prescribed consultation bodies. Solutions to coordination problems can be

adjusted more easily. Therefore, there is more space for experimental, innovative and flexible approaches to policy-making (Benz 2000).

In the view of Klaus Armingeon, Switzerland's loosely coupled federal design allows for more flexible escape routes, and thus entails a lower risk of gridlock. Several features illustrate the 'more loosely structured' character of Swiss federalism. The members of the Swiss parliament are not bound by strong levels of party discipline. As we have seen, Swiss parties are more decentralized, with cantonal branches that dominate central party wings. In addition, most cantonal governments replicate the 'magic formula' which marks the composition of the federal council (executive). Their inclusiveness reduces the risk for party gridlock in the second chamber or other intergovernmental forums (Armingeon 2000: 123). Furthermore, the federal government consults the cantons and relevant interest groups before it introduces legislation which affects their autonomy. However, it is not compelled to take their wishes into account, certainly if they represent a clear minority view. In addition, joint-financing mechanisms are not compulsory. Cantons may refuse to accept 'matching grants' and decide to go it alone. Conversely, the federal government may be able to pursue some of its objectives notwithstanding the refusal of one or several cantons to sign up to the federal policy plan. In comparison with Germany the Swiss federal government also leaves the cantons with a larger discretion in implementing federal law. Partly, this reflects the much larger fiscal autonomy of the Swiss cantons. Partly, such discretion follows from the constitutional requirement to take cantonal differences into account. Hence, compared with Germany, there is more scope for interregional policy divergence in policy areas in which the federal and regional governments must cooperate (Vatter 2002). Finally, loose coupling is still sufficiently tight to prevent a race to the bottom. Regional migration ratios are only half as high as in the US. Thus Swiss people are much less likely to vote with their feet than their American counterparts. The federal government is left with sufficient scope to set up regional programmes, subsidize the relatively deprived (mountainous) cantons and prevent its citizens from flocking to the urban centres. However, unlike Germany it does not prescribe a 'uniformity of living conditions' (Armingeon 2000: 121–3).

In the view of others, the Swiss federation is certainly prone to gridlock. For starters, Switzerland is the only clear-cut case of a 'coming-together federation' (Linz and Stepan 1996). Therefore, the Swiss cantons have been able to use their autonomy and mobilize their veto points to prevent a tighter system of coupling from arising. In this sense, the position of the cantons has been much stronger than that of the German regions, most of which in the immediate post-war period were in a state of social and fiscal despair. Furthermore, although a system of 'loose coupling' does not prevent incremental policy changes from happening, more substantive changes may be as difficult to achieve as in Germany. This can be illustrated with

reference to the development of the Swiss welfare state (Obinger 1998; Obinger, Armingeon, Bonoli and Bertozzi 2005).

In contrast with Germany or Austria, it took much longer to get the Swiss welfare state off the ground. Referendums certainly contributed to keeping the redistributive role of the centre at relatively low levels. The centre lacks the tax resources to finance redistributive programmes of similar magnitude to those in Germany. The regions have bargained more successfully to centralize social legislation under the form of skeleton laws, which leave the cantons with more significant administrative leeway (Obinger 1998). The pace of Swiss welfare centralization has been slowed down as the result of a few more factors. For instance, most of the social-interest groups (and health-care providers) are decentralized as are the major political parties. Unlike in Germany, where the two largest parties are pro-welfare, the Swiss Liberal and Radical parties do not share that conviction. Each of these actors can and has occasionally mobilized the institutional veto points to prevent further social centralization. For instance, small rural cantons elect a high number of conservative politicians to the federal second chamber. There, they wield a disproportionately large influence because of the overrepresentation of these small cantons. Similarly, influential business groups have used (the trigger of) a referendum to force the centre into 'lowest-common-denominator solutions' in social policy. However, as labour unions have increased their grip on society as well, measures that combine elements of welfare expansion and retrenchment stand the best chance of success. The success rates for social-policy measures which unambiguously sought to expand or retrench the welfare state were much lower. They faced the collective protest of, respectively, the major business or trade union organizations (Obinger 1998: 253–6).

More recently, it has been argued that although the Swiss welfare state needed a long time to take off, it now almost seems as difficult to retrench some of the welfare policies. Cantonal governments have resented a reduction in federal unemployment schemes which would lead to higher cantonal payments in social assistance (Obinger, Armingeon et al. 2005: 291). However, overall, not federalism, but the people, should be held responsible for the difficulty of welfare retrenchment. This is so, because most measures which seek to retrench the welfare state have been blocked owing to a no vote in a referendum on an ordinary legislative proposal. Federalism would only interfere if a constitutional amendment on social-policy reform was rejected on the basis of a cantonal instead of a popular majority. Although few constitutional amendments which proposed changes in social policy passed, their rejection was not based on a cantonal majority. In sum, loose coupling has not prevented policy change from happening, but policy change is likely to be incremental. The cantons or their channels into the central machinery of government may reduce the speed of proposed policy changes. However, incremental policy change, for instance in welfare centralization and

retrenchment, is more often the product of other veto points which are less important in the German context, such as referendums.

Loose coupling is not without additional problems. As in a system of tight coupling, the lines of accountability are not always clear, and, as is the case in Germany, Switzerland has been preparing a more profound reform of its federal system. Next to changes in the mechanisms of fiscal equalization, the reforms also seek to 'unbundle' (disentangle) the tasks of the federation and the cantons. Although the confederation and the cantons would still cooperate in 12 subject areas (amongst which are environmental matters, regulating of airports and supplementary old-age pensions) cantons would also be made exclusively responsible for 13 subject areas. In many policy fields, inter-cantonal cooperation would be strengthened or replace central-regional cooperation (Schmitt 2005: 357). There is no consensus yet on these proposals and as constitutional amendments they would in any case require the consent of the people and a majority of the regions.

Austria: centralized federalism without major veto points. Compared with Germany and Switzerland, the Austrian centre is in a much stronger position to push through its own wishes. There are fewer institutional veto points that can be linked to federalism. Furthermore, from the outset, Austrian federalism has been relatively centralized in legislative and fiscal terms. In areas where policy interlocks, 'loose' rather than tight coupling is the order of the day.

Earlier, I stressed the limited role of the Austrian second chamber as a regional veto player. Given the scarcity of national referendums, the Constitutional Court is the only institutional veto player which is sufficiently strong to halt some of the centralizing forces in Austrian federalism. Yet, the veto potential of the Constitutional Court has been neutralized. The constitution was amended in a way which guaranteed that future judgments would comply with a federal government's wishes, or previous judgments were rendered irrelevant (Obinger 2005). Such strategies have been particularly successful when Austria was governed by grand coalitions (ÖVP-SPÖ). This condition applied for most of the post-World War II period. Intergovernmental ministerial forums may not produce a strong regional counterweight either. As in Switzerland, the proportional composition of some of the regional executives has ensured that major party differences can be cleared away before they would be exposed more openly in such gatherings (when debating reforms of the fiscal equalization laws, such squabbles cannot always be avoided).

In welfare policy, the weakness of the veto points, the relatively small interregional socio-economic disparities and the presence of two catch-all pro-welfare parties has contributed to a swift centralization of the Austrian welfare state. Even when both of the catch-all parties were not governing

together in a federal grand coalition (1966–1986; 2000–), devolving social welfare was not considered an option.

More recently, the Maastricht criteria and the presence of a centre-right government strengthened overall budgetary constraints. These have not provoked the devolution of welfare policies (as these might come under the form of unfunded mandates). Rather, the federal government retrenched from important aspects of the welfare state without being stopped by any of the political or institutional actors. In an unusually brusque way, the centre-right federal government sidelined the neo-corporatist actors in the policy process, and strengthened its own role as the key welfare agenda setter. The Social Democrats launched a popular initiative against the central government's quite radical retrenchment proposals. Although the outcome of the initiative forced the federal government to consider alternative proposals for reform, none of them were turned into policy. The opposition took certain radical policy reforms in accident insurance benefits, pensions and taxation to the Constitutional Court, but only with limited success.

Remarkably, the regions did not stand up against these reforms, although the proposed cut-backs threatened to increase the levels of territorial inequality in the state. For instance, although pensions are a central competence, the number of pensioners receiving minimum pensions is more than twice as high in Carinthia than in Vienna (Obinger 2005: 216, fn. 98). Furthermore, the retrenchment of federal social policies is likely to drive more people into social assistance, which is covered by the Austrian regions. Regional protest only showed after the governing parties, in particular the populist right-wing FPÖ, lost badly in successive regional elections. Ultimately, this led Jörg Haider, the general party leader and regional *Landeshauptmann* of Carinthia, to provoke early general parliamentary elections. Should, as in Germany, such reforms have required a more direct input of the regions, the *Landeshauptmänner* would have been in a stronger position to moderate such reforms.

As in Germany and Switzerland, there have been recent attempts to reform the structure of Austrian federalism. In a sense reform proposals also seek to 'disentangle' central-regional responsibilities. However, they would do this by weakening the powers of the regional governments even further. Hence, the discretion of the centre to change the course of policies would grow. A 'convention on the reform of the Austrian political system' (*Österreich-Konvent*) concluded its activities in January 2005, after two years of intensive deliberations. Central and regional politicians took part in the discussions. In his report, the president of the convention, Franz Fiedler, suggested that the centre be made *entirely* responsible for legislating in education and health. The regions would only retain some responsibility for the implementation of these policies, albeit purely as agents of the centre. The second chamber would not be strengthened to compensate for the loss of regional

legislative autonomy. The Fiedler report, which was meant to serve as the basis for a broader consensus, provoked dissent among some of the leading regional actors. As a result, no compromise solution is likely before the end of the current legislative term, and Austrian federal reform will be put on hold for a few years (Bußjäger 2005: 403–26).

Intergovernmental policy-making in the less-cooperative federal or regionalized states: Belgium, Spain and the United Kingdom. In Austria, the relatively limited scale of territorially based opposition to major structural welfare reform is not only the consequence of a lack of regional veto points. The political or socio-economic cleavages that underpin the Austrian political system have rarely been couched in territorial terms (Erk 2004). In this sense, IGR in Austria are played out very differently from IGR in multinational states such as Belgium, Spain and the UK. As I have argued in Chapters 3 and 4, in all three states, responsibilities are divided in such a way that each level has more independence to legislate for and administer its policies. Yet this does not render IGR irrelevant, particularly in Spain, where the distribution of competencies is always open to ambiguity and contestation. Therefore, it is surprising that of all three states only Belgium has provided mechanisms which are capable of meeting such needs for intergovernmental dialogue. In Belgium, the veto potential of the Dutch and French language groups is extremely high. The Belgian centre cannot decide without the consent of both. In this sense, the influence of the language communities stretches well beyond policy areas in which the interests of the centre and the Regions or Communities intersect. In such areas, more traditional intergovernmental mechanisms are at work. Each of the participating actors (with the exception of the tiny German-speaking Community) has a right of veto in such forums. The Spanish regions are not strongly involved in the politics of the centre. Where central and regional interests overlap, intergovernmental negotiations may not necessarily take place. Alternatively, they may not involve all the relevant regional actors. This can result in a politics of hierarchical control, judicial litigation or bilateralism. Similarly, the Scottish and Welsh regions cannot be sure that the centre will take their interests into account. This is particularly relevant for Wales which is entirely dependent upon the centre in legislative terms. The limited participation of the Spanish regions (or also of Scotland and Wales) in the politics of the centre may reduce their pre-commitment to the objective of national solidarity (Bednar, Eskridge and Ferejohn 2001; Filippov, Ordeshook and Shvetsova 2004: 226–98). I will touch upon this issue in much greater detail in Chapter 7. In the following paragraphs, I will analyse how regional actors influence the potential for policy change in Belgium, Spain and the UK, and in what sense they are involved in intergovernmental decision-making.

Policy change and IGR in Belgium: it takes two (sometimes five) to tango. In Belgium, all central decisions, irrespective of whether or not they touch upon regional issues, require the implicit consent of the two main language groups which constitute the federation. In this sense, the French or Flemish Communities can mobilize their ministers in the federal executive to prevent policy change from happening. Federal representatives act as agents of their language communities because they stand for monolingual parties which, with the exception of Brussels, campaign in monolingual districts. For instance, Flemish- and French-speaking parties represent different views on how to reform the central administrative structure or to tackle juvenile delinquency. The party political landscape leans more to the right in Flanders. Therefore, a majority of the Flemish parties has paid stronger support to suggestions for changing the federal civil service on the basis of 'New Public Management' principles. Similarly, more Flemish politicians favour repressive measures to contain juvenile delinquency, whereas a majority of their French-speaking counterparts emphasizes the virtues of alternative punishments instead. Such disagreements prevent a change from the current status quo.

Next to the veto points of the language communities in the centre, there is a set of intergovernmental channels which more clearly involve representatives from the central and regional governments. They convene on issues in which central and regional interests overlap. Until 2004, such channels of IGR were largely used in a constructive manner and were often sidelined by more relevant negotiations between the federal and regional party leaders. Federal and regional governments were congruent in party political composition for most of the time. In Belgium, party leaders are not normally active at the federal or regional *executive* levels. They usually have their seat at a regional or federal level or occasionally even that of the European Parliament. Their 'non-executive' function frees them from interests that are too closely tied to a particular level of government or a specific ministerial department. In this sense, they can serve as mediators between the federal and regional party ministers.

The role of the 'institutionalized' intergovernmental forums is likely to increase: since July 2004, the federal and regional governments have been composed from different political majorities. The first of such forums is the Concertation Committee (see above). Once it is called upon to deliberate, the Committee has 60 days in which to work out compromise solutions. This requirement for unanimity explains why only 30 per cent of all conflicts which the Committee was asked to consider between 1995 and 1997 ended up with a compromise solution (Jans and Tombeur 2000: 153). Furthermore, there are more mechanisms that seek to involve the regions in the preparation of central policy in one way or another. Hence, the Concertation Committee is a deliberation mechanism of last resort and in this sense its low success rate is not surprising. The federal constitution or

the special majority laws stipulate a wide array of mechanisms for information-sharing or consultation (Poirier 2002: 32). All in all, these mechanisms are at least as strong a guarantee for regional input as the Swiss *Vernehmlassungsverfahren*. Sometimes, they share the feature of loose coupling. Although regional consultation is a formal prerequisite, the federal government is not always bound to take the opinion of the regions into account.

For instance, the organization of federal health care institutions or the placement and training of the unemployed requires that at least *information is exchanged* with the Communities and Regions. First-aid health care and job-creation are Community and Regional competencies respectively. The regions *must be heard* when the federal government is seeking to alter the status of their civil servants, or when it is regulating certain policies, such as energy policy, air traffic control or some aspects of environmental policy which the centre still controls. Sometimes, the executives of the regions *must be associated* in the drafting of federal legislation, for instance in transport, communication, police, fire-fighting, electricity or air traffic control. The federal government should consider the suggestions of the Regions. The special majority laws which regulate the financing of the Regions and Communities contain no less than 18 clauses which prescribe their involvement in federal decision-making (Poirier 2002). Finally, the 'legislative branch' of the Council of State (Belgium's highest administrative court) advises the federal and regional executives on the constitutionality of all their legislative proposals. Although the advice of the Council must not be taken into account, it serves as an important flashing light, signalling whether proposed legislation could spark intergovernmental friction.

Where the regions must be associated with a federal policy or be consulted, the outcome may lead to a cooperation agreement. There are more successfully concluded cooperation agreements than compromises of the Concertation Committee. This is so despite the requirement that the executive actors and the regional parliaments must approve such agreements whenever they have budgetary implications or directly affect the citizens. Hence, cooperation agreements acquire a joint-decision character, and are subject to potential veto. Between 1988 and 1998 some 126 agreements were signed, some of them as the result of a *constitutional* (i.e. special majority law) obligation to do so (Jans and Tombeur 2000: 149). Arguably, the most important cooperation agreement emerged in the field of foreign policy. Here, an elaborate mechanism was devised which secured the input of the regions in negotiations at the international or EU level whenever matters are discussed that fall within the scope of their domestic competencies (Kerremans 2000 for an overview).

Following the regional elections of June 2004, the federal and regional governments are no longer congruently composed. Consequently the formal channels of IGR are gaining relevance, as disagreements can no longer be

solved within the major party groups. However, the success rate of such meetings is not necessarily higher. A case in point is a failed intergovernmental agreement in the Autumn of 2004 that would have enabled courier firm DHL to expand its Brussels airport hub. Unsurprisingly, the heavily urbanized Brussels regional government used its autonomy in environmental policy to push for the most stringent noise-ceiling levels of all the Belgian regions. The unwillingness of Brussels to lower its environmental standards to a level which would have satisfied Flanders (let alone DHL) proves three points. First, a quasi-agreement among the members of the federal executive on how to proceed could not persuade the Brussels regional government to change its mind. This was so, notwithstanding the highly politicized nature of the issue. The French-speaking Green and Christian Democratic parties do not participate in the federal government, but they are coalition partners in the Brussels regional executive. Therefore they should have been consulted in a timely way and proper manner to increase the chances of a breakthrough. Second, intergovernmental crises may lead to non-decisions, but they need not threaten the survival of the federal executive (Jans 2000). Put differently, intergovernmental crises should not be mistaken for intragovernmental crises (Deschouwer 2004b). Finally, dual-type federations are certainly not free from intergovernmental conflict. As political leaders are less 'accustomed' to and bound by IGR, they may be conducted in a less amiable atmosphere and more often produce litigation (Braun 2000).

Policy change and IGR in Spain: potential for contested policy change. Compared with Belgium, interexecutive meetings in Spain are less frequent and often sidelined by strategies of bilateralism or unilateralism, producing regular judicial conflict or policy duplication. The centre is more willing to take on (certain) regional views when it depends on some of the ethno-regionalist parties for obtaining a central parliamentary majority. The centre encounters 'few' territorial veto points which could prevent the reversal of its policies. The example of education policy makes this clear.

All the Spanish regions have now acquired similar levels of autonomy in education. Yet, the autonomy of the regions in this field is constrained in two respects. For starters, the Spanish constitution stipulates that 'education is a right of all Spaniards'. Furthermore, and more controversial, the centre is entitled to enact 'foundational' and 'organic laws' which specify the general principles or the basic conditions which the regions should observe when exercising their right of autonomy in education policy. So long as the Social Democrats controlled the central government or the Conservatives relied on the support of some of the ethno-regionalist parties, the level of central intrusion in education policy was limited. Schools were granted greater autonomy and financial diversification. At the same time, the centre always kept a close eye on the overall quality of the education curriculum by

strengthening its evaluation and inspection mechanisms (Losada and Máiz 2005). However, as soon as the PP managed to capture an absolute majority in the central parliament (2000–4), it sought to reclaim its substantive authority in education policy. The centre was no longer primarily concerned with securing the overall financial sustainability and equity of the education system, but shifted its focus to changing the contents of education instead. The PP also sought to insert some of its ideological core values in education curricula. It prescribed a more state-centric view on Spain and Spanish historiography, de-emphasized the relevance of minority languages or Spain's 'plurinational' character, and increased the importance of religious education (Losada and Maiz 2005). If the Spanish regions had access to the same intergovernmental mechanisms as their Belgian counterparts or could have wielded more power in the centre, such a change of direction in education policy would not have been possible. All that the regions are left with is the judicial route or the consolation that the centre must be cautious not to curb the levels of regional autonomy too much for electoral reasons.

The centre's determination (and capacity) to change the direction of education policy offers some proof of the weakness of IGR. Yet, the Spanish state certainly contains several such channels. Earlier I referred to the sectoral conferences bringing together representatives from the regional and central governments with the purpose of deciding on issues of common interest. There are two conflicting views on the actual contribution of these conferences in streamlining IGR. The dominant view is that the 27 sectoral conferences have made a limited impact on smoothing IGR. They have produced few Joint Plans and Programmes for common central-regional action. They have also been of limited help in avoiding conflict settlement by judicial means. Usually, a decision to pursue court action is taken by the Judicial Offices of the regions and their opinion is rarely informed by the outcome of preceding discussion in these conferences (Grau i Creus 2000). Furthermore, the outcome of sectoral conferences is not binding on any of the parties.

However, Tanja Börzel has argued that the policy record of the sectoral conferences has significantly improved since 1994 (and has continued to do so until the general elections of 2000). She claims that the growing need to coordinate domestic policies as a result of increasing Europeanization has played an important role in this. Since 1994, the Spanish regions have begun to coordinate their policies on EU matters that fall within their domestic competence sphere (such as agriculture). As the EU forces the regions to speak with one voice, they had to look for common action. Even the historic nationalities have come to realize this. These cooperation mechanisms have had positive spill-over effects in the domestic intergovernmental arena. Sectoral conferences in highly Europeanized areas tend to be more successful also in producing agreements in domestic IGR than sectoral conferences in policy areas with low levels of Europeanization (Börzel 2002: 136–46).

However, the relationship is not a watertight one: several sectoral conferences may fail to produce intergovernmental agreement at home, despite their capacity to do so on issues that acquire a European dimension. Unfortunately, Börzel's data are not recent enough to conclude whether this improved climate of IGR continued during the period 2000–4, when the PP governed alone. If the PP pursued narrower party interests, as was the case in education policy, the success rate of these channels of IGR should have dropped significantly.

Frequently, IGR turn sour because the incentives for the parties in central government to take regional viewpoints into account are too weak. However, the duality between the historic regions or minority nations and the other regions is another potential source of conflict. The historic regions prefer bilateral relations with the centre, instead of IGR in which all the regions participate. Without being approached in a 'bilateral' way, some of the historical regions may even refuse to take part in an intergovernmental programme. For instance, in unemployment policy, the centre and the regions share certain competencies. Yet, the Basque government has refused to accept responsibilities for active employment policy without also being offered the power to regulate unemployment protective policies (Gallego et al. 2005). The Basque government has also opted out of an intergovernmental agreement which contains mechanisms for coordinating social policies. It feared that the centre would use its access to categorical grants as a means to interfere into Basque social policy. Furthermore, because of its high levels of fiscal autonomy (and above-average per capita fiscal returns), it could easily survive without such grants (Moreno and Trelles 2005). The peculiar demands of the historic regions are also reflected in their and the centre's willingness to contemplate court action. Central-regional conflicts, where fought out in court, have involved the Basque, Catalan or Gallego regions in about 60 per cent of the cases (Porrás et al. 2002 referred to in Gunther, Montero and Botella 2004: 320–1).

In contrast, the preference of the historic regions to engage in bilateral relations with the centre has minimized the scope of horizontal intergovernmental cooperation. Unlike in Belgium (but also Germany, Switzerland or Austria), there are few intergovernmental agreements between two, let alone all, of the regions. The constitution authorizes the conclusion of such agreements, but, depending on their subject matter, additional regional consent may be needed. However, until 1998, only about a dozen of such agreements were in existence compared with five thousand(!) agreements which the centre had concluded with each of the regions individually (Börzel 2002: 102).

The United Kingdom: intra-party IGR masks high potential for hierarchical control. Finally, in the UK, the potential for intergovernmental conflict and policy change has so far remained untested. This is primarily owing to the

short time span of devolution and the Labour Party's control of the central and regional administrations. In comparison with Spain, the powers of the Scottish Parliament are spelled out more clearly, and at first sight there is less scope for policy duplication. Yet, the Scottish executive must closely cooperate with the UK government and Parliament. This is particularly the case because it is entirely dependent upon the UK Parliament for the financing of its legislative and administrative tasks. Scottish and Welsh budget planning requires that the devolved authorities are involved in the British comprehensive spending review, well before the annual budget is announced in the House of Commons. Any legislative proposal which could incur extra costs beyond the amount pledged in the 'Barnett formula arrangement' requires the consent of the UK Treasury. For instance, on this basis, Scotland was entitled to additional central revenue to contain the spread of Foot and Mouth disease (Trench 2004: 174).

Apart from fiscal negotiations, IGR also emanate from the interdependence between some of the devolved and the 'reserved' matters. For instance, social security matters are generally controlled by the central state, but certain welfare provisions have been devolved. This can lead to occasional conflict, for instance, when the British government seeks to strengthen the conditions (eligibility) for social security payments, while the Scottish Executive is simultaneously strengthening its policy of paying for the long-term care of the elderly (Trench 2004).

In order to avoid policy duplication, the devolved authorities have sought access to the centre. They have done so primarily by using intra-party IGR and by making less use of Joint Ministerial Committees, let alone by reverting to the Privy Council. However, this may change when the Labour Party no longer controls the central and regional governments. In principle, electoral calculations are the most important element to stop a central government from reversing or changing its policies vis-à-vis the regions.

At present, the 'mutual trust' between the Labour-dominated UK and Scottish governments can be read from the repeated introduction of so-called 'Sewell-motions' in the Scottish Parliament (Trench 2004). Such motions enable the Scottish executive, subject to the Scottish Parliament's consent, to transfer responsibility for certain devolved matters back to Westminster whenever this would suit the cohesiveness of a policy. Arguably, a Labour- or SNP-led Scottish government would be much less likely to introduce such motions if it were to face a Conservative UK government. As the Belgian example testifies, a more adversarial political climate may generate a more active role for the courts or enhance the visibility of formalized channels of IGR, such as the Joint Ministerial Committees.

The need to intensify cooperation between the central and regional governments is even more explicit in Wales, because of the very specific design of devolution there. Although the Welsh devolution settlement is a potential legal minefield, major coordination problems have been avoided owing to

the firm grip of the Labour Party on the Welsh Assembly and UK government. Yet, the potential for future disputes is widely recognized. Therefore, in Wales, a so-called 'Richard Commission' has recommended the transformation of the Welsh Assembly into a genuine parliament with legislative powers modelled after the Scottish Parliament (Osmond 2004). The UK Labour government has recently endorsed that suggestion, but requested that such a change should be made dependent upon the outcome of a post-legislative referendum in Wales (Wales Office 2005: 9).

4. Regional autonomy and policy divergence

4.1. Policy divergence in two organic federations: labour market, welfare and education in Germany and Switzerland

Federal or regionalized states with a more cooperative blueprint leave less scope for autonomous regional action. Regions may still be important collective players, but, the more their powers are tied up with central legislative powers, the fewer opportunities are left to tailor policies to the needs of the individual regions.

Policy divergence raises certain risks and opportunities (Keating and McEwen 2005). The main risk, particularly in fiscal matters, is that it can trigger a 'race to the bottom' and neglect issues of social equity. The main virtue is that policy divergence not only allows regional governments to take interregional differences in socio-cultural or socio-economic preferences into account, but also allows them to engage in policy experimentation. Ultimately, this may trigger 'a race to the top' in which regions copy the policy devices of their more successful cousins.

Within the group of the cooperative federations, Switzerland, with its more loosely coupled form of intergovernmental interaction and extensive regional fiscal autonomy creates more room for policy divergence than Germany. We can compare such interregional differences in some aspects of labour, welfare or education policy. In both countries, the first two policies are relatively centralized, but still leave some scope for regional action. By comparison, in Germany and Switzerland education policies, with the exception of certain aspects of higher-education policy, have remained decentralized. All three policies are funded more explicitly on the basis of regional revenues in Switzerland.

Although the German centre has assumed most of the concurrent powers in social policy, the regions have retained important responsibilities in stimulating employment and structural policy and policies that provide care for the elderly.

One cause of policy divergence in employment policy is the different party complexion of the regional governments. Regions employ a vast corps of civil servants. Schmidt and Schmid demonstrated that regions that have been controlled more often by left-wing parties (SPD) are also more likely to

push public employment above the national average (Schmidt 1980 in Schmid 2001: 286; and Schmid 2001: 287–8). This tendency even continued after German unification. Yet, public-sector employment grew faster in the East, irrespective of whether or not its regions were governed by left- or right-leaning government coalitions.

Party differences have not always been decisive in accounting for different regional approaches, for instance in labour market policy. The Southern German regions have channelled a substantial share of their resources into structural and regional economic development programmes. Such programmes would eventually pay off in higher regional employment, so they argued. By comparison, all of the Eastern regions as well as Bremen, North-Rhine Westphalia and Hamburg spent relatively more money on vocational training programmes or on alternative measures for integrating the long-term unemployed in the labour market. They hoped that such measures would pay off under the form of more structural and economic development. Yet, a third group of regions (Saarland and Schleswig-Holstein) did not link the labour market to economic development policies at all. Instead, they signed up to social policies that were co-funded by the centre, thus avoiding an activist regional role (Schmid 2001: 291–3).

German regional labour market policies also illustrate how regions can learn from each other. For instance, Lower Saxony was the first region to create so-called 'social enterprises'. These enterprises mostly employ citizens who are long-term unemployed, but they are nonetheless fully integrated into the market economy. The success of these social enterprises meant that, in time, similar employment constructions were set up in nearly all of the German regions. In some sense, the transfer of policies from one region to another is facilitated by the dense network of intergovernmental channels. Civil servants and politicians can make use of these networks to exchange ideas. Although such interaction patterns may produce more homogeneous policies in time, the tendencies to innovate can still emerge from the bottom up, rather than top down. Similar spill-over effects occurred in elderly care policies, where so called *Fachbruderschaften* and *Wissenskoalitionen* (epistemological communities which bring together policy specialists from the different regions) produced the diffusion of innovative ideas across regional boundaries. Ultimately, this paved the way for a more active participation of the federal government in elderly care policies (Schmid 2001: 293).

Education is another policy in which the level of German interregional cooperation is strong despite the fact that it is a policy in which the regions have managed to retain most of their autonomy. One year before the federal constitution was endorsed education ministers representing the future regions of Western Germany had already established a standing conference of ministers of education, culture and science, seeking to harmonize the various education systems of the regions. This *Kultusministerkonferenz* (KMK) has harmonized education curricula and established general quality

standards in education, which enables pupils to continue their education in another region without significant transition costs. The conference also intensified cooperation between education, research and cultural institutions. The KMK has been criticized for its relatively limited output (partially owing to the decision-making rule of unanimity), and for its inability to keep the federal government out of the education area (Scharpf 1988). True, the federal government's entry is almost exclusively confined to higher education. In that field, the federation coordinates joint tasks which assist the regions in co-financing university infrastructure and university hospitals. Furthermore, the centre has also strengthened its regulatory influence through enacting 'university framework laws'. These framework laws have contributed to harmonizing the organizational structure of universities throughout Germany. For instance, they prescribe a government-appointed 'president' to act alongside a rector who specifically promotes academic interests (Franckmann and De Weert 1993).

Recently, the universities and the regions have been pushing for more autonomy. On the one hand, there is a tendency to create a network of elite universities which would cross-cut the regional divisions. Their creation would strengthen the need to central coordination. On the other hand, some regions (with the implicit consent of many universities) have agreed to introduce university tuition fees for basic degrees. The support for tuition fees is generally higher in regional governments which are controlled by the Christian Democrats and which are resource rich. In January 2005, the German Constitutional Court determined that the regions are allowed to set university tuition fees (or leave it up to the universities to do so). The Constitutional Court overturned a federal ban on tuition fees, which the federal SPD-Green government had issued to prevent the Conservative governments from allowing such fees. As it stands, Bavaria, Baden-Württemberg and Hamburg have announced the introduction of tuition fees, as have SPD-Liberal controlled Rhineland-Palatinate. The 'tuition fee ruling' provides a good example of the recurrent tension which emerges from conceiving Germany as a social and as federal state at the same time.

Compared with Germany, the scope for regional policy divergence is much wider in Switzerland. This applies to most welfare and education policies. Although pensions, health, accident and unemployment insurance are now regulated at the Swiss federal level, the cantons are left with sufficient scope to pursue their own welfare policies. They are jointly responsible with the municipalities for implementing much of federal social policy and they raise the bulk of direct taxes. Furthermore, several welfare policies (social assistance) fall under cantonal or municipal control. Finally, several interest organizations operate at a cantonal level, most notably health insurance funds (Armigeon, Bertozzi and Bonoli 2004).

Klaus Armingeon et al. explored potential variations in cantonal welfare policy. They assumed that cantons in which left-wing parties (Social

Democrats) capture a relatively larger share of seats in the legislature will pursue more left-wing welfare policies. For instance, they assumed that left-wing dominated regional governments will spend higher per capita amounts on welfare and provide broader welfare coverage. They also looked at some alternative factors that may have influenced the variation in welfare-state regimes such as direct democracy (cantonal referendums) and the existing cantonal traditions of welfare organization. As in Germany, they found that policies differ substantially according to which party has the strongest influence at the regional level. Cantons in which the Social Democrats are relatively strong (e.g. 'red Geneva') are most likely to set up generous cantonal welfare regimes. However, the relative strength of the Christian Democrats or Liberals does not have a significant impact on the presence of a more 'family-oriented' versus a more 'liberal' (privately based) cantonal world of welfare.

Party-political dominance was not the only determinant in explaining 'variations of Swiss welfare'. Cantons in which more popular votes were organized on welfare policies or on cantonal taxation proposals ended up with less Social-Democratic or Conservative welfare regimes. The cantonal, as much as the federal, electorates do not easily endorse proposals that would increase overall taxation levels, even if the bulk of their revenue is meant to support the expansion of the welfare state (Armigeon, Bertozzi and Bonoli 2002).

Next to various 'worlds of welfare', Switzerland certainly features many 'worlds of education' as well. In education policy, patterns of divergence interact more clearly with linguistic or religious fault lines (Hega 2000). For instance, the German-speaking cantons have a more decentralized education system. In some municipalities the population may be even involved in electing teachers of the municipal schools. In general primary and secondary schools are predominantly funded on the basis of municipal tax revenues. In contrast, most of the cantons which are located in the *Suisse Romande* (Catholic and French- or Italian-speaking cantons) attribute a strong role to the cantonal ministries of education in organizing and supervising education. The ministries are better staffed and comprise a higher number of education specialists. Municipalities do not organize referendums to seek the endorsement of proposed teachers. Finally, French- and Italian-speaking cantons assume a much larger role in subsidizing education. For instance, the cantonal share of grants subsidizing non-university education is as high as 84.5 per cent in the canton of Geneva, but is as low as 18.0 per cent in the small German-speaking canton of Obwalden (Hega 2000: 15–16). According to Gunter Hega these differences in the organization of education policy between the Romanic- and German-speaking cantons are linked to the religious factor. In the *Suisse Romande* a dominant network of Catholic schools emerged, which facilitated the standardization and centralization of education standards within and even across cantonal borders.

Compared with Germany, there is a broader acceptance of policy divergence, even when this leads to some social policy divergence. For instance, the private contributions to (semi-)public services or the level of social coverage for programmes in which the cantons remained autonomous varies substantially from one canton to another. Furthermore, cantons prefer the option of intercantonal cooperation to the alternative of federal aid (and as a consequence federal interference in cantonal matters). Intercantonal cooperation is necessary if we take into account that the smallest cantons often lack the capacity to do their job properly. After all, the smallest Swiss cantons only have the size of medium-sized villages or a small city. For instance, Appenzell-Innerrhoden, the smallest (half-)canton has only 15,000 inhabitants, still only about a fifth of the population of the small German-speaking Community in Belgium. Possibly, their administrations do not employ more than a hundred people, who nonetheless must administer the same flow of federal bills or legislate on strictly cantonal matters such as (non-higher) education policy.

Small cantons have some weaknesses compared with their bigger cousins: (1) their legislatures are weakly staffed and many cantonal legislators are not engaged in politics on a full-time basis, which frees the executive from strong executive control; (2) their civil servants are generalists, lacking sufficient expertise to implement complex federal laws or draft technically solid cantonal legislation; (3) they are more likely to contract out policy implementation to private agencies or to devolve matters to the municipalities; (4) they are more dependent upon federal grants – such as the canton of Uri which saw its budget explode by 400 per cent, in order to finance the construction of the Gotthard highway on its territory; and (5) they are not adequately involved in the consultation processes which precede the submission of bills to the federal parliament (Vatter 2004: 54–7).

To alleviate these problems small cantons have cooperated with other cantons by means of regional cooperation ‘treaties’ or ‘concordats’. As in Germany, the merger of some regions has been contemplated (for instance the cantons of Geneva and Valais) as an alternative to intensifying intercantonal cooperation, but so far unsuccessfully. Concordats require the consent of the cantonal parliaments and the people. Such agreements have been sought in socio-economic, health or educational matters. For instance, the smallest cantons may rely on the services of adjacent cantons for health care (hospitals) or higher education. In return they provide a financial contribution, the cost of which is lower than if they had to offer these services themselves. Small cantons may also decide to establish joint agencies, for instance for the collection of statistical data or for the promotion of tourism (Vatter 2004: 57). Only occasionally, a need arises for the federal government to step in. For instance, not all 26 cantons can offer university education. In costly disciplines such as engineering and medicine there is only space for a few players. Hence, the federal government drafts a framework bill which

stipulates the contributions of each of the university-free cantons to the university-providing cantons. The federal government itself organizes university education in engineering, medicine and architecture (Hega 2000).

4.2. Policy divergence in Spain, Belgium and the United Kingdom

The urge to diversify policies is more outspoken in the case of the Spanish historic nationalities or the Belgian Communities. They may have sought to use their control of certain aspects of social policy or education as instruments of national identity building. However, the freedom to diversify policies along these lines may be curtailed by the centre or, as is often the case in Spain, by the non-historic regions. Most resist the idea of a multinational Spain, in which the minority nations are allowed to move ahead.

For instance, although the Spanish regions are only active at the fringe of welfare policies (that is, excluding education), regional variations are noticeable among all seven regions which have the longest-standing autonomy in health, housing, social services, basic income and active employment policies (Basque Country, Navarra, Galicia, Catalonia, Andalucia, Valencia and the Canary Islands).

In some policies, policy divergence is clearly linked to differences in regional levels of affluence. Because of their relative wealth, the Basque Country, Navarra and Catalonia have been able to devise a wider set of social-assistance policies than the relatively poor regions of Andalucia and Galicia. The latter rely more strongly on social assistance coverage which is provided by civil society (such as the Red Cross organization) or by the centre. However, the extent of equalization is insufficient to raise the level of social-assistance coverage to that of the Basque Country or Catalonia (Gallego et al. 2005). In this sense, Spain does not aim for the same level of equalization that is provided in the German federal system.

As in Germany and Switzerland, regional policy variations are sometimes linked to differences in regional party political dominance. For instance, in health policies, the Basque and Navarrese governments have sought to maintain a strong public role, but Catalonia has been more in favour of liberalizing (*marketizing*) at least part of these policies. This is so despite the fact that Navarra, the Basque Country and Catalonia are amongst the most affluent regions. Similarly, the average per capita expenditure on public housing is almost twice as high in the Basque Country, Navarra and Andalucia than in the other regions. The more copious public-housing policies in Andalucia partly reflect the long-term Socialist dominance of that region. The Basque National Party is certainly not left wing (in fact, in its socio-economic policies it shares many views of the PP), but it is also not as market driven as the Catalan CiU. Thus, the market-oriented policies of the Catalan government are in line with the centre-right orientation of all Catalan regional governments until 2003 and they correspond with the entrepreneurial legacy of that region (Gallego et al. 2005).

The Spanish decentralized state contains also several examples of regional policy spill over. This is so, despite the relatively infrequent occurrence of IGR in Spain. Non-historic regions, such as Andalucia, may copy policies that were first successfully implemented by the (historic) regions. For instance, in their analysis of welfare reform in Andalucia, Moreno and Trelles document how the Andalusian government has adopted a minimum income scheme that was largely inspired by the Basque model. What sets it apart from many comparable income schemes in other regions is that it is not solely geared towards providing social assistance to the most needy, but requires recipients to fulfill certain criteria which should enable their full participation in the labour market. The programme requires interdepartmental cooperation between several ministerial units (education, employment and housing) and between various regional public bodies (Moreno and Trelles 2005).

Finally, in the field of education policy, two important 'sources' of divergence can be noted. First, and in this sense devolution has not made a major difference, the share of non-publicly-funded (fully private) schools is higher in some regions than in others. It is as low as 21 per cent in the Canary Islands and as high as 51 per cent in the Basque Country (Losada and Máiz 2005). Such differences reflect particular historic traditions that may vary from one region to another and were already applied when education was not yet devolved. Second, although education is now a competence of all the regions, the historic communities acquired control of education policy at an earlier stage and have used it as a tool of nation and identity building. They have done so by stimulating education in the national minority language, but also by attaching more relevance to regional history, culture and symbolism (Losada and Máiz 2005).

Similar tendencies have marked the development of education policy in Belgium too (De Rynck 2002). On the one hand, the Flemish Community has used its autonomy to modernize education curriculums and to carve out a more autonomous role for an independent body which oversees state education. Initially, the French Community was more concerned with securing the funding of its education system than with modernizing the education structures. The financially more precarious situation of the French Community has also resulted in comparatively lower pay for its university teachers and higher tuition fees than in Flanders. In recent years the French Community has copied some of the curricular reforms that were first implemented in Flanders. On the other hand, in higher education policy at least, the Flemish Community used its self-gained autonomy to forge scientific and cultural links with the Netherlands (Swenden 2003). University curriculums and scientific output are assessed by research panels in which Dutch scientists take part, alongside colleagues from various Flemish, and possibly Francophone, universities. The Flemish ministry of education has also been strongly supportive of the so-called European-(but non-EU)-driven 'Bologna'

process. 'Bologna' seeks to 'rationalize' the European higher-education sphere. To that purpose it recommends the standardization of higher-education programmes along the 'Anglo-Saxon' Bachelor-Masters formula and introduces a transnational credit points system. In this matter, the Flemish point of view ran almost parallel to that of the Dutch minister of education. The Flemish minister of education was even asked to represent her Dutch colleague in a monitoring meeting at which she could not be present. In contrast with Flanders, the French-speaking Community was at best lukewarm in its initial support for the Bologna changes. The Bologna reforms were only grudgingly implemented when it became obvious that most of the neighbouring countries, including France, also signed up to their commitments.

Finally, the Scottish executive has not refrained from adopting different policies from the UK in areas in which it had gained full legislative competence (McEwen 2002). For instance, the Scottish executive provides more generous free personal care to the elderly than the UK government which introduced a more selective means-tested policy for those who live in England and Wales. Similarly, the Scottish executive has refused to incorporate so-called 'foundation hospitals' into the 'National' Health System, although the UK government did so for the rest of the UK. Similar differences can be spotted in the realm of education policy, as teachers in Scotland are paid higher salaries than in the rest of Britain, no up-front tuition fees are levied on university fees, and the Scottish executive has not allowed Scotland's best universities to charge students additional top-up fees. Each of these policies is consistent with the more pro-welfare attitude that has prevailed in Scotland, and with regard to education policy it also reflects the attitude of the Liberal Democrats who are coalition partners in the Scottish executive. It remains to be seen whether some of these policies are sustainable. For instance, the Scottish executive has pledged to make its funding for universities partially dependent upon the performance of Scottish universities in the UK-wide 'Research Assessment Exercise' (RAE). If, in a few years from now, English universities tend to outperform Scottish ones, the Scottish executive may feel itself under increasing pressure to introduce top-up tuition fees as well.

5. Conclusion

In this chapter, I sought to illustrate the relationship between the nature of intergovernmental relations and public policy outputs in a multilevel environment. Previous chapters clarified that the need for intergovernmental coordination mechanisms is not equal for all federal or multilevel states. Federations that are more cooperative (hence tend closer towards the organic end of the continuum) are more in need of such mechanisms than multilayered states that have adopted a more disentangled federal design.

The analysis made clear that the federal designs of Germany and Switzerland provide ample channels for intergovernmental action in which the regions have secured a strong collective or individual input. In Germany, the Bundesrat stands at the apex of a vast network of intergovernmental coordination bodies in which the central and regional civil servants assume a prominent position. IGR are less 'executive' based in Switzerland. In Belgium, formalized mechanisms of intergovernmental action have gained in importance since the federal and regional governments are no longer congruently composed. However, the formalized participation of the Spanish, Austrian and British (Scotland and Wales) regions in intergovernmental channels is weak. In each of these countries the second chamber does not operate as a territorial upper house. In Spain, sectoral conferences have developed, but often they do not produce (binding) outcomes and they may be sidelined in importance by bilateral negotiations. Few Austrian intergovernmental channels produce binding outcomes. In Britain, the conflict-absorbing relevance of the Joint Ministerial Committees remains untested as the Labour Party has controlled the central and regional levels of government.

In the second part of the chapter, I provided a link between the nature of IGR and the policy-making process. It is often asserted that organic or joint-decision federations such as Germany produce policy gridlock. Gridlock may emerge as a result of two factors. Regional policy players act as much as party than as regional agents and they may wield their influence in the centre to oppose the federal government of the day. Or, regional governments may play out their specific regional interests in IGR that require unanimous decision-making. Policy interlocking coupled with unanimity voting produces 'tight coupling'. A system of 'tight coupling' may lead to 'lowest-common-denominator' solutions or inefficient policy outcomes, because the divergent interests of too many participants must be taken into account. In contrast, in Switzerland the regions have retained more autonomy to opt out and the centre is not always forced to follow the opinion of the regions. More intergovernmental decisions are taken with qualified majority support. Therefore, it is said that Swiss federalism is a system of loose coupling (Armingeon 2000) that is less prone to gridlock.

The empirical analysis demonstrates that this view needs some qualification. German federalism has been capable of some adaptation. As the social policy record of the Social Democratic Schröder governments demonstrated drastic welfare reforms have been possible although the Social Democrats did not control the second chamber. The overall magnitude of joint-decision-making programmes or the number of regions which have benefited from such programmes has also changed over time. However, one cannot deny that the second chamber has used its potential as a partisan veto player when certain conditions were met. Furthermore the proliferation of mechanisms of (closed-door) intergovernmental coordination has blurred

the chains of public accountability and created possibilities for blame shifting. In Switzerland, the lines of accountability have remained clearer, since the cantons have retained more fiscal autonomy and are left with more room for policy divergence. Yet, while incremental policy change is more likely in Switzerland than in Germany, this is not the case for major changes in policy direction. In Germany, the Bundesrat or the channels of IGR can operate as veto players. In Switzerland, the second chamber, the cantons, the channels of IGR *and the people* can act accordingly. In Austria, the institutional position of the regions in IGR is so weak that the main drive for a centre not to reverse policies is an electoral one. Hence, in welfare policy, the Austrian regions have not been in a strong position to stop the retrenchment of the welfare state despite the fact that they carry important responsibilities for implementation in this field.

Where the central and regional policy levels have remained more disentangled the potential for each level to pursue its own preferred options is larger. Belgium is a peculiar case. The two language communities have acquired a position of mutual veto in the politics of the centre. In this sense the federal government cannot change any of its policies without the consent of the two major language groups. The Regions and Communities have acquired positions of veto in the mechanisms of vertical intergovernmental coordination as well. However, in Spain, intergovernmental mechanisms are lacking where central and regional policy interests intersect. The centre can change its priorities and drastically change policies, as the PP demonstrated in its take on education policy between 2000 and 2004. However, strong regional resentment to such policies may lead to policy pre-emption and judicial litigation. In the UK, the intergovernmental mechanisms have yet to prove their relevance.

The lower the level of entanglement between both levels, the higher the scope for regional policy divergence. In general, Swiss cantons diverge more strongly in education or welfare policy than the German regions. In Germany, education ministers have set up elaborate horizontal cooperation mechanisms to standardize education curriculums, despite the fact that they are under no constitutional obligation to do so. In Spain, the minority nations have used their autonomy in education policy to promote their regional language or cultural history. In Belgium, the Communities have developed divergent policies in higher-education policy.

Regional policy divergence can be an asset. It allows regions to tailor policies to the socio-cultural needs of their population. As some examples made clear, policy divergence does not have to lead to a race to the bottom, but may also spark policy innovation and trigger a race to the top. However, policy divergence comes at a potential cost. Public services, including services in welfare, may not be of equal standard throughout the state. One may argue that the public support for interregional divergences in public-service delivery is much lower in Germany and Austria than in Belgium, Spain and even

Switzerland. In a future structural overhaul of its federal model, however, should Germany decide to disentangle the levels of federal-regional interlocking, it may be left with no choice but to tolerate more of such differences. If Germany wishes to retain its character as a federation, reducing the influence of the regional executives in the centre must be compensated for by increasing the powers of the regional parliaments. If only the influence of the regions in federal policy-making were reduced Germany would become more of a 'social' than a 'federal' state, and its 'federal' system would come to resemble that of Austria. That Scotland, Wales, Flanders and the Spanish historic communities have used their autonomy to diversify policies is no surprise. They do not only qualify as regions, but also as minority nations of the state. In the final chapter I focus specifically on the governance of these multinational states.

7

The Centre, the Regions and Plurinationalism

1. Introduction: the peculiarity of multinational federations

Of our six West European countries with federal traits, three are clearly multinational: Belgium, Spain and the United Kingdom. The main rationale for devolving powers in these three countries is to attenuate feelings of substate nationalism which emerged within one or several of their regions. In this sense, to devolve powers is a means to 'hold' these states together (Linz and Stepan 1996). Switzerland is not a clear-cut example of a multinational federation. In Switzerland, the social cleavages are not coinciding, but rather cross-cutting. Most of the cantons are monolingual, but cantonal borders do not correspond with linguistic or religious fault lines since there are 4 languages and 2 religions but 26 cantons. Yet, like Belgium, the United Kingdom and Spain, Switzerland is what Juan Linz and Alfred Stepan have called a state-nation (Stepan 2001: 326). State-nations are defined as 'multi-cultural or even multinational states that nonetheless still manage to engender strong identification and loyalty from their diverse citizens' (Stepan 2001: 309). Furthermore, Swiss society contains the ingredients that would make for a multinational state elsewhere. Its citizens hold different religious and linguistic backgrounds. In this sense, Switzerland deserves to be included in this chapter.

In this chapter I consider the strengths and weaknesses of federalism in coping with multinationalism. At one level, the management of multinational federal states is similar to that of mononational federations. In both groups of states, decisions must be made on how to divide competencies or what level of interregional solidarity payments the centre should provide. Yet, in other respects, multinational federal arrangements raise problems of their own. These can be summarized in the following three points.

First, discussions on the most appropriate level of interregional solidarity or the optimal distribution of competencies can be *more contentious* in a plurinational state. For instance, in Germany, the regions of Hesse, Baden-Württemberg and Bavaria may complain that too much of their regional

wealth is flocking to the other regions under the form of equalization payments. However, these debates may take a more antagonistic spin if they occur in multinational federations, particularly when the 'minority nations' are also the most important paymasters. Among our case studies, this applies to Flanders, the Basque Country and Catalonia. Conversely, welfare-state retrenchment may reduce feelings of loyalty vis-à-vis the state among the inhabitants of a recipient region with a comparatively well-developed sense of nationhood. Scotland provides a good illustration of this (McEwen 2002). Hence, in multinational federations the loyalty vis-à-vis the state (which usually corresponds with the majority nation) is more precarious than in a mononational federation.

Second, typically, the demand for regional autonomy is concentrated within regions which consider themselves as 'nations'. Usually, they represent a state-wide demographic *minority* and at least some of their inhabitants may consider themselves as part of a nation with a right to coexist alongside, override or even secede from the state to which they belong. *Minority nations* may seek a right for recognition within an existing state-structure, *without* wanting to achieve full state sovereignty. The concept of a *minority* nation assumes that the subnationality (or subnationalities taken separately) can be weighted against a dominant *majority* nation. Hence, the Catalans and Basques stand against the Castilians who represent the Spanish nation, while the Scots and Welsh are dwarfed by the English nation. Perhaps the term 'minority' nation sounds slightly awkward when it is used to refer to a subnationality that comprises a *demographic* majority of the state. In Belgium, the Flemish population represented a demographic majority of the Belgian population as early as 1830. Yet for long, the Flemish could be considered as a minority-nation, since they have been the main driving force in transforming Belgium from a unitary into a federal state. In whichever way national *minority* is defined (demographic or political), the quest for autonomy is not spread evenly across the state. Therefore, multinational federations often feature *asymmetric* forms of decentralization. As founding 'nations' of the state, they claim a form of special recognition ('asymmetric federalism') that sets them apart from other regions, let alone from the regions in a mononational federation. Asymmetric federalism has sparked normative debates that are largely absent in most mononational federations.

Finally, because they must accommodate subnationalities, the design of plurinational states may be different from that of most mononational federations. The need to recognize minority nations by granting them autonomy may be paralleled by a desire to involve them more systematically in policy-making at the centre, possibly even by providing them with a position of veto. In this sense, multinational federations may display important elements of power-sharing, which the literature of comparative politics has labelled as *consociational* (Lijphart 1999).

This chapter is divided into five sections. In the first section I introduce the notions of 'national cohesiveness' and 'the territorial concentration of a national minority' (Coakley 2003). The way in which both concepts operate requires me to identify what determines whether someone belongs to a minority nation: language, race, or simply territory? Put differently, how do we define what is a national minority?

In the second section I review two competing views on how federalism can contribute to attenuating nationalist conflict. A first view posits that for federalism to work well, the (minority) nations must be territorially concentrated. Following Horowitz, we could call this '*homogeneous federalism*'. A second and much less-widespread view holds that federalism can be of value if regional borders do not coincide with national borders. In that case we face some form of '*heterogeneous federalism*' (Horowitz 2000). I will argue that the national cohesiveness and territorial concentration of minority nations affects which of both forms can be applied most easily.

In the third section, I turn to the normative debate surrounding the presence of asymmetric federalism. Does asymmetry create two classes of citizens or is the special protection of minority groups justified, even from a liberal point of view? The debate on asymmetric federalism is then subsequently extended and illustrated with regard to language politics. Here, the territorial defence of regional or minority languages would conform to an asymmetric treatment. The overall application of the personality principle would be the logical outcome of a symmetric approach. I also test whether a strictly territorial approach to regional language policy is needed to protect the most vulnerable language, as some authors suggest.

The fourth section maps multinationalism by turning to the concept of dual and multiple identities. I first provide a brief comparison of how citizens identify themselves on the basis of a few surveys. Next, I seek to answer what these identities may tell us about the preferred state-format (satisfaction with federal arrangements as they stand, or rather support for further devolution or possibly even centralization). Finally, I consider how these levels of identification may have evolved and whether such changes can be attributed to the federalization of the state.

In the fifth and final section, I briefly touch upon an alternative model of conflict regulation, namely, an electoral or 'incentive approach' and consider how it measures up against or possibly can be combined with a federal or consociational approach to conflict management.

2. Mapping the national cohesiveness and territorial concentration of minority nations

Before entering a discussion on the potential virtues of heterogeneous and homogeneous federalism, we must realize that the choice for either form cannot be freely imposed from above. Rather, minority nations already exist

when the first claims to territorial autonomy are phrased. Yet, the territory in which minority nations seek to exercise self-autonomy may also comprise citizens of the national majorities. Similarly, citizens who represent the minority nation may populate certain areas which the centre is not willing to concede. Arguably, homogeneous federalism works best when two conditions are met. First, the minority groups constitute a vast majority of 'their' territory. In this respect, John Coakley refers to a *high territorial cohesion* of citizens who represent the minority nation. Second, the citizens who represent the minority nation are not widely dispersed across the state, but live concentrated within their home territory. In Coakley's term, the minority nation displays a *high degree of national cohesiveness* (Coakley 2003: 9). Homogeneous federalism is a less-appropriate device when none or only one of these conditions is met. Before applying Coakley's distinction to our group of case studies, three elements need to be addressed.

First, Coakley initially made his distinction with ethnic groups in mind. Hence, he referred to the 'ethnic' cohesiveness of a territory and the territorial concentration of 'ethnic' instead of 'national minorities'. Ethnicity covers a broader meaning than national minorities. Ethnic groups also cover indigenous peoples or transnational ethnic groups without a clearly identifiable homeland, such as the Roma. Therefore, among the category of ethnic groups, national minorities take in a special position. They usually display already high levels of territorial concentration and their territory is likely to be strongly ethnically cohesive also. However, because there are still significant variations within groups, the distinction remains a useful one for identifying differences among national minorities.

Second, the concepts of territorial concentration and ethnic cohesiveness were used for classifying ethnic minorities within and across existing *state* boundaries. Although we are primarily concerned with the concentration of national minorities *within* a state, we could apply Coakley's dimensions to a broader international framework as well. For instance, only two-thirds of the Basque population lives in Spain; the remaining third lives in France.

Third, the primary identity marker of ethnicity is not always clear-cut. For instance, in the case of Belgium, we can easily say that language is *the main* element of distinction between Flemish and Walloon citizens, but language is hardly a defining element in Scottish identity. A majority of Scots does not even speak Gaelic or Scots (though they may pronounce English with a 'Scottish' accent). In Scotland, sheer territorial location combined with a shared history and tradition (church, legal system) mould Scottish identity. These examples illustrate that when seeking to analyse these cases, a more profound discussion of the markers of national identity is required. Bearing these observations in mind, we can nonetheless bring to life the concepts of territoriality and cohesiveness, using the markers of identity that were considered as having the strongest meaning as seen in Chapter 2. In applying the notions of 'national cohesiveness' and the 'concentration of minority

nations', I first examine the cases where language is a visible identity marker: Flanders and Wallonia, Catalonia, the Basque Country, Galicia, Switzerland and Wales.

Belgium

The two main Belgian regions, Flanders and Wallonia, appear as strongly ethnically cohesive. In the last language census (1947), 90.4 per cent of the respondents who lived in Flanders considered themselves as Dutch-speaking (compared with only 4.9 per cent who claimed to be French-speaking). By comparison, 90.8 per cent of the respondents who lived in Wallonia reported themselves as French-speaking (compared with only 2.0 per cent who claimed to be Dutch-speaking; Hooghe 2003: 76).

The main exception distorting the congruence between language groups and territory is Brussels (and some of its surrounding municipalities). Although a minor exception in demographic terms, it comes as a highly important political one. As a city region of roughly one million inhabitants, and capital of Belgium (and the EU), Dutch- and French-speaking Communities take a mutual interest in its governance. Furthermore, Brussels is also the only Belgian Region that has undergone a major transformation in its linguistic composition since 1830. At the time of Belgian independence a majority of its then much smaller population was Dutch-speaking. The city's role as the administrative centre of Belgium brought in a strong cohort of immigrants from Wallonia. They could easily continue to hold conversations in French, the main language of administration and business throughout Belgium at that time (Brans 1993). By 1947, the share of Dutch-speakers had dropped to 24.2 per cent, while the French-speaking share rose to 70.6 per cent. No language censuses have been held since, making the results of regional elections for the BCR parliament as the best (but certainly not watertight) indicator for the linguistic composition of the Brussels regional population. In the 2004 regional elections, the Dutch-speaking voters added up to only 13.8 per cent of the total regional vote, suggesting a further decrease of the Dutch-speaking population since.

Although predominantly a French-speaking city region, Brussels is not Walloon in ethnic composition. French-speaking inhabitants of Brussels make up 17.5 per cent of all French-speaking Belgians. The region's French-speaking inhabitants (of Belgian descent) are willing to consider themselves as part of the broader French-speaking Community.¹ However, they do not share some attributes that are linked with Wallonia, such as an outspoken political preference for the (French-speaking) Social Democrats. Facing the nearby proximity of the Flemish region, language is a more important marker of their identity than for most of the Walloons. By comparison, Dutch-speaking inhabitants of Brussels make up only 2.5 per cent of the total Dutch-speaking population. Most of them are more willing to identify with the Flemish community. Because of the more dispersed character of

'French-speakers' (Wallonia and Brussels), the territorial concentration of the Dutch-speakers is somewhat higher than that of the French-speakers.

Spain

As with Flanders and Wallonia, the Catalan and Basque national identities are strongly associated with the Catalan and Basque languages. Of both languages, the Basque language (Euskera) has been the least successful in encompassing a national identity among a majority of citizens who live in that region. A majority of the Basque population cannot speak Euskera. The rapid industrialization of the Basque Country, particularly in the early twentieth century and in the period between 1955 and 1975, has led to a strong influx of Castilian-speaking immigrants. For instance, in the 1970 census, the combined population of the three Basque Spanish provinces and Navarra amounted to 1.2 million. Almost a quarter of its population aged 10 or higher was still registered in a non-Basque province 10 years before (Coverdale 1979: 31).

Like the Basque Country, the relative affluence of Catalonia provoked an important influx of immigrants from other parts of Spain. As in the Basque Country, much of this immigration took place between the 1950s and 1970s. The combined population of the four Catalan provinces amounted to 5.7 million in the 1970 census. A decade earlier, nearly 16 per cent of the Catalan population aged 10 or above was still registered in a non-Catalan province (Coverdale 1979: 24). Almost 80 per cent of these immigrants settled in the city of Barcelona. By 2000, the Catalan population had risen further to 6.3 million (Roller 2004: 151). Unlike the Basque Country, the immigrant population has been more successful in learning the Catalan language.

Table 7.1 illustrates that, in 1990, only a quarter of the Basque population claimed to speak and understand Euskera very well. The corresponding shares for the Catalan (in Catalonia) and Galician (in Galicia) populations were above respectively 80 and 60 per cent. Immigrants who have settled in

Table 7.1 Citizens of the Spanish historic communities and their knowledge of the regional language

	Catalan (in Catalonia)	Basque (in the Basque Country)	Galician (in Galicia)
Understand well	86	28	84
Speak well	68	26	63
Read well	64	25	52
Write well	31	20	30

Note: figures in percentages (1990).

Source: Heywood 1995: 22.

the Catalan urban centres (mainly Barcelona) have been as willing to learn Catalan as immigrants who moved into the smaller urban or rural areas. Not only is the Catalan language closer to Castilian in syntax and grammar than the (non-Indo-European) Basque language, unlike Euskera it is also more 'a language of science and culture'. Citizens who live in Catalonia are well advised to know Catalan if they want to advance rapidly in socio-economic terms (Coverdale 1979: 24).

The Catalan language is spoken by a large share of the Catalan population and is a strong component of the Catalan regional identity. If we use Catalan as the principal marker of Catalan identity, we find that the territory in which it is spoken largely corresponds with the boundaries of the contemporary Autonomous Community of Catalonia. More than 80 per cent of the citizens who live in Catalonia can speak Catalan (although it may not be their first language). Therefore, the national cohesiveness of the Catalan territory is relatively high, albeit it not as high as that of Flanders. All in all, the Catalans live in fairly concentrated areas as well. Only small pockets of Catalan-speakers are found in the Eastern parts of Aragon, Valencia, the Balearic Islands, and even Sardinia (Italy) and the Eastern Pyrenees (France). This said, the ability to speak Catalan is certainly not a watertight predictor of Catalan identity. Catalan ethno-regionalist parties typically receive about half of the votes in regional elections. This is lower than the percentage of the population who know how to speak Catalan.

In contrast with Catalonia, the territorial match between the Basque nation and its territory is a matter of dispute, even among the Basque nationalists. Should the Basque territory be confined to the three historic provinces that form the presentday Basque Country (Vizcaya, Guipúzcoa and Alava)? Or should it also contain the former kingdom of Navarra and the three Basque provinces that are located in Southern France (Laboure, Basse-Navarre and Souile)? If we take Euskera as the cornerstone of Basque identity, it appears that a majority of the Euskera-speakers live within the three Spanish historic provinces which constitute the present Basque Country. In this sense, the Basque ethnic group is concentrated within a restricted area. However, the national cohesiveness of the Basque nation is relatively low because Euskera is spoken by less than a third of the population. The total group of Basque speakers is estimated at 700,000; 600,000 of whom live in Spain and 90,000 in Southern France. The total population of the Basque Country amounted to 2.1 million in 1998. Yet the share of the ethno-regionalist vote (PNV, EA, EH) has been consistently higher than in Catalonia.

Finally, Galicia has the most weakly developed sense of political nationalism of the Spanish historical communities. Yet, Galego is well spoken by a majority of the region's 2.7 million inhabitants. The Galician minority nation is also contained within the territory of Galicia. Not having experienced major waves of immigrants, Galicia has remained ethnically

cohesive. Yet, the widespread knowledge of a non-Castilian language has not been translated into comparably high votes for the ethno-regionalist parties (BNG).

Switzerland

Switzerland is the third country in which different language groups live together. Of the 7.3 million Swiss inhabitants 63.9 per cent are German-speaking. The French-speakers make up 19.7 per cent of the population and the Italian-speakers contribute another 6.6 per cent. Romansch is spoken by only 0.5 per cent of the Swiss population (Cordell 2004: 170; figures for 2001).

The French-speaking Swiss are concentrated within seven monolingual or plurilingual cantons. However, these cantons are also populated by German- or Italian-speakers. Together they represent 13.7 per cent of the population.² The linguistic cohesiveness of the German-speaking group is higher. The officially monolingual German-speaking cantons only comprise French- and Italian-speakers for about 3.1 per cent of their population. This makes the 'national cohesiveness' of the German-speaking Swiss as strong as that of the Flemish. The population of the canton of Ticino remains overwhelmingly Italian-speaking. However, the share of the native Italian-speakers has decreased as a result of internal Swiss migration from 99 per cent in 1880 to 84 per cent in 1980. In popular terms this meant that the native Italian-speaking population of Ticino stood at 223,000 in 1980. In the same year 203,000 (Swiss native) Italian-speakers lived in the four most populous German-speaking and the two most populous French-speaking cantons. Hence, the territorial concentration of the total group of Italian-speakers is relatively small. Finally, Romansch is spoken by 0.5 per cent of the Swiss population. Although nearly all the Romansch-speakers live in the canton of Graubünden, in 1980 their share of the total regional population was no higher than 21.9 per cent. By comparison, the shares of German- and Italian-speakers in Graubünden were as high as 59.9 and 9.4 per cent respectively (McRae 1983: 217). Hence, Romansch is very much a territorially concentrated language, but the territory in which it is most spoken (the canton of Graubünden) is in itself not 'linguistically cohesive'.

United Kingdom

The United Kingdom is the last country in which language plays a role as an identity marker, but only significantly so in Wales. As reported in Chapter 2, the share of Welsh citizens who can speak Welsh fluently or very well is estimated at about 20 per cent (Dunbar 2004: 100). Welsh-speaking citizens overwhelmingly live in Wales (territorially concentrated), but, if the Welsh language is used as a basis, Wales cannot be considered as ethnically cohesive. As in the Basque Country and Catalonia, the rapid industrialization of Wales and the immigration of non-Welsh-speaking citizens has dramatically altered the language situation. Although the knowledge of Welsh may be on

the rise again, Welsh identity is marked by other factors than language, such as a different religious culture. However, the Welsh language and a distinct religious tradition are not strong enough to mould a strong form of regional nationalism. Welsh society is too 'cosmopolitan'. Apart from Welsh-speaking and Welsh-born citizens, it comprises a substantial group of Anglo-Welsh (born in Wales) and English-speaking newcomers (who migrated from England). Furthermore, the lower socio-economic strata are divided between Welsh-speaking rural workers and Anglo-Welsh descendents from immigrant workers. The latter have been less interested in preserving a Welsh culture than in advancing their socio-economic status (Keating 1998a). This explains why Welsh Labour leaders (including Neil Kinnock) opposed or at best grudgingly supported devolution when it was first put on the agenda in the 1970s. It also explains why the vote for ethno-regionalist parties (Plaid Cymru) is relatively low.

Of all the minority nations then, Scotland is the only one in which the role of language as an identity marker is nearly negligible. Or, to paraphrase Keating, Scottish nationalism may be the least romantic, but also one of the most open ('civic') forms of European nationalism (Keating 2001a). Scottish identity is closely linked with practices that predate the union with England in 1707. These Scottish peculiarities consist of a different education and legal system, a separate (Presbyterian) Church of Scotland and a distinct local government system (Keating 2001a: 200–1). As Scottish nationalism cannot be defined on the basis of race, language or religion, territory may serve as the best marker of Scottish nationalism. 'To be born and raised' in Scotland may be used as a proxy for Scottish national identity. Approximately 7 per cent of the Scottish population is born in England. This makes Scotland nationally cohesive. Furthermore, a vast majority of Scots lives in Scotland. Those who flock to London or England are too small in number to constitute a political, let alone a demographic, force.

3. Homogeneous federalism: virtues and vices

The stronger the territorial concentration of subnational groups or the higher the subnational cohesiveness of a territory, the easier homogeneous federalism can be applied. Homogeneous federalism is by far the most widely practised form of federalism, and it dominates the federal arrangements of Belgium and Switzerland. However, in Switzerland, the number of cantons does not match the number of official languages. Catalonia constitutes an intermediary case. Homogeneous federalism is less of an option for Wales and the Basque Country, unless powers would be devolved further to specific areas that are overwhelmingly Welsh- or Basque-speaking.

Homogeneous federalism has the benefit that '*intra-ethnic* cleavages can be utilized to reduce the energy expended at the center in *inter-ethnic* cleavages' (Horowitz 2000: 619, my italics). Or, to put it differently, 'lower-level

cleavages' may be activated at the regional level (Horowitz 2000: 618). For instance, once education was transferred to the Belgian-language communities, the Community governments could prioritize what share of the money they wished to spend on vocational training or schools equipment. They could decide on how to rearrange links between the various school providers (for instance, municipal, state and Catholic schools) or in what sense university funding should be made partially dependent upon research output rather than from student numbers. The Flemish- and French-speaking parties may have provided different answers to each of these questions, but as a result of devolution the debate could now focus on educational content, rather than on how to divide the educational pie between Dutch- and French-speakers (De Rynck 2002). Put differently, a politics of 'control' between national groups gave rise to a politics of party competition that is common for mononational polities (Erk 2003).

Generally speaking, the internal borders of federal systems are quite static. Unless there is massive internal migration, federations cannot be easily made more homogeneous. Yet two of Western Europe's states provide interesting examples of how federal structures were adjusted so as to make some of their regions more ethnically homogeneous. The first example relates to the birth of the Swiss Jura canton. The Jura was carved out of an existing canton, following a long-protracted negotiation process. I will touch upon it in greater detail in due course. The second example falls beyond the scope of this book, but is nonetheless worth mentioning here. The Italian region of Trentino-Alto Adige contains a sizeable minority of German-speakers. Their concerns have been accommodated by creating a more homogeneous form of devolution. This was accomplished not by changing the borders of the region, but by devolving powers to both of the regional provinces. One of these provinces (South Tyrol) is predominantly German-speaking. In this sense, devolution 'empowered' the voice of the German-speakers. Power-sharing mechanisms were inserted to ensure that the rights of the Italian- and Ladin-speakers at the provincial level were not neglected (for an overview, see Alcock 1994; Palermo 2004).

Homogenization through boundary adjudication: the case of the Jura

In the Napoleonic period, the Jura was made a part of the canton of Bern. The inhabitants who lived in the Southern Jura were predominantly German-speaking and Protestant. Their less-numerous northern counterparts were mostly Roman Catholic and French-speaking. Further immigration from German-speakers into the Northern Jura provoked resentment among the French-speaking Catholics who felt threatened in their religious and linguistic identity. As was the case in Belgium in the twentieth century, the religious cleavage gradually gave way to the linguistic divide. In 1947, a member of the cantonal parliament was refused access to the cantonal

executive on the grounds that he spoke French. Following this incident, a *Rassemblement Jurassien* was formed which propagated the secession of the French-speaking Jura from the canton of Bern. Two *cantonal* referendums were organized on the question of separation (1947, 1962). In both of these the Jurassiens were outvoted by the more populous German-speaking Bernese. Moreover, votes in favour of separatism were concentrated within the three Roman Catholic northern districts of the Jura. By themselves, even these votes were not numerous enough to mobilize a majority of votes in support of secession within the Jura (the three southern districts overwhelmingly voted against; Steinberg 1996: 89–93).

The youth wing of the *Rassemblement Jurassien* vented its frustration by turning to small-scale violence. In 1970, Bernese voters approved an amendment to their cantonal constitution, enabling another referendum on separatism to be held if asked for by at least 5,000 Jura voters. In such a referendum only citizens who lived in the Jura (thus not in Bern) would be allowed to vote. If carried, further referendums would have to be organized at the lower municipal levels. This would allow the communes to decide whether or not they wanted to join the new canton or to stay with Bern. The proposed solution was resented by the Jurassiens. On the basis of the preceding referendum they feared that they would lack sufficient support to mobilize majority support in the first Jura-wide referendum. Thus, they demanded that the vote would be open to non-resident Jurassiens and closed to citizens who immigrated to the Jura (predominantly German-speakers).

Nonetheless, in 1974 a referendum took place on the basis of the procedure that was specified in the aforementioned constitutional amendment. This time the fears of the Jurassiens proved unjustified. The proposal to separate was carried with a majority of just 2,745 votes (71,309 electors took part in the vote). In the next year a second referendum was organized in the three southern districts of the Jura where there was a clear majority against separation from Bern. All three districts (Moutier, Courtelay and Neuveville) voted in favour of remaining with Bern, but in Moutier the result was very close. Further referendums were then organized in 15 municipalities who voted differently from the majority of their district. Once more, the outcome for the city of Moutier showed that the allegiance to either community was split, with 2,150 citizens in favour and 2,540 against joining Bern. However, despite initial small-scale violence the local minority group accepted the outcome of the popular vote (Steinberg 1996: 93–9).

The process of determining the boundaries of the Jura came to an end in 1995 when the municipality of Vellerat with only 70 voters opted in favour of leaving Bern. Furthermore, as a result of the boundary changes, the German-speaking (but predominantly Catholic) district of Laufenthal had become geographically isolated from Bern. Therefore, Laufenthal could decide to join the adjacent German-speaking canton of Basel-Land. In 1989,

the citizens of Laufenthal approved this option with 4,650 votes in favour and 4,333 against (Steinberg 1996: 89–99).

In addition to referendums in the directly affected cantons, districts and municipalities, state-wide referendums were needed to effect the proposed boundary changes. Therefore, the process of boundary adjudication is an extremely inclusive one. As such, it has been very different from the process that led to the constitutional anchoring of the linguistic border in Belgium in 1962–63. As Steinberg correctly argues, the process of boundary adjudication is testimony to Swiss identity insofar as the smallest ethnic, linguistic and cultural units need to be preserved (Steinberg 1996: 97). However, the reconciliation process took a very long time. It kicked off with two referendums on secession and involved binding referendums at the smallest municipal and nation-wide level in a period which spanned more than three decades. Multiple veto points popped up along the way. In the presence of more deep-seated ethnic divisions these could have escalated rather than dampened ethnic violence.

The limits of homogeneous federalism

There are three possible limits to a strictly homogeneous form of territorial conflict management. First, when the subnational or ethnic groups are strongly intermingled from the outset, a strictly homogeneous solution may not be an option. Boundaries cannot always be changed so ‘easily’ as in the case of the Jura. Consequently, mechanisms may be needed to accommodate the concerns of the regionally concentrated minorities (who usually correspond with the national majority). For instance, in Belgium, protective devices apply at the regional level (in the Brussels Capital Region), and in some of the suburban (Brussels) municipalities, which ended up ‘at the wrong end of the language border’ (see below). In Spain, the constitution stipulates that Castilian may be used throughout the country, hence also in the Basque Country and in Catalonia. Yet, unlike in Brussels, there is no guarantee that Castilian-speakers will be involved in the regional governance of Catalonia or the Basque Country, just as there is no guarantee which entitles the latter to participate in the governance of the centre.

Second, although homogeneous federalism can take the heat out of inter-ethnic conflict, it can also reduce the costs of secession. Secession is easier to argue for if a minority nation assumes a hegemonic position within its territory and does not have to consider the interests of its fellow group members who live in adjacent territories. Arguably without *Brussels*, an institutional hyphen in which the Flemish and French Communities take a strong interest, the case for two independent states, Flanders and Wallonia, could be made more easily (Swenden and Brans Forthcoming). Similarly, without Basques living outside or Castilians living inside the current borders of the Basque Country, the Basque Country could have turned into an independent nation-state already (Coakley 2003: 300). Or, if much less than half of

the citizens of Valencia were Catalan-speaking, the incentives for Catalonia to break away from the Spanish state could have been higher.

Finally, the conflict-reducing potential of homogeneous units only works when sufficient lower-level cleavages can be played out effectively at the regional level. As Donald Horowitz put it, 'without sub-ethnic divisions or lower-level ethnic divisions than those that prevail in politics at the center, or with a structure that suppresses such lower level divisions ... homogeneous [regions] are unlikely to reduce conflict at the center. Rather, they are likely to be ... springboards to group power at the center. Especially if there are only a few units, homogeneous states ... will exacerbate rather than alleviate ethnic conflict' (Horowitz 2000: 619). Although Donald Horowitz wrote these words with the Nigerian context in mind, they do provide a warning for Belgian federalism, which is in essence dyadic (bipolar), centrifugal and without state-wide parties.

For instance, in Flanders and Wallonia the issues which dominated the campaign for the regional elections of June 2004 took on an unusually 'antagonistic character' vis-à-vis the other community. The Belgian regions built up a substantial policy portfolio (education, culture, transport, environment, agriculture). Yet in Flanders none of the regional policies received as much attention as the steps which future Flemish policy-makers should take in negotiating the further reform of the state. Formally, changing the Belgian state structure is the sole prerogative of the federal parliament. However, the outcome of the regional elections was indicative for the future position of the regional government leaders in negotiations that could lead to such changes. The prominent presence of federal party politicians in the campaign was not conducive to highlighting 'intra-ethnic' differences on proposed party policies either.

4. Heterogeneous federalism and the logic of *consociationalism*

If institutional engineers had the choice of designing the internal boundaries of a federation, they might opt for a heterogeneous instead of a homogeneous form of federalism. The underlying assumption is that by taking *heterogeneous* units as the starting point 'divisive issues that might otherwise engulf the entire country' can be resolved locally (Horowitz 2000: 618). The rationale for heterogeneous federalism is thus the opposite from that which underpins homogeneous federalism. Homogeneous federalism tries to reduce conflict by offering the national minorities a home territory. Heterogeneous federalism accepts ethnic conflict at the centre but at the same time 'quarantines' and dilutes it by forcing the various ethnic groups to cooperate at the regional level. Regional political leaders are thus socialized in inter-ethnic conflict management when assuming a function in central politics and vice versa.

Practical experience suggests that elements of heterogeneity arise more as a matter of necessity than as a matter of choice. Furthermore, the heterogeneous nature of some regions, such as the Basque Country, does not necessarily mean that the national groups who live there will be involved in regional policy-making. *Explicit consociational* mechanisms are required if there is to be a genuine form of power-sharing between the various nationalities. Arend Lijphart is the major intellectual father and the staunchest defender of a *consociational* approach to conflict management (Lijphart 1999, 2002). The two primary characteristics of such an approach are the *sharing of executive power* and *group autonomy*. Two secondary characteristics that can strengthen both principles are *proportionality* and *mutual veto* (Lijphart 2002: 38–9). The sharing of executive power (power-sharing in the strict sense of the word) means that the composition of the regional or central executive should be made up of all the ethnic groups of a divided society. Furthermore, these groups should hold each other in check. The strongest group(s) cannot encroach upon the interests of the smaller ethnic groups because they all possess veto powers. The power-sharing executive decides by consensus. The characteristic of group autonomy reflects the intention to delegate the largest possible level of decision-making authority to the various ethnic groups or ‘segments’. Finally, proportionality means that civil-service positions, fiscal resources and administrative appointments are distributed in accordance with the popular strength of a segment or group in a given society (Lijphart 1979).

Not all *consociational* systems are federal (see also Chapter 1). For instance, Arend Lijphart found that unitary states such as the Netherlands, Cyprus, Surinam or Lebanon operated at one point as unitary consociations (Lijphart 1979: 513). Not all federal systems are *consociational* either. For instance, a mononational federation such as Germany has ‘majority constraining features’ (e.g. the smallest regions are overrepresented in the second chamber). Yet each of the regions does not operate as a territorial segment with mutual veto-powers as is required by *consociational* theory. Arguably, the less homogeneous is a federation, the more likely it is to contain some *consociational* elements. That said, not even all of the heterogeneous federations are *consociational* in character. For instance, in Spain, the Basque and Catalan regions comprise a significant number of Castilian-speakers. Yet the Spanish constitution does not require that the Basque/Catalan and Castilian language groups participate in the governance of the Basque or Catalan regional governments. Similarly, the Spanish constitution does not give the Basque or Catalan national minorities a veto right in the governance of the Spanish centre.

In a federal state, *consociational* devices can apply at the central and at the regional levels of government. Arguably, in the context of a heterogeneous federal arrangement, we are perhaps more likely to find *consociational* mechanisms at the regional than at the federal level. Because of its overall majority status, a national *majority* is in a stronger position to enforce such

consociational rules at the regional level, where they protect its regional minority status. By comparison national minorities are not normally 'numerous' or strong enough to wield the political power that is needed to produce *consociational* mechanisms at the centre. Hence, the stronger the (demographic or socio-economic) weight of the 'minority nation' within the overall state, the more likely the centre is to adopt *consociational* mechanisms there (see also O'Leary 2001). In the following paragraphs I will review forms of *consociationalism* where they apply at the regional or central levels of government. I will consider the regional applications first.

Regional *Consociationalism*

The most thorough application of *consociational* mechanisms at the regional level appears in the Brussels Capital Region (BCR), Belgium. These rules serve to protect the Dutch-speaking minority there, and should be interpreted as the regional equivalent of similar *consociational* mechanisms which protect the state-wide French-speaking minority at the federal level.

In the executive of the BCR, power-sharing is guaranteed by the usual consensus procedure, but there is additional representational parity. With the exception of the Brussels minister-president, there are as many Dutch-speaking as French-speaking ministers. By convention the minister-president is a French-speaker, who represents the largest (French-speaking) party in government. A special federal majority law determines the picking-order of the ministerial competencies among both language groups. The French-speakers have the first, second and fourth choices and the Dutch-speakers have the third and fifth choice (Swenden and Brans forthcoming). The making of the regional executive is subject to a double majority in the regional parliament. By default each group can present its own candidate ministers. Only the designation of the minister-president is subject to parliamentary approval with an absolute majority. The double-majority requirement also applies for changes to the parliament's standing orders, for any constructive motion of want of confidence, and for any changes to the governance structure of the 19 municipalities of the BCR (Clement and Delgrange 1999: 531; Nassaux 2001). When a language group is of the opinion that any legislative or executive proposal harms its interests, it can pull the alarm bell, and force the (bi-nationally composed) regional executive to work out a solution. Finally, at the administrative level, representational quotas fix 69 per cent for Francophones and 31 per cent for Dutch-speakers, but the highest-ranked civil servants are equally divided between French- and Dutch-speakers. A contingent of bilingual civil servants is provided.

Brussels is not only a Region in its own right, but it also serves as the meeting point of the Flemish and French Communities. Therefore, mechanisms had to be set up which enable the implementation of Community policies in the region. To that purpose, the Brussels Regional parliament is divided into two language groups, allowing its members (as well as the corresponding

members of the regional executives) to serve as agents of their Communities. Dutch- and French-speaking regional councillors form distinct Flemish or French Community Commissions and can enact *secondary legislation* respectively with regard to Flemish or French Community policies on offer in Brussels (in this sense, their competencies are similar to those of the Welsh Assembly).³ Yet, certain decisions pertain to both Communities (for instance, those affecting hospitals in Regions that cater for the needs of both Communities). In that case Dutch- and French-speaking councillors constitute a joint community commission and take their decisions with a double majority. Protective guarantees at the subnational level of that kind only exist in Brussels. (Although Northern Ireland is excluded from the comparative analysis, the institutional mechanisms that were at work in that region until devolution was suspended showed many similarities with the Brussels model. They required power-sharing in the executive and cross-community support in the legislature.)

The Swiss political system contains centrally imposed rules which safeguard the freedom of religion or the right of German-, French- and Italian-speakers to communicate with the federal government in the language of their choice. Yet no such guarantees exist at the cantonal level. In practice, most cantonal executives are oversized and may comprise representatives from parties which attract supporters from various religious and linguistic backgrounds. Yet these mechanisms are not the result of formally imposed *consociational* mechanisms, similar to the mechanisms that are at work in Belgium. A fortiori, the same observation applies to Spain. The Basque Country, Catalonia and Galicia must recognize Castilian alongside the minority language that is spoken in their region. However, the *regional* minorities are not offered any procedural protection in the regional legislatures, let alone offered guaranteed representation in the regional executive. Despite this constraint, in each of these regions, even in the most polarized of them all, the Basque Country, representatives from (some) ethno-regionalist and (some) state-wide parties have occasionally formed coalition governments. In this sense, power-sharing coalitions were formed after the regional elections.

Central consociationalism

Belgium is the only one of our case studies which explicitly provides *consociational* rules at the centre. They serve the interests of the French-speaking minority. Representing about 40 per cent of the population and until the mid-nineteenth century also the main socio-political elite, the French-speaking group was strong enough to impose such rules on the centre when powers were devolved to the regions. The federal *consociational* features underline the dyadic nature of Belgium.

They serve to smooth the coexistence of the Dutch- and French-speaking language groups, but they do not explicitly take Brussels (and thus the

Regions) or the interests of the German-speaking Community into account. For instance, although a certain number of Dutch- and French-speaking senators should have their residence in the Brussels Capital Region, there is no specific guarantee that secures the *direct* input of the Regions in the Belgian centre. The Regions are nonetheless indirectly represented, as a result of the strong congruence between Community and Regional borders. Similarly, granting a federal veto power to the extremely small German-speaking Community which just represents 70,000 inhabitants would be driving the *consociational* logic too far.

I have discussed the Belgian federal *consociational* mechanisms extensively in Chapters 3 (courts), 5 and 6. I should add here that apart from operating in the legislative, executive and judicial arenas, these mechanisms also affect the working of the civil service, diplomatic corps and army. Federal civil servants are divided into two language groups. The share of Dutch- and French-speakers roughly corresponds to their respective shares in the Belgian population as a whole. Yet, 20 per cent of the higher-ranking federal civil servant positions are set aside for so-called bilinguals. Half of the bilinguals are native Dutch-speakers who must have passed a rigorous French-language exam, the other half are native French-speakers who passed an equally difficult Dutch-language test (Brans and Hondeghem 1999). The linguistic composition of the federal diplomatic corps corresponds to the demographic strength of the linguistic communities, although all diplomats must display fluency in the other national language. With regard to the top diplomatic functions (Ambassadorships), linguistic parity is the rule. Similar rules apply to the army.

Next to Belgium, Switzerland is a strong living example of a *consociational* federation. As in Belgium, the regions cannot be identified as the main *consociational* segments of Swiss society. Rather, the Swiss segments are the three official language groups or the two major religions. Switzerland's linguistic and religious diversity is reflected in the composition of its federal executive. Elected by a joint session of both federal parliamentary chambers, it has been composed as a Grand Coalition in which at least two French-speakers and one Italian-speaker assume a seat. From 1959 until 2003, the 'magic formula' resulted in the presence of two Radicals (Liberals), two Social Democrats, two Christian Democrats (Catholics) and one representative from the Farmers' Party. Since these parties have strongholds among different language and religious groups, the magic formula produces linguistic and religious diversity. The executive decides by consensus. Therefore, no decisions are taken that encroach upon the specific interests of the linguistic or religious minority groups. Unlike in Belgium, the presence of Grand Coalitions is not constitutionally required, but could be suspended or altered at any time. For instance, the number of delegates from the Swiss People's Party in the federal executive was increased after the 2003 federal elections to take account of that party's rapid electoral growth.

Yet, some federal *consociational* mechanisms are constitutionally anchored. For instance, the federal executive cannot comprise more than one member from the same canton. In practice, the smaller cantons rotate in claiming an executive seat, whereas the large and powerful cantons (Zurich, Vaud and Bern) are almost always represented (Wälti 1996: 12). As we have seen, the constitution also specifies that the members of the Swiss Federal Tribunal, or highest federal court, should represent all three language communities. Sufficient representation of the French- and Italian-speakers is also aimed at in the federal civil service, although there is no fixed quota system as in Belgium. For instance, the French have been somewhat overrepresented in the federal Ministry of Foreign Affairs, whereas the contingent of German-speakers is above average in the Chancellery, Military, Interior and Justice Departments. The federal parliament is not organized in language groups, and the representation of the various languages is roughly in proportion to their demographic weight. This applies even to the second chamber which has two members per canton (or only one in the case of two half-cantons). Usually the non-German-speakers make up to 12 or 13 out of 46 delegates (McRae 1983: 126–7).

Many analysts of Swiss politics argue that the referendum has operated as a *consociational* device par excellence. Although essentially an instrument of majoritarianism, it can protect the voice of the regions because in the Swiss context *constitutional* referendums never work as a simple majority device. Such referendums require the consent of a majority of the cantons alongside a popular majority. Alternatively, a group of a minimum of eight cantons can trigger a referendum after a federal bill that is not already subject to a mandatory referendum has been passed by parliament. Although it has been used only once, a threat to activate a cantonal referendum may force the centre into policy concessions. This said, the French- and Italian-speaking cantons taken together do not reach a quorum of eight.

The view that the constitutional referendum could help to protect the interests of the minority language or religious groups does not often hold. Arguably, several outcomes have run against the voting patterns of the smaller French or Italian cantons or the minority Catholic group in the Swiss federation. Instead, the constitutional referendum seems more often to protect the interests of the small, rural and predominantly German-speaking cantons (Vatter and Sager 1996). When first introduced in 1848, the double-majority requirement was meant to protect the interests of the eight *Sonderbund* cantons. Demographic changes since have made the double-majority requirement into an instrument of limited protective value for the French- or Italian-speaking minorities. Since 1848, the population of Geneva has multiplied by seven, but the population size of the smallest canton of Appenzell-Innerrhoden has remained almost constant. Thus far, eight proposals have failed because they lacked a cantonal majority, in spite of a demographic majority in their favour. On those questions, the French- and

Italian-speaking cantons were usually on the losing end (hence, they favoured the change; Vatter and Sager 1996: 179).

A well-known example of a referendum in which the French- and Italian-speakers voted differently from a state-wide and cantonal majority is the 1994 referendum which sought to obtain Switzerland's entry into the European Economic Area (EEA). Entering the EEA was perceived as a stepping stone to potential Swiss membership of the European Union. The proposal was rejected by 50.3 per cent of the Swiss people and by 19 Swiss cantons.⁴ Yet, roughly 56 per cent of the German-speaking Swiss voted against joining the EEA whereas more than two-thirds of the French-speakers endorsed the treaty. The referendum coincided with an economic crisis, which hit the urban centres of French-speaking Switzerland and the Ticino hardest. Therefore, the federal government was afraid that linguistic tensions between the language groups might exacerbate as a result. It set up information campaigns to reduce prejudices against the other linguistic communities. Simultaneously it increased the infrastructural aid to the economically deprived areas. It also negotiated a new bilateral treaty with the EU, proposing a more restricted form of economic cooperation than the EEA. The proposal passed by referendum in 2000. Bächtiger and Steiner see this as evidence of the commitment of the Swiss political elites to maintain a multicultural political order, 'leading to a willingness – especially among German-speaking elites – to contain growing divisions, to be receptive to the claims of other cleavage groups, to engage in conciliatory activities, and to find policy solutions that alleviate grievances' (Bächtiger and Steiner 2004: 47).

In contrast with Belgium and Switzerland, the Spanish centre lacks any *consociational* features. Although the regions have gained substantial self-rule, the composition of the national executive, the Senate, Constitutional Court and civil service does not systematically protect the interests of the historic Communities, let alone of all the 17 regions. Rather, the influence of the regions in the centre has been linked with the latter's requirement to take on board the views of some ethno-regionalist parties for securing a central parliamentary majority.

Finally, despite the fact that Scotland and Wales represent a low share of the British population, some provisions have sought to voice the interests of the UK regions in the centre. In contrast with Spain, the British government accommodated Scottish and Welsh interests even before devolution was implemented. Suffice to recall the role of the Scottish and Welsh Office and the Secretaries of State for Scotland, Wales and Northern Ireland with cabinet status. However, in practice, cabinet and party pressures limited the autonomy of the Scottish caucus and secretary to issues of relatively low political salience, such as local government, education and social work. Health, economic development and the budgetary priorities remained under strong central control (Keating 2004: 160–3). As a result of devolution, the

mechanisms that sought to accommodate the minority nations in the centre have been weakened. A Scottish and Welsh Office are still in place, but now function as part of a newly created Ministry on Constitutional Affairs (see Chapter 3). The overrepresentation of Wales and Scotland in the Westminster Parliament was ended after the 2005 general election. In this sense, the British polity has become more majoritarian in the centre.

5. Normative issues of multinational federalism

Asymmetry

Chapter 3 dealt with the institutional features of asymmetric federalism. Formal asymmetry can be understood in both a narrow and wider sense. Where it leads to the formal allocation of different sets of competencies to different regions, we speak of formal asymmetry in the narrow sense. Where it leads to a privileged relationship of certain regions in the centre, for instance, by means of their exclusive participation in bilateral intergovernmental meetings, their overrepresentation in the federal legislature (second chamber), or the granting of procedural veto powers (cf. the *consociational* rules in Belgium), we can speak of formal asymmetry in the wider sense.

Asymmetric federalism raises some normative questions that are linked to specific conceptions of democracy. In Spain and the UK, formal asymmetry has provoked considerable discussion, particularly on whether 'a special status' for the minority nations can be reconciled with a conception that all citizens should be treated as equals, irrespective of the region from which they originate. In Spain, the discussion has centred primarily on the privileged bilateral relationships which the historical regions have cultivated with the central government (thus contributing to a relatively weakly developed set of intergovernmental consultation mechanisms in which all the Spanish regions take part). As we have seen, various reforms have reduced the aspects of formal asymmetry so that one could argue that the Spanish answer to the critique that not all citizens are treated equally was to grant more autonomy to the regions without a historic character.

In Britain, the seeds of a privileged relationship with the centre predate the devolution of powers to Scotland and Wales. Until 2005, this was exemplified by the overrepresentation of both regions in the central legislature. Regional secretaries are still represented in central government. Yet this privileged relationship was not really a concern until the prospect of legislative devolution was put forward. Unlike in Spain the discussion on asymmetry has not focused on equalizing the differences in status between the minority nations (Scotland and Wales) and the region(s) with a lesser status. England is not even a region with any legislative or administrative powers of its own. However, its dominance is so massive that its interests are sufficiently catered for by the centre. Instead, the discussion in Britain has focused more on the consequences of allowing Scottish MPs a say in codetermining UK

policies (minus Scotland) in devolved areas, when English and Welsh MPs cannot codetermine Scottish policies in the same matters. This issue is commonly referred to as the *West Lothian Question*. It is named after Tam Dalyell, a Labour MP representing the Scottish constituency of West Lothian, who raised it in the 1970s, when the then-Labour government was intent on implementing devolution.

The origins of the West Lothian Question go back to the nineteenth century, when successive Liberal governments sought to grant home rule to Ireland. If Ireland was to have a domestic legislature to legislate on Irish affairs, it should no longer be able to codetermine the devolved areas in Westminster that pertain to England, Scotland and Wales. Hence, Irish MPs would only be allowed a say in non-devolved policy areas, such as foreign policy, defence and taxation. The Irish would otherwise face the luxury of being able to decide twice. They would decide on matters of their own concern in the regional parliament (in which the English, Scottish and Welsh MPs in Westminster would lose their say) and on the same matters as citizens of the UK in Westminster. In the home rule bills that were presented in 1893 and 1912, this dilemma was partially resolved by reducing the Irish representation in Westminster (from 103 to 80 MPs) for each vote on matters that had been devolved to the Irish parliament (Bogdanor 1999: 30–1). However, the more logical answer, to exclude Irish MPs from decisions on devolved policy areas was ruled out. Since the expenditure levels for Irish policies were made dependent upon the expenditure levels for similar types of policies in the rest of the UK, the Irish would still require a stake in codetermining these policies as well. Furthermore, the ‘in-and-out’ option could influence the political balance in the centre, as the contingent of Irish MPs would have been large enough to produce different political majorities in the centre for the discussion of devolved as compared with non-devolved policy areas.

The answer which the present UK Labour government has offered to the West Lothian Question is very similar to the solution which Liberal Prime Minister Gladstone proposed in 1893. Scottish and Welsh representation in the Westminster Parliament was brought back to proportionality after the 2005 general election, but Scottish MPs can still codetermine English policies in legislative affairs that have been devolved to the Scottish Parliament. As the contingent of Scottish and Welsh MPs might be decisive in providing UK governments with a nation-wide majority, a more drastic in-and-out option could cost Labor its majority whenever the UK Parliament discusses non-devolved areas. Furthermore, the fiscal arrangements still make Scottish (and Welsh) expenditure levels dependent upon expenditure changes in England. Hence, if English MPs were to reduce overall levels of public expenditure, it would only be fair for Scottish and Welsh MPs to have a say in this, even if the proposed changes pertain to health or education policy.

The only option then to really solving the West Lothian Question is to reduce the levels of asymmetry. This is what happened in Spain. This said,

even in Spain some elements of asymmetry remain and it may be surprising that the Spanish equivalent to the West Lothian Question has not triggered the same amount of controversy there. For instance, although the level of Basque fiscal autonomy is extraordinary, Spanish central governments or state-wide party representatives have not called for the abstention of Basque representatives in the Cortes (parliament) when it legislates on taxes for which all the regions but the Basque Country remain dependent upon the centre. Furthermore, between 1993 and 2000, and again since 2003, Spanish central governments have been dependent upon the support of some of the ethno-regionalist parties. Arguably, if the MPs representing the Basque Country or Catalonia were excluded from voting on decisions in which they, but not the other regions, had gained autonomy, Spanish minority governments might not require the support of the ethno-regionalist parties on such issues.

Solving the West Lothian Question by reducing levels of asymmetry can generate practical and normative problems. Practically speaking, reducing asymmetry is difficult when there is little support for elevating the status of England to that of a region with legislative and administrative powers or when there is scant enthusiasm for the regionalization of England.

More fundamentally, reducing levels of interregional asymmetry is bound to raise normative questions of a different order. In this sense, the Spanish experience is instructive again. The Spanish answer to the West Lothian Question – granting more home rule all-round – has frustrated its minority nations there. What they seek is special recognition as a minority nation, and not just to become a non-nationality-based region alongside other regions of the same type. They argue against the assumption that asymmetry leads to ‘two classes of citizens’. If their status as a stateless nation is totally ignored, they will feel marginalized, even if their civil, political and social rights of citizenship are guaranteed (Requejo 2004: 263).

Indeed, some political theorists have defended the argument that asymmetry can be reconciled with liberal democracy, as equality for individual citizens does not necessarily require that all regions have equal powers. For instance, Will Kymlicka argues that granting special status to nationally-based regions ‘can be seen as promoting ... moral equality [of persons and equal respect for their interests], since it ensures that the national identity of minorities receives the same concern and respect as the majority nation (Kymlicka 2001: 105; also Requejo 2004). If the citizens of Murcia consider the Spanish government as their national government, then a strong Spanish central government would be more consistent with their view of national identity. If the Catalans consider the Catalan Generalitat as their national government, a strong Catalan parliament and executive would be consistent with their feeling of identity. Paraphrasing Kymlicka, if the citizens of Murcia ask the Catalans ‘Why can’t we all be Spanish first, and Catalan, Basque, Galician, Murcian second?’ they overlook that it requires

the Catalans to subordinate their national identity, whereas the citizens of Murcia could simply continue to express their primary national (Spanish) identity (Kymlicka 2001: 105). Put differently, while granting more autonomy to England or the English regions might solve the West Lothian Question, it is bound to create another one. Should the status of Scotsmen and women be reduced to that of a 'regional division' within the majority nation (UK)? For the minority regions, asymmetry is the logical consequence of recognizing their status as one of the founding nations of the state; for the majority nation, equality of territorial units (symmetrical federalism) is the logical consequence of respecting equal citizenship rights.

Multinational federations must seek to find an acceptable balance between a minority nation's request for *special* recognition and the majority nation's desire to uphold equal rights for all citizens irrespective of their place of living. Discrimination refers to the unequal treatment of equals as much as it can refer to the equal treatment of non-equals. Insofar as asymmetry is meant to work away the latter source of discrimination, it need not upset the basic principles of liberal democracy (but not everyone is convinced, see Barry 2001: 292–328). Ideally, the degree of asymmetry should be open to adjustment, requiring the consent of both the minority and the majority nations.

An application of asymmetric federalism: the specific case of national minority languages

Minority nations are often marked by the presence of a specific minority language (hereafter simply referred to as a regional language), which, as we have seen, may have played a key role in moulding regional identities.⁵ The issue whether regional languages deserve special protection alongside the majority language (or in the Belgian and Swiss cases along other regional languages) fits very well into the normative debate on asymmetry that was touched upon above. A classic liberal theorist would argue that regional languages should be recognized alongside national or other regional languages. However, he would also defend the claim that regions in which regional languages are spoken should allow citizens who do not know them to use the national (or other regional) language(s) in public life. Such a viewpoint corresponds with the *personality principle*. Conversely, a liberal nationalist would argue that, in order to protect their more vulnerable status, regional languages should be allowed to be imposed as the only language of communication within the region(s) in which they are spoken (Parijs 2000). Such a view corresponds more clearly with the *territoriality principle*.⁶

Specialists of linguistic politics have frequently stressed the double meaning of language: language as an *instrument* of communication between the governors and the governed, and language as a vital marker of national *identity*. Taking the viewpoint of a classic liberal, Alan Patten has argued that the principle of territoriality can be defended, when it is connected to the role of

language as an *instrument*. However, the personality principle is normatively superior as soon as the value of language as an *identity marker* comes into play (Patten 2003).

Focusing on the *instrumental* value of language, territoriality, so Patten argues, contributes to making the overall provision of public services more cost effective; it facilitates the social mobility of all and prevents the segmentation of deliberative discourses along linguistic lines. However, territoriality cannot be applied without certain conditions being first met. Citizens who do not speak the regional language should be provided with ample opportunities to acquire it. Younger generations can achieve this objective via schooling. As I will discuss, the 'mixed' Catalan–Castilian or Welsh–English education programmes are clear examples of this strategy. Older generations may be offered linguistic facilities of a transitory nature (as one cannot expect them to become fully bilingual) and may have to receive free education in the regional language. This should enable them to start using that language gradually. Acquiring the regional language also helps them to broaden employment opportunities, and more generally to increase the potential number of fruitful friendships and relationships in the area. However, a case could be made that outside the region in which the regional language is spoken, being able to communicate in other languages may provide a substantially wider 'context of choice' (Will Kymlicka). For instance, in Switzerland, French-speakers are well advised to learn German if they aspire to an important function in the federal administration or in business. The same applies to Basque- or Catalan-speakers who envisage a career in the Spanish civil service, army, courts or diplomatic corps. Therefore, citizens whose regional language is territorially protected should not refrain from learning the other languages also, so as to keep open any options to further their careers elsewhere. Given these conditions, territoriality cannot be dismissed on purely instrumental grounds. However, in the view of Patten, this view changes as soon as one conceives language as an important socio-cultural (identity-building) marker. To deny citizens who do not speak the language of the region in which they are living a right to use the national majority language is to deprive them of an essential element of their identity. Therefore, the protection of regional languages should never result in prohibiting French-speakers in Flanders or Castilian-speakers in Catalonia from using French or Castilian in their public life.

On the latter point, the viewpoint of the traditional liberalist and the national liberalist diverge. Somehow reciprocating the general argument that national minorities deserve special protection, the case is made that regional languages should be granted the status of sole public-working language (territoriality) in the regions where they are spoken. Without such special recognition, minority nations would be deprived of a suitable protection of one of their core identity-markers (language as a symbolic, identifying element). Worse still, minority nations may face the long-term disappearance

of their language. In a sense, then, the case for territoriality becomes an instrumental one as well for, as Philippe Van Parijs has argued vehemently, without territoriality, 'one language will eat the other', gradually eroding the identity of those who speak the 'most tasteful' language (Parijs 2000: 219). Or,

in a world of contact and movement, there is no other means of durably protecting vulnerable languages (and therefore, no other means of sustainably securing linguistic peace) than the firm assertion of the territoriality principle: when people intend settling in a particular territory, they should kindly but firmly be asked to have the humility to learn the local language, however widely their language is spoken, however superior they sincerely believe their own language to be. (Parijs 2000: 219)

On the basis of the above argument, the Catalans argue that the vulnerable language in need of protection is Catalan (*vis-à-vis* Castilian), the Flemish believe it is Dutch (*vis-à-vis* French) as much as the Welsh think it is Welsh (*vis-à-vis* English). In the following section, I will first briefly review how the multilingual states of Western Europe have dealt with the thorny issue of language politics, and subsequently document whether 'without territoriality' the more vulnerable languages will effectively be eaten by another. Put differently, does a policy of bilingualism necessarily extinguish the most vulnerable language?

Language politics: from the most territorial to the most bilingual regime

Belgium

Belgium offers the most extreme example of linguistic territoriality. The principle of territoriality was *formally* asserted as early as 1932, when, as a result of protracted strife, Dutch was turned into the sole official language of governance in Flanders, and French was confirmed as the sole official language of Wallonia. The linguistic laws of 1962–63, reaffirmed the territoriality principle creating three monolingual regions: the French-speaking region, the Dutch-speaking region and the German-speaking region.⁷ Brussels received bilingual status. In 1970, the division of Belgium into four linguistic zones was constitutionally entrenched (Alen 1995). The subsequent transformation of Belgium into a federal state has had no influence on the distribution of the language zones. As a general rule, the federal government communicates with citizens in the regional majority language, not in their individual language. Hence, a Dutch-speaking Belgian who lives in the Walloon city of Liège will receive his federal taxation form in French, and a French-speaking Belgian who resides in the Flemish city of Antwerp will receive hers in Dutch. The same rule applies to the regional public authorities: Dutch-speakers who live in Wallonia will be addressed in French by the

Walloon government, just as the Flemish government will normally address French-speakers who are based in Flanders in Dutch. Yet, there are two important exceptions to the territoriality principle.

The first and foremost exception pertains to Brussels. As the capital of Belgium, Brussels gradually acquired a bilingual status. Consequently, all public authorities in that region (federal, regional, municipal) must be able to communicate in Dutch or French. All public signposts are also indicated in both languages. However, services that are provided by the respective Communities in Brussels (via the Flemish or French Community Commissions) are exclusively in Dutch or French. This means that education is provided exclusively in one or the other language (with the exception of specific language courses offering French or Dutch as a second or third language), and that, unlike in Catalonia for instance, bilingual education is not on offer.

The second exception pertains to some municipalities that contain significant numbers of people who do not speak the regional language as their first language. The most contentious of these are located in the Brussels' periphery. Geographically, Brussels is a predominantly French-speaking island surrounded by Flemish territory. As a result of the complicated package deal that emerged in 1962–63, 6 suburban municipalities ended up in Flanders although they contained sizeable French-speaking minorities. By now, suburbanization and the rapid 'Europeanization' of Brussels and its surroundings have turned French into the most widely spoken language in almost each of these municipalities (Murphy 1988: 128; Janssens 2002). To accommodate the presence of the growing group of French-speakers, these 6 suburban municipalities were allowed to offer certain public *facilities* to their citizens in French. Although in total 27 such 'facility municipalities' exist (some also offer facilities in Dutch or German in areas where they have the status of local minority languages), language facilities are used most widely in the 6 suburban municipalities. The status of 'facility municipalities' is constitutionally protected. Amending them requires the consent of the federal parliament with special majorities. We could identify the linguistic regime in these 'facility municipalities' as one of 'soft territoriality': French-speaking citizens are entitled to receive all their administrative documents in French, to use French in education (up to a certain level) and in commerce (Distelmans and Koppens 2002 for a detailed overview; Swenden 2004c).

Switzerland

After Belgium, Switzerland offers the best example of linguistic territoriality (McRae 1983), yet Swiss language politics is not entirely territorial. As far as the communication of the *federal* government with *individual* citizens is concerned, the *personality*, rather than the territoriality, principle applies. Unlike in Belgium, Swiss citizens, irrespective of their place of living, may communicate with the federal government in German, French or Italian

(McRae 1983: 119–52). Switzerland has three *official* languages (German, French and Italian) and four *national* languages (German, French, Italian and Romansh). The value of recognizing Romansh as a national language is symbolic as only the official languages can count on extensive federal administrative protection. For instance, in the federal parliament and the federal courts, proceedings may occur in the three official languages, and documents (statutes) are made available in all three languages as well. As was indicated above, the composition of the federal government, departments, agencies, courts, the military and diplomatic corps roughly reflects the linguistic make-up of the country. Advancing to the higher positions in central ministerial departments requires a good knowledge of German *and* French. Decentralized agencies, such as the postal services, recruit on the basis of local needs. For instance, post offices in the canton of Graubünden will therefore almost certainly employ several Romansh-speaking employees. This said, in practice MPs who represent the tiny Italian minority will more often address their peers in German or French than in their native tongue. The vast majority of federal documents is originally written in German, and, as Jean Laponce put it, ‘the francophone official who gets a plum posting to Bern goes there with no illusions – he or she will have, with few exceptions, to operate in German’ (Laponce 1987: 175–7).

At the regional or cantonal level, a much more rigid application of the territoriality principle applies. Cantonal politics and education are taken care of in the official cantonal languages, and the federal public services communicate with the cantons in the latter’s official languages. Unlike in Belgium, the federal constitution does not specify cantonal deviations to the territoriality principle. Instead, each canton *may* opt for some form of institutional bilingualism. The cantons of Valais, Fribourg, Bern and Graubünden adopted a multilingual status, while the remaining 22 cantons have endorsed a monolingual status. That status is German in 17 cantons, French in 4 cantons and Italian in 1 canton. In the group of monolingual cantons education is generally provided in the regional language, but the instruction of German (in the French or Italian cantons) or French (in the German cantons) is specified as a compulsory second language.⁸ The 4 multilingual cantons (bilingual in the case of 3, multilingual in the case of 1) may apply bilingualism or multilingualism all round, apply it to certain of their administrative districts or opt for subdividing the canton into several monolingual administrative districts. In the latter case, the cantonal language regime vis-à-vis the administrative districts or municipalities is similar to the language regime which the federal government applies in relation to the cantons. In Valais, members of the regional minority language (German) have a right to use their language in courts and parliament and have access to German-speaking schools. The German-speaking minority in Fribourg, which populates 3 out of 7 administrative districts, but comprises a majority in only 1, has not received similar protective guarantees. The near proximity

of predominantly German-speaking Bern may explain this. Bern, Switzerland's national capital, has long provided a strong protection to its French-speaking minority. However, the breakaway of the French-speaking Jura seriously diminished the protective rights of the (now much reduced in number) minority. Finally, while the canton of Graubünden recognizes German, Romansh and Italian as official cantonal languages, common services are most frequently provided in German, on the grounds that – unlike Romansh – it is a language that can be acquired by all (McRae 1983: 172–83). In sum, rather than characterizing these cantons as 'bilingual', they are closer to being territorial, but they provide certain facilities in the regional minority language. Furthermore, the scope of these facilities varies from one canton to another, possibly even from one municipality to another.

Spain

Spain offers a third interesting example of a country which seeks to accommodate the aspirations of historic communities, each with clearly identifiable regional languages. Article 3 of the Spanish Constitution stipulates that Castilian (Spanish) is the official language of the state, while 't[he] other Spanish languages will also be official in their respective Autonomous Communities, according to their own statutes' (translation: Conversi 2002). Catalonia's statute of autonomy recognizes Catalan and Spanish (Castilian) as Catalonia's two official languages. Similarly, according to their statutes of autonomy, the following are recognized as regional official languages alongside Castilian: Galician in Galicia, Euskera in the Basque Country and Navarra, Catalan in the Balearic Islands and Valencia (as Valencian), Aranese in Catalonia and Asturian in Asturias. Leaving aside Catalonia, the regional language has the status of a *minority* language, at least on the basis of demographic criteria. This also explains why Catalonia has been the most successful of the regions in employing language as a vehicle of national identity-building.

The Spanish national government communicates in Spanish (Castilian) with all the regional authorities, as well as with all its citizens irrespective of whether or not they speak a regional language. In practice, speakers of a regional language are almost always bilingual. In this sense, national language policies are less accommodating to regional linguistic concerns than Swiss and certainly Belgian federal language politics. However, the regions are largely competent in educational matters, and the use of languages in crucial public services such as the media and postal services is devolved to the regions. Regions may actively use their powers to engage in promoting the regional language (Roller 2002b). The Catalan government has done so most successfully.

First, it has made schooling in *both* languages compulsory for all school-age children. In Elisa Roller's view, the spread of Catalan via schooling could be seen as a first phase in Catalan linguistic politics, described as a policy of

normalization, which sought to restore Catalan to its pre-Franco status. The commonly followed path in Catalonia (and Galicia) is to enable a process of 'linguistic immersion' whereby children in primary school are taught in the regional language but must also acquire Spanish. As of secondary-school level and higher, teachers are free to teach in Castilian or in the regional language (Gunther, Montero and Botella 2004: 323). We should note that as far as education is concerned the Basque Country has followed a pattern that is more in line with its polarized political climate on the nationalist issue. Education is provided in Euskera and Castilian, but parents have little choice but to send their children from a young age to schools that are instructing either in Euskera or in Castilian. Some immersion schools exist which mix both languages but they constitute a minority (Gunther, Montero and Botella 2004: 324).

Second, and more controversially, as of 1997, the Catalan government has engaged in an effort to promote the use of Catalan in the private sector, the media and cinema (dubbing of films in Catalan), establishing its status as the *de facto* lingua franca of Catalonia (Roller 2002b: 283–5). The more openly cast preference for Catalan has been perceived as a violation of the co-equal status of Castilian, and more generally of the assumption that the private sector may not be forced into using a regional language. The Catalan government has defended its policies on the grounds that Spanish already benefits from its status as the language of the central government. The asymmetric (preferential) treatment of Castilian at a state-wide level, so the Catalan government seemed to argue, warrants an asymmetric (preferential) treatment of Catalan at home. However, this stance has aroused considerable debate on what should be the permissible boundaries of promoting and regulating the use of Catalan, even within the ranks of the long-term governing ethno-regionalist CiU. Several court cases have sought to overturn the preferential treatment of the regional languages in education or recruitment for the regional civil service, but, in general, the Constitutional Court has not sanctioned these laws (Keating 2001b: 129; see also Chapter 3).

The United Kingdom

Finally, in the UK, the protection of the two main regional languages, Welsh and Gaelic (Scots, Irish and Cornish could be added), is of more recent vintage. All UK political institutions (executive, Parliament, administration and the courts) operate in English and as such these languages are only protected at a regional or local level. Although their use has been tolerated for a long time, until recently there was little public policy available to *promote* them. Devolution has enabled the Scottish Parliament and Welsh Assembly to take further action to promote the use of Gaelic, or to foster the idea of a bilingual Wales (although the Welsh Assembly itself cannot legislate to such effect). In practice, the Welsh Assembly has been much more active in language politics than its Scottish counterpart, a reflection of the relatively

large size of its Welsh-speaking contingent (compared with the small group of Gaelic-speaking MSPs in Edinburgh).

Although it operates in English, the UK government has been willing to provide Welsh-speaking translations of its documents (without official status), that is, long before devolution was implemented. It has also allowed the use of Welsh in the courts and, since 1944 it has set up Welsh-speaking schools. A Welsh public television channel has been operating since 1982. Since 1988, Welsh has been included as a 'core' subject in Welsh-speaking schools (about a quarter of all Welsh primary schools) and as a 'foundation' subject in English-speaking schools (the remaining 75 per cent). When they leave school, 'all children [...] must] have acquired a substantial degree of fluency in Welsh' (Welsh Office cited in Dunbar 2004: 109).

The Welsh Language Act (1993) has enabled a more wide-spread use of Welsh in public life. It has created a Welsh Language Board to *promote* the use of Welsh and to encourage all public bodies to treat Welsh and English on equal terms. The Board only devises 'enabling strategies', it cannot impose legally enforceable rights. The process of devolution has authorized the Welsh Assembly to strengthen the use of Welsh. The Welsh Assembly is allowed to do 'anything it considers appropriate to support the Welsh language' (GWA 1998). In contrast, measures which promote the use of Gaelic are almost absent in Scotland: although Gaelic has been used as the language of instruction in a small number of primary schools, its use there has been more the result of parental lobbying and the goodwill of local authorities than of central or Scottish public policy (Dunbar 2004: 118). Unlike in Wales, students are not compelled to learn Gaelic and there is limited funding for supporting broadcasting in that language. Although devolution has increased the awareness of the Gaelic issue, it remains a low priority (Dunbar 2004: 117–22).

Do regional languages necessarily need full territorial protection?

Regional languages are treated differently in each of Western Europe's multilingual or multinational democracies. Yet, does the absence of any territorial protection of regional languages also lead to their gradual erosion as Philippe Van Parijs seems to suggest? On the basis of some preliminary data, the evidence seems mixed at best.

The Belgian case seems to support this view. The early history of Belgian linguistic politics demonstrated that Flemish labourers who left for a job in the Walloon industry smoothly assimilated into the French-speaking culture. The rapid Frenchification of Brussels offers further evidence of the process of linguistic homogenization that followed upon the exposure of Dutch to the influence of French. Had it not been for the demarcation of monolingual zones, French may now have been spoken more widely throughout the country. Conversely, had it not been for the presence of linguistic facilities, Dutch might now have been spoken more widely in the

six suburban facility municipalities (Janssens 2002 for a survey). However, Belgium is also a very peculiar case. Many of the suburban municipalities are witnessing an unusually high turnover in migration patterns, and comprise relatively high numbers of non-Belgian citizens. Furthermore, the French-speaking Belgian or non-Belgian citizens who moved to these municipalities in recent times are mostly employed in Brussels. They can work in a French (or English-speaking) environment and send their children to French-speaking schools there. In this sense, French-speakers do not suffer from a reduced 'context of choice' (Kymlicka) by settling in a Dutch-speaking region.

However, Spain and even Wales demonstrate that regional languages can survive, possibly even flourish, despite the absence of a fully territorial regime. In Spain, the Franquist regime, while all but friendly towards minority languages, was unsuccessful in extinguishing Catalan, Galego or Euskera. At the onset of the Spanish democratization process, Galego was the most widely spoken minority language, with 86 per cent of the regional population claiming to speak it. Comparable percentages for Catalan (in Catalonia) and Euskera (in the Basque Country) amounted to 78 and only 20 per cent respectively (Gunther, Montero and Botella 2004: 179). During the Franquist period, Catalan socio-economic elites never gave up on speaking their language. They could also lean on a strong literary tradition. As Catalonia served as the power house of the Spanish economy, immigrants who settled there felt a need to learn the language. The situation was different in Galicia and the Basque Country, where the socio-economic elites were quick to adapt Castilian as their working language. That this did not affect the knowledge of Galician is attributed to the latter's proximity to Castilian, unlike Euskera, a non-Indo-European language.

Language policies which developed after 1978 (and tolerated variations on regional bilingualism) have not further reduced the popularity of Euskera, let alone that of the other regional languages. By 1996, the share of the Basque population claiming to understand and speak Euskera had increased to 28 per cent; the share of the Catalan and Galician population reporting to understand and speak the regional language remained stable (89 per cent in Galicia, 79 per cent in Catalonia) (Gunther, Montero and Botella 2004: 180 citing data from Siguan 1999: 14).

The share of the total Welsh population that is Welsh-speaking decreased dramatically from 54 per cent in 1891 to close on 19 per cent in the 1991 census. Despite the rapid fall of the Welsh-speaking share, it was never so low as to exclude a reversal of this declining trend (in Scotland, Gaelic is so little spoken that most MSPs do not prioritize its conservation, let alone its further expansion). There is now growing evidence that the Welsh policy of bilingualism is paying off. In the 2001 census 20.5 per cent of the Welsh population claimed to speak Welsh. The knowledge of Welsh is particularly on the rise among the young people. The Welsh Assembly government projects a further increase of Welsh-speakers with 5 per cent by 2011.

This would be the result of increasing the percentage of children who receive some education in Welsh and of further strengthening the use and visibility of Welsh in all aspects of life (Dunbar 2004: 116; *Dyfodol Dwyieithog/Bilingual Future* 2002). Therefore, the Spanish and Welsh examples suggest that policies that *promote* a regional language but fall well short of a tight politics of linguistic territoriality may consolidate or strengthen the presence of a regional language. Hence, the particular context in which the French-Dutch linguistic tensions are being played out in Brussels and its periphery should not be taken as a normative guideline for language politics elsewhere. Furthermore, while the territorial solution to language politics has considerably reduced inter-ethnic conflict in Belgium, it has also consolidated the strength of the linguistic segments as the basic pillars of Belgian federal society. This is not without a cost, as I will explain in further detail in the next section.

6. Plurinationalism and multiple identities

One way to measure the success of multinational federalist or regionalized structures is to study its citizens' patterns of identification and their evolution in time. Although the creation and direct election of regional assemblies in Belgium, Spain and the UK may have initially boosted patterns of ethno-regionalist identification, from the centre's perspective granting home rule was meant to reach the opposite effect: strengthening loyalties vis-à-vis the state. Researchers have long investigated citizens' patterns of identification with their region (minority nation), the centre or, to various degrees, a combination of both (so-called 'dual or complementary identities'). This type of research has had the longest tradition in Spain (CIRES [Centro de Estudios de la Realidad Social] data reported in Moreno 2001 and Gunther, Montero and Botella 2004). Table 7.2 displays the strength of dual identities in the two Spanish regions with the most strongly developed regional identities: the Basque Country (BC) and Catalonia (CAT) covering a period of

Table 7.2 National identification in the Basque Country and Catalonia, 1979–2002

	BC79	BC82	BC92	BC98	BC02	CAT79	CAT82	CAT92	CAT98	CAT02
R	37	44	22	32	29	15	9	15	15	16
R > S	11	17	21	24	22	12	18	21	27	25
R = S	24	25	38	35	38	36	41	36	37	38
S > R	3	5	9	3	4	7	9	8	6	8
S	25	9	10	5	6	31	23	20	15	12

Note: Basque Country shaded.

Source: Adapted from Gunther, Montero and Botella 2004: 184.

23 years. The top row illustrates a pattern of identification with the minority nation or region only (R); the second row lists the share of respondents who identify more with their region than with the state ($R > S$); those that are ranked in the middle row constitute the 'hard core dual identifiers' who associate themselves as much with the region as with their state ($R = S$); respondents who are ranked on the fourth row identify more with the state than with the region ($S > R$); while the fifth row lists the share of respondents who consider themselves exclusively in state-wide terms.

As one may expect, Basque and Catalan citizens are more likely to identify with their region, although patterns of regional identification are most explicit in the Basque Country. Both regions are growing closer to one another. Basque citizens were less likely to identify exclusively with their region in 2002 than in 1979, but the opposite evolution has taken place in Catalonia. The table offers a powerful illustration of the volatile character of national identities. For instance, between 1982 and 1992, the share of the Basque population who exclusively identified with the Basque Country halved (but strongly recovered thereafter). In the words of Gunther, Montero and Botella, 'these fluctuations indicate that national identities are more malleable than a static "primordial" notion of nationalism would suggest, or than an explanation based on stable demographic characteristics could possibly accommodate' (Gunther, Montero and Botella 2004: 185). In general, devolution itself has not greatly affected the patterns of identification with the state.

Table 7.3 lists comparable data for Belgium (Flanders and Wallonia) and the UK (Scotland and Wales). The data cover a much narrower time span. In comparison with the Basque and Catalan cases, Flemish respondents (at least until 1999) show relatively low levels of regional identification (certainly in exclusive terms), although there is a marginal increase of citizens who are exclusively identifying with Flanders. In 2003, about 30 per cent of the Flemish respondents identified exclusively or more with Flanders than with Belgium, but those with an exclusive level of regional identification still made up only 7 per cent of the population (Billiet, Lille Lecture/ISPO 2005). Together with their Walloon counterparts, the Flemish population has the largest cohort of pure 'dual identifiers' (as much Flemish/Walloon as Belgian) of all cases that are reported here. Given that the federalization of Belgium has been driven in part by a highly committed group of Flemish nationalists, this high share of dual identifiers may come as a surprise. Despite a further step in the reform of the state in 2000–1, in Flanders and Wallonia the patterns of identification have not changed much since 1995. Although we lack data documenting such patterns of identification in the period that precedes or coincides with the federalization of Belgium, there is a general understanding that the share of Flemish citizens who are willing to identify with Belgium alongside Flanders has substantially increased (De Winter 2002: 223). Hence, while the Flemish have been the most

Table 7.3 National identification in Belgium and the UK

	FLA95	FLA99	WA95	WA99	SCO92	SCO97	SCO01	WAL97	WAL01
R	3.6	7.0 (7.2*)	1.5	2.3	19	23.1	36	13.1	23
R > S	23.1	22.4 (23.3*)	9.4	11.3	40	38.7	30	29.1	22
R = S	45.3	42.2	44.7	41.8	33	25.8	24	25.8	29
S > R	17.2	13.3	25.3	22.0	3	4.0	3	10.4	11
S	10.8	15.1	18.0	22.5	3	3.5	3	15.3	11

Note: British data do not always round up to 100.0 as they usually also comprise a category 'other' which is not listed here.

For Flanders: * denotes outcome of not yet publicly released data on the basis of 2003 ISPO survey (courtesy of Billiet/Lille lecture and ISPO KULeuven 2005). Belgium shaded; FLA = Flanders; WA = Wallonia; SCO = Scotland; WAL = Wales.

Source: Maddens, Billiet and Beerten 2000 (Belgium 1995); Meersseman, Billiet and Depickere 2002: 20 (Flanders 1999); De Winter 2003: 112 (Wallonia 1999); Keating 2004: 172 (reporting data from Scottish Election Survey for Scottish and Welsh data 1997); Curtice and Seyd 2001: 236 for Scottish data 1992 and ESRC 2004 for Scottish and Welsh data 2001.

adamant party in claiming regional autonomy, the incremental regional policy portfolio may have actually contributed to dampen anti-Belgian feelings in that part of the country. Conversely, in line with the reduced competences of the centre, forces that still bind the French-speakers to the centre are less strong now than some decades ago (Hooghe 2004: 80–6). Thus, regional identification patterns in Wallonia may grow faster than in Flanders, and in this sense, as between the Basque Country and Catalonia, they may be converging (at a very slow pace).

The comparable figures for Britain demonstrate patterns of identification that are leaning more closely towards the regionalist end. This is most explicitly the case for Scotland. The Scottish data can be situated somewhere in between the Basque and Catalan figures. The most recent figures even show patterns of identification that are much closer to the Basque than the Catalan data in terms of the level of exclusive regional identification. Four years after the first election of the Scottish Parliament, 66 per cent of the Scots felt either exclusively or predominantly Scottish, compared with only 6 per cent who identified exclusively or predominantly with Britain (SSAS 2001 reported in ESRC 2004). The share of respondents who identified as much with Scotland as with Britain was only 24 per cent. This suggests that the first direct election of the Scottish Parliament has strengthened existing feelings of Scottish identity. The same pattern can be observed in Wales albeit that in this region dual identities represent a considerably higher share of the population.

Before placing the above figures into a wider context, we should make note of the lack of *recent* comparable data for Switzerland. In Switzerland

surveys carried out in the early 1980s asked respondents whether they identify *primarily* with the canton in which they live, the linguistic group to which they belong or with Switzerland.⁹ Despite the institutional strength of the cantons, about half of the respondents marked Switzerland as their first choice. This confirms that 'state-nation' character of Switzerland or, as the British historian Lord Acton once observed, 'the Swiss are ethnologically ... French, Italian or German, but no nationality has the slightest claim upon them, except the purely political nationality of Switzerland' (Lord Acton, cited in McRae 1983). However, patterns of identification vary from one linguistic group to another. Swiss identification is highest among the German-speaking Swiss: almost 60 per cent identified with Switzerland first. Furthermore, the German-speaking Swiss were likely to put cantonal ahead of linguistic identity. In contrast, less than half of the Italian and French Swiss citizens identified primarily with Switzerland. Yet, the share of citizens who identified with Switzerland still outnumbered the share of those who put cantonal or linguistic identifications first. In the case of the Italian-speaking group, identification was strongest with the canton, not with the language group to which they belong. The pattern was the opposite for the French-speaking Swiss surveyed (Kerr, Sidjanski and Schmidtchen 1972, cited in McRae 1983: 109). The Italian-speaking Swiss population is primarily contained within one canton (Ticino), therefore, cantonal and linguistic identification roughly overlap.

7. Plurinationalism and political options for the future

Measuring patterns of identification on a five-point ordinal scale as above do not provide much information on the intensity of regional or state-wide identification patterns. Most importantly, they do not tell us much about the political options which citizens are willing to support. Additional surveys are needed to document these options. Fortunately social scientists in Spain, Belgium and the UK have made an effort to collect such data.

For instance, using three different criteria (support for independence, exclusive identification with the region and support for regional instead of state-linked passport), Moral has distinguished between various forms of support for Catalan or Basque independence. Those who favour all three options are hard-core or 'coherent separatists' (*independistas*). In 1996, they represented 20.6 per cent of the Catalan and 29.5 per cent of the Basque respondents. Respondents who only support independence, but do not exclusively identify with their region *or* do not wish to give up their Spanish passport, cannot be considered as fully committed *independistas*. Adding these 'soft' *independistas* to the group of hardliners brings the total share of *independistas* to nearly 35 per cent in Catalonia and 45 per cent in the Basque Country (Moral 1998, as reported in Keating 2001b: 76). In both cases, the percentage is consistently below the share of the population who identify

with their region in exclusive or predominant terms. In the Basque Country it is also below the share of parties which at some stage paid lip-service to Basque independence.

In a survey among members of the Flemish electorate (1999), 19.8 per cent of the respondents subscribed to the goal of Flemish independence, of whom 5.9 per cent subscribed *totally*, 22.1 per cent took a neutral position and 53.6 per cent rejected the idea of Flemish independence, of whom 17.5 per cent rejected the idea *totally* (Meersseman, Billiet and Depickere 2002: 15). The support for independence decreases with the level of education. When asked to assess the current division of competencies between the centre and the regions, a majority of voters within each of the Flemish party groups (with the exception of the separatist Vlaams Blok) marked it as (roughly) satisfactory. Even a plurality of the Vlaams Blok voters assessed the division of competencies as (rather) satisfactory (Meersseman, Billiet and Depickere 2002: 30). When *forced* to change the current institutional equilibrium, roughly a quarter of the respondents would transfer powers back to the centre, well over 60 per cent would devolve more powers to the Communities or Regions. About 15 per cent of the population would seek Flemish independence. The preferred institutional options are strongly affected by the party political colour of the respondents. In 1999, respondents who voted for the Flemish Social Democrats or Christian Democrats were least likely to support independence (under 5 per cent) and were keenest on returning powers to the federal level (close to 30 per cent). When they ended up in opposition at the federal and regional levels between 1999 and 2004, the Flemish Christian Democrats adopted a harsher pro-Flemish point of view. Its voters seemed to have followed that line of thought. In 2003, 53.3 per cent of the Christian Democratic voters agreed with the proposition that the regions should gain more powers, well above the mean score for the Flemish electorate of 46.4 per cent (Billiet Lille Lecture/ISPO 2005).

As one would expect the support for Flemish independence is highest among voters of the Flemish moderate and extreme-right-wing Flemish nationalists (yet in the 1999 survey still only around respectively 25 and 28 per cent defended this view). However, 29 per cent who voted Vlaams Blok were also keen on supporting a stronger centre! (Meersseman, Billiet and Depickere 2002: 30). The latter figures illustrate the fragmentation of the Vlaams Blok electorate. A part of its voters are turned on by the party's commitment to Flemish independence but another part is primarily attracted by its hard-line views on immigration and crime. In this sense, the survey data confirm that the Vlaams Blok electorate does not behave as would be expected from an ethno-regionalist party. In Spain and the UK, citizens who vote for the PNV, EA, HB, SNP or Plaid Cymru are more likely to support independence than citizens who vote for the (regional branches) of state-wide parties. In Flanders, the share of Vlaams Blok voters who supported independence in 2003 was only slightly above the Flemish mean (47.3 per cent) and

it was lower than the corresponding shares for those who voted for the Flemish Christian Democrats (53.3 per cent) or for the Flemish Moderate Nationalists (NVA; 78.2 per cent; Billiet Lille Lecture/ISPO 2005). Overall, the modest support for more regional autonomy is striking and contrasts with the attitudes that a majority of Flemish party and opinion leaders are taking with regard to the further evolution of the Belgian state.

Finally, although close to 7 out of 10 Scottish respondents identify exclusively or predominantly with Scotland, the support for an independent Scotland (either full sovereignty or under continuous membership of the European Union) has never been higher than 40 per cent (Keating 2001b: 226). The history of the UK as a union-state leads to a high level of identification with the region, even in the largest stateless nation of the UK: England. For instance, in the 1997 general election survey a third of the English respondents considered themselves as exclusively or primarily English. Only 26 per cent of these respondents exclusively or primarily identified with Britain (Curtice and Seyd 2001: 236). Yet, in 2000, 54 per cent of the English supported the claim that 'England should be governed as it is now with laws made by the UK Parliament' (Curtice and Seyd 2001: 235).

Attitudes towards devolution did not change much between 1999 and 2003. The share of Welshmen and women in support of an independent Wales stabilized at roughly 14 per cent, but support in favour of transforming the Welsh Assembly into a Scottish-style parliament increased to 38 per cent. In the same period, support for independence decreased marginally from 24 per cent in 1999 to 22 per cent in 2003. The share of respondents who favoured (a possibly stronger) Scottish Parliament stayed at nearly identical levels (although it is down by 2 per cent also, but from a much higher level of 54 per cent in 1999). Remarkably, a quarter of all respondents would rather have no devolution at all, an increase of 6 per cent since 1999 (ESRC 2004). This suggests that devolution may have raised some false expectations, but also that those who have been frustrated with the working of the Scottish Parliament and executive do not necessarily prefer the option of an independent Scotland.

8. In search of a durable multinational equilibrium

Electoral strategies and the malleability of national identities

National identities are malleable, so Gunther, Montero and Botella argue, and they consider the volatility of Basque national identity levels as supporting evidence. What explains such fluctuations? The answer leads me back to Chapter 5, in particular to the strategy and behaviour of the political elites.

For instance, in Chapter 5 we mentioned the Partido Popular's decision to rule out a coalition with any of the Basque regionalist parties after the Basque 2001 regional elections. In part, the central PP was to blame for a

polarization of the Basque electorate on the Basque question. Prior to the 1996 general elections, the PP had accused the PSOE (in government at the central and Basque regional level) for being too soft on terrorism and ETA and used it as a strategy to dislodge the Social Democrats from central office. In turn, the Social Democrats refused to endorse a peace plan that was proposed by Basque Prime Minister (*lehendekari*) Ardanza (PNV). Inspired by the Northern Irish peace process, the plan sought to bring all the nationalist and non-nationalist parties around the table *without* prior conditions and limitations (hence without the requirement of a cease fire being met first; Harty 2004: 147). The plan was rejected by the Spanish Social Democrats and the Conservatives, but came as a blow to Ardanza, who until 1998 headed a regional coalition with the Social Democrats. According to Harty, the failure of Ardanza to secure the agreement of the Social Democrats and Conservatives forced him into a discussion with representatives of the other ethno-regionalist parties, including Herri Batasuna, the political arm of ETA.

Gunther, Montero and Botella provide a different explanation for the increasing polarization of the Basque political landscape. In their view, the PP's harsh anti-Basque nationalist stance was as much a response to some provocative statements by the Basque ethno-regionalist parties, including the PNV. The process of polarization started well before Ardanza proposed his peace plan and was mainly inspired by the electoral strategies of the PNV. They believe that there was room for an all-party (excluding Herri Batasuna) commitment to non-violence when the PNV served in a regional coalition with the PSOE under Ardanza's leadership. This strategy paid off in terms of attenuating nationalist feelings. It boosted the share of citizens with dual identities at the expense of those who identified exclusively with the Basque Country. Even among PNV voters the share of those who identified solely with the Basque Country dropped from 67 per cent in 1982 to only 17 per cent in 1989 (Gunther, Montero and Botella 2004: 190). Yet the lower salience that was attributed to the regionalist issue threatened to drive traditional PNV voters to the (also) socially conservative Partido Popular. To maintain its electoral appeal, the PNV gradually sharpened its position on Basque nationalism again. This process created a fight within the party leadership ranks first. Premier Ardanza held firm to a moderate position, seeking the involvement of the state-wide parties, but party leader Arzullus defended a hard-line nationalist strategy. Ultimately, Ardanza was forced to give up the Premiership and the PSOE was thrown out of the regional coalition and replaced by the more nationalist EA (initially as a minority government supported by EH, the political arm of ETA). In September 1998, the three nationalist parties signed the Pact of *Estella/Lizarra*. It claimed that 'a political solution can only originate through an open process of dialogue and negotiation *without* any exclusion with regards to the *agents* involved' (hence, without excluding EH from the process). It also proclaimed that the future of the Basque Country was solely to be decided by the citizens who

live in the seven Basque provinces located in France and Spain. Finally, it urged for 'recognition of the *sovereign* traditions and aspirations of the citizens' who live in those provinces (translated quotes taken from Harty 2004: 147; my italics). Evidently, calls for an independent or freely associated Basque Country would fall beyond the permissible boundaries of the present Spanish constitution. They would require the amendment of the Spanish constitution and, so the Social Democrats and Conservatives argue, the approval in a state-wide referendum first.

Analysing who is responsible for the polarization on the Basque issue falls beyond the scope of this book (the Spanish literature is extremely divisive on this issue). What is clear is that the strategies of the party leaders have polarized the Basque electorate. At the time of the 1998 regional elections, the share of PNV voters who exclusively identified with the Basque Country had increased from 17 per cent in 1989 to about 40 per cent (Gunther, Montero and Botella 2004: 192). Electoral strategies may lead parties to adopt a policy stance that may not be conducive to solving multinational conflict despite a public opinion that is generally supportive of a pragmatic stance. Few Basque coalitions have been all inclusive, and, in this sense, the PNV-PSOE coalition could have paved the way for a broader all party coalition that would have isolated ETA or forced its political arm into more moderate views.

Party strategies in the Basque Country are frequently contrasted with Catalonia, where the coexistence of Spanish state-wide and Catalan nationalist parties has not polarized public opinion that much. There are no Catalan separatist paramilitary movements and the long-term governing CiU (1981–2003) has been willing to 'work the system' (despite its calls in 1998 for more asymmetric federalism and constitutional changes that should lead to a confederal state-format in the so-called *Declaration of Barcelona*, a pact signed with the PNV and BNG, two non-Catalan nationalist parties). The current regional coalition government between PSC (Social Democrats) and ERC is testimony to the fact that coalitions between Catalan nationalist and 'Spanish' parties are possible. In this sense, the Catalan party landscape is reflective of Catalan public opinion as it not only provides voters with an opportunity to vote for left- or right-wing formations, but also for parties that oppose (PP), support (PSC) or strongly support (ERC-CiU) further regional autonomy.

Pieter Van Houten has aptly remarked that there is an opportunity structure in the Catalan party system that is entirely missing from the Belgian context (Houten 2004). We have seen that relatively few Flemish citizens exclusively or primarily identify with Flanders and that the support for independence is remarkably low. However, unlike in Catalonia, the bipolar Belgian party system excludes competition between state-wide and regionalist parties. All parties are regional in character. This leaves parties with little choice but to strengthen their ethno-regionalist appeal in the wake of (general and regional) elections.

By now, the Flemish Christian Democrats, Liberal Democrats and Flemish (extreme-right) nationalist parties have at least formally subscribed to the notion of a confederal Belgium or an independent Flanders (only in the case of the Vlaams Belang). So far, the Flemish Social Democrats and Greens have defended a more moderate stance, but these parties are not normally contemplating the centralization of certain competencies. On the contrary, the goal of making competence packages 'more homogeneous' should result in devolving additional legislative powers to the regions. As Van Houten puts it, 'a party system with mostly regionally organized parties implies that a territorial cleavage will be very salient for the population, as it now has effectively been institutionalized in the political system. Consequently, more and more issues will be framed and discussed in territorial terms, and the region will become the primary point of reference in political debates' (Houten 2004: 17). If this is true, one may wonder whether it will be only a matter of some time before Flemish public opinion more wholeheartedly embraces the confederal option. Surveys that coincided with the regional elections of 2004 might have produced a Flemish public opinion that is more supportive of autonomy than in 1999. This would be the result of an electoral campaign in which the Flemish-Francophone dimension overtook the debate on how the already acquired regional set of competencies could be governed better. The question can only be raised hypothetically as no (methodologically solid) surveys have been released to date to prove this point.

Strengths and limits of *consociational* federalism

In some respects the Basque and Belgian cases are useful for highlighting the strengths and weaknesses of a *consociational* approach to ethnic conflict management. In the Basque Country, the absence of a *consociational* institutional arrangement has meant that parties there could adopt starkly opposing views on the nationalist issue since they *do not have* to cooperate in governance. Arguably, in Belgium, the *consociational* measures that apply in the centre (and in Brussels) serve as an *institutional brake* on the process of unfolding the Belgian state. That brake may keep actual policy outcomes more in tune with the prevailing views among the Belgian public. Lijphart is correct in stating that should parties raise excessive claims, for instance, by openly propagating secession, they may be left out of the post-election (federal) coalition-game (as is the case with the separatist Vlaams Blok). Most democratic parties will also seek to gain power in office at one point in time, and therefore they may have to moderate their viewpoint so as to present themselves as sufficiently *Salonfähig* (Lijphart 2002: 45).

However, the Belgian *consociational* mechanisms only serve as a brake so long as both language groups do not share common viewpoints on what state-format serves their interests best. In this sense, the stakes for the French-speaking party leaders to uphold a stronger centre may be reduced if Wallonia were to shed its status as Belgium's socio-economic laggard.

A stronger economic South would deprive the Flemish nationalists of much of their ammunition, but it would also reduce the political costs of a further growing apart. Furthermore, the effects of *consociationalism* are fully experienced in the federal and Brussels' arenas, where Flemish and French-speaking parties are condemned to cooperate. They are at best played out indirectly in the other regions, as no cross-Community cooperation is required in the post-electoral phase.

Consociationalism is not without its weaknesses. One element of criticism refers to the freezing of segments or political groups beyond a level that the members of these groups are willing to support. A good case in point is the procedure which underpins the election of the parliament of the Brussels Capital Region. Unlike the rest of Belgium, French- and Dutch-speaking parties are on offer. However, the institutional rules prohibit parties from one language group from forming an electoral cartel with an ideologically related party from the other language group. Voters must first indicate whether they wish to vote for a party of the Dutch- or a French-speaking language group before they can vote for a party or party candidate of their preference within that group. Candidates must profess their loyalty to a party which belongs to either language group. The Flemish parties are guaranteed a fixed number of seats in the regional parliament. Although they protect the Dutch-speakers against underrepresentation, these electoral rules also preclude the formation of bilingual electoral lists. One could make a case that the antagonism between the Dutch- and French-speakers is not high enough to prevent the formation of bilingual or bicomunal lists, should parties be allowed to create them. Proof for this can be found in the *municipal* elections which take place every six years in each of the 19 municipalities that compound the Brussels Capital Region. At this level, *consociational* power-sharing mechanisms are weakly developed and bilingual party cartels are allowed to form (Swenden and Brans forthcoming). Generally, *bilingual* lists represent about a third of all party lists. Flemish parties are almost as likely to team up with French-speaking parties with a similar ideology (Social Democrats, Greens, Liberals ...) than to join Flemish parties of a different ideology (Deschouwer and Buelens 1997).¹⁰ However, proponents of the *consociational* mechanisms at the level of the Brussels Capital Region argue that *without* such guarantees at the regional level, fewer bilingual electoral alliances would have emerged at the local level also.

In a more extensive critique on *consociationalism* Donald Horowitz put forward some additional weaknesses. First, *consociational* approaches assume a level of statesmanship, that is, a willingness among majority leaders in the centre and the regions to share political power. That willingness does not easily correspond with political realities in the field. Put differently, even if the Basque Country had adapted a *consociational* framework, it may have fallen apart (cf. also the break-down of the power-sharing mechanism in Northern Ireland). Second, ethnic group leaders who play a lead role in

consociational conflict management are not necessarily more inclined to accommodative behaviour than the members of their group. Third, compromises are not without cost. Opposition is likely to arise from within the ethnic groups, leading to open challenges of group leadership and the emergence of new ethnic parties which propose less accommodative policies. Finally, *consociationalism* requires power-sharing after the elections, but the presence of group-based parties or a proportional electoral system do nothing to encourage such behaviour in the pre-electoral arena (Horowitz 2002: 20–3). As was noted in the Belgian example, there is a considerable difference between the behaviour of parties in the federal election campaign and their behaviour in coalition-negotiations afterwards. Thus far, antagonism between French- and Dutch-speaking parties has not prevented the formation of federal coalition governments. However, voters would be treated more honestly had these incentives to inter-group cooperation been present in the campaign itself. Instead, the general climate in the election is one of mutual avoidance or accusation, rather than of bargaining and reconciliation. Such incentives to intergroup cooperation can only come from two directions.

Either, *state-wide parties* must be at hand. The state-wide party may remind the regional party wings not to exaggerate the autonomy claims which they are allowed to make in regional elections. What is needed for a federal, stable arrangement is an ‘integrated’ party, that is, ‘a party in which politicians at one level of government bear an organizational relationship to politicians at other levels as well as to politicians within their level’ (Filippov, Ordeshook and Shvetsova 2004: 188). Such parties consider the benefit of each federal subject of roughly equal importance, and therefore ‘prefer more equitable allocations of benefits’ (Filippov, Ordeshook and Shvetsova 2004: 190)

As Filippov et al. acknowledge integrated parties do not come out of the blue. They are themselves the product of design, ‘the design of institutions that compel politicians to erect parties of a particular sort because that sort and not some other serves their interests’. In Belgium, it seems more logical and easier to abolish federal elections and to make the composition of the federal parliament dependent upon regional elections than to persuade the linguistically split parties to join forces again (Maddens 2004). The formation of bilingual parties is not really an option when inter-group antagonism runs high or the interests of ruling party leaders are undermined.

When party leaders are not inclined to forge direct organizational links with representatives from the other language, religious or ethnic group, such linkages may nonetheless emerge from *incentives in the electoral system* (Horowitz 2000). To that purpose, the electoral system should allow for ‘vote pooling arrangements’ (Horowitz 2002: 23). Whereas a *consociational* approach forces elites into accommodative behaviour after the elections, a vote-pooling approach forces elites into such types of behaviour before the elections (Reilly 2001: 11). To that purpose Horowitz suggests the introduction of

'a preferential electoral system', preferably the 'alternative vote',¹¹ or the creation of a single electoral district to elect some of the candidates. In the long run the outcome of such incentives *may* lead to the emergence of 'geographically or ethnically inclusive political parties'. In contrast with *consociationalists*, defendants of the electoral-incentive approach argue that proportional representation is not the best electoral system. PR does not break down the salience of ethnicity in the electoral process, but perpetuates it.

However, the vote-pooling arrangement which the Horowitz school advocates remains difficult to reconcile with a form of homogeneous federalism. The key objective of the incentive approach is to make politicians who represent one group to campaign for the 'second choice' of electors who belong to a different national group (Reilly 2001: 10). But such an approach requires that, at the very least in federal elections, voters can cast a second preference for a candidate or party of another ethnic group. Hence, in the Belgian context, a Flemish Social Democrat should have the opportunity to cast a second preference vote for a French-speaking Social Democrat. A *Horowitzian* approach to Belgian conflict management would thus transform the electoral system in such a way that regional party politicians become partially dependent upon the support of voters who live in the adjacent regions (Deschouwer, Van Parijs et al. 2005 for a recent proposal in that sense). The problem with the electoral-incentive approach is that it requires a change of the electoral system and constituency boundaries to the support of which few Belgian politicians could be presently persuaded. Since its inception the logic of Belgian federalism has run in the opposite direction. To reverse the tide is to defeat some tough laws of institutionalism. If at all possible, such a change would have to be implemented gradually.¹²

Consociational and electoral-incentive approaches have their friends and foes (see Horowitz 2002 and Lijphart 2002 for a vivid defence of their respective approaches and equally forceful criticisms of the other approaches). A further empirical analysis of this debate would fall beyond the scope of this book. Perhaps the world-wide experience with managing multinational states teaches us that conflict resolution does not require a clear cut choice for federalism, an electoral-incentive approach or *consociationalism*. All three mechanisms can be combined in a dynamic way.

However, institutional rules may not generate the intended consequences. For instance, the electoral-incentive approach may enable voters to cast a vote for candidates of a different ethnic group. Party leaders may encourage voters to act accordingly. However, the presence of institutional rules which command the support of the political leaders does not guarantee that the voters will follow the advice of their political leaders (Fillippov, Ordeshook and Shvetsova 2004: 267). Hence, when designing institutions, policy-makers and institutional advisers should take into account the following three guidelines.

First, all institutional devices should be assessed in light of the specific socio-economic or cultural characteristics of the society in which they operate. For instance, we may argue that Belgian federalism would have been more stable if its main subunits were based on 10 provinces instead of just two language groups. Interregional relations would be less zero-sum (Fillippov, Ordeshook and Shvetsova 2004: 268–73). Political debates would be more cross-cutting as on some issues a number of French-speaking provinces could have sided with a few of the Flemish provinces. Yet, when devolution kicked off, the language cleavage was already too deep. The sociological basis of Flemish nationalism was strong. In this sense, the regionalization of Belgium on provincial lines was never a real option.

Second, once in place, many institutional mechanisms are path dependent. Unless they build in a considerable potential for flexibility, institutions can prevent the adoption of institutional solutions that may seem more suitable to conflict management. For instance, the Spanish process of devolution has some elements of inbuilt flexibility because it has allowed the regions to decentralize powers within the contours of a constitutionally stipulated envelope of regional autonomy. In contrast, in the absence of a state-wide party system, in the short term Belgian party leaders may have more to lose than to gain from forging links with parties across the linguistic borderline.

Finally, despite the previous two rather pessimistic observations, institutional rules are always open to some change because they do not operate in a social vacuum. So far, the Belgian *consociational* rules have been very robust, but power-sharing devices in South Africa or the Netherlands quickly disintegrated when the societal need to support them was no longer there. The short-lived South African interim constitution demonstrates that *consociational* features do not necessarily have to institutionalize ethnic cleavages. Or, although changing electoral systems or electoral boundaries affects the core of existing democratic power equilibria, profound electoral change is not impossible as the examples of Italy and New Zealand assert (Lijphart 1999).

9. Conclusion

In this chapter I sought to highlight the problems and opportunities that arise from operating a multinational federal or regionalized state. In the first section, I mapped minority nations on the basis of their territorial concentration and the national cohesiveness of their territory. I also discussed what could be perceived as the best 'marker' for identifying who belongs to a minority nation. Language constitutes an important marker for the identification of the Flemish, Walloon, Basque, Catalan and Welsh (minority) nations, but it is relatively insignificant for determining the identity of the Scottish. Furthermore, in the Basque Country and in Wales a majority of the

regional population is not Basque- or Welsh-speaking. It was noted that the territorial concentration and the national cohesiveness of the Flemish, Walloons and Scots are high. Although not embedded in a multinational state, the same observation applies to the German- and the French-speaking Swiss. The Catalans live territorially concentrated, but Catalonia also contains a significant number of Castilian-speakers. The same is true for Wales. The Basque Country combines relatively low levels of territorial concentration with low levels of national cohesiveness. A significant group of Basques lives in Navarra or the three Basque provinces that are located in France, and most citizens who live in the Basque Country do not speak Euskera.

Homogeneous forms of federalism are easiest to adopt when national minorities live territorially concentrated and when the territory in which they live is nationally cohesive. By granting home rule to a minority nation, multi-ethnic tensions can be removed from the politics of the centre. However, where the citizens of the minority nation do not live in very concentrated areas and/or when the national cohesiveness of their territory is low a need for power-sharing may arise. Such polities may still be federal or regionalized, since they grant home rule to one or several regions (such as Catalonia or Brussels). However, they may have to combine a form of territorial home rule with mechanisms that prevent one national group from encroaching upon the rights of the other. Where they institutionalize power-sharing devices, a form of *consociational* federalism or regionalism emerges. In Belgium such mechanisms protect the interests of the Dutch- and French-speaking language groups, respectively at the levels of the Brussels Capital Region and the federal government. In Switzerland, similar, albeit more flexible, mechanisms operate at the federal level. Yet, in Catalonia and the Basque Country, no *consociational* mechanisms are at work, despite the multinational make-up of their populations. The stronger the position of the minority nation (for instance because of its socio-economic, cultural or demographic weight in the state as a whole), the more likely that it will be protected by power-sharing devices at the central level also (O'Leary 2001). This explains why in Belgium the French-speaking group is so well protected at the federal level whereas the Basque minority finds hardly any protection at the level of the Spanish central state.

Where only minority nations are granted home rule, asymmetric federalism is the result. Asymmetry raises some normative problems. In Britain, policy-makers have focused on the so-called West Lothian Question, that is, the voting of Scottish MPs in Westminster on legislative matters that have been devolved to Scotland. Regionalizing England would be an obvious way to solve the West Lothian Question, but public support for it is missing. By comparison, in Spain, interregional levels of asymmetry have diminished. However, this development has dissatisfied the historic regions which consider their status as minority nations as a sufficient ground to claim a special status within the state as a whole. Different normative conceptions

on asymmetry also lead to different views on what the desirable protection of a regional or minority language should be. Indeed, minority nations who feature a specific minority or regional language may argue that it deserves to be 'territorially protected' against the language of the state-wide majority. Some would even argue that without such protection, the state-wide language may eliminate the regionally concentrated minority language. The language regimes of Belgium and Switzerland are very territorial. In contrast, in Catalonia, the Basque Country and Wales a form of bilingualism applies but each of these regions also prescribes certain measures that promote the use of the minority language. I have argued that from a practical (instead of a normative) viewpoint, the most suitable language regime should be open to pragmatic negotiation. Policies which actively promote the use of a regional minority language but fall well short of its territorial imposition may suffice to sustain or even increase the share of regional citizens who speak it. Such policies seem to be paying off in Wales, Catalonia and the Basque Country.

In the next section of the chapter I compared the identification of citizens who live in the minority nations on the so-called 'Moreno scale'. The levels of regional identification are highest in the Basque Country, Scotland and Catalonia. They are low in Wallonia. Wales and remarkably also Flanders assume a somewhat intermediary position. A high share of the Flemish population identifies with Flanders and Belgium. These findings translate well into political preferences, insofar as the share of the regional population who support independence is also highest for those minority nations whose citizens display the highest level of regional identification. However, the correlation is not a watertight one. Furthermore, the political preferences and the corresponding levels of identification are not fixed, but may evolve in the light of changes in the political environment. Identities are malleable, and, as the Basque example made clear, political elites may seek to construct the identities that best serve their political interests.

The absence of any *consociational* mechanisms at the Spanish central and regional levels of government does not force the ethno-regionalist and state-wide parties to share in governance. In this sense, they enable political elites to adopt a polarizing strategy. The dynamics are very different in Belgium, where at least at the federal and Brussels regional levels, inter-Community cooperation is required owing to the presence of deeply entrenched *consociational* mechanisms there. However, the Belgian example also demonstrates that *consociational* devices may serve to freeze 'ethno-regionalist' tensions. For instance in Brussels voters cannot vote for bilingual party lists in regional elections. Furthermore, parties have no incentive to reach out to the other Community in their electoral campaigning. This is so because of the absence of state-wide parties. In this sense, some analysts have argued that Belgium needs to adopt 'electoral incentives' forcing politicians to reach out to the other Community in federal electoral campaigns.

Consociational, federal and electoral incentive approaches have their friends and foes. *Consociationalism* is often seen as elitist and conflict freezing; electoral incentives assume that voters will automatically follow the more moderate course of their political leaders and vote for more moderate candidates. In this sense, the electoral-incentive approach is elitist as well.

Institutional mechanisms are resilient. Macropolitical institutions such as electoral systems or power-sharing devices are difficult (but not impossible) to change. However, institutional devices can be combined in creative ways (for instance '*consociational federalism*'). Their effect on moulding levels of identification with the state or minority nation should be studied carefully and interpreted in the light of the special socio-economic background of each multinational state. How to manage multinational polities is among the most complex and fascinating questions that should concern the community of social scientists. To further improve our knowledge in this regard will not only serve the states or regions that were part of this comparative study but, more broadly, of all political structures that live up to the challenge of producing common action in the face of multinational or multicultural fragmentation.

Notes

1. Comparative federalism and regionalism in Western Europe

1. Some would argue that the UK should be understood as a federaacy, because Scotland and Wales are so small relative to the UK-wide population. Yet, federacies are defined as 'political arrangements where a large unit is linked to a smaller unit or units, but the smaller unit retains considerable autonomy and has a minimum role in the government of the larger one, and where the relationship can be dissolved only by mutual agreement' (Watts 1996: 8). In this sense, the UK cannot be a federaacy because in theory the centre has the right to amend or terminate the levels of regional autonomy for the devolved authorities without their explicit consent.

2. The origins of federalism and regionalism in Western Europe

1. Although William Riker left us with an impressive comparative and empirical analysis of federalism, he was too simplistic in pointing out only two necessary conditions for the formation of federal states. In his view, politicians who *offer* a federal solution either do so because they desire to expand territorial control as a protection against a looming external military or diplomatic threat or because they seek military or diplomatic expansion (Riker 1964). Federalization is the fruit of defensive or expansionist motives. In the latter case, policy-makers realize that their objectives cannot be achieved without retaining some form of regional autonomy. Politicians who *accept* the proposal to federate do so because they share in the expansionist plan of the federators or in the fear of an imminent military threat. For either reason, they rule out independence (Riker 1964: 10–48). Riker goes at lengths to demonstrate the plausibility of both arguments for the formation of the US federation. The same motives are questionable for explaining the current format of the Austrian or German federations. His arguments certainly fail to explain the recent federalization of Belgium and Spain, as the *absence* of an external threat is obvious in both cases and neither state aspires to territorial aggrandizement. Finally, Riker does not specify what constitutes a threat, and without such specification, some form of external threat that can serve to justify federalization is easily found (see King 1982: 33–6 for a critique).

3. The centre and the regions

1. In this sense, I subscribe to William Riker's view, who argued that for a constitution to be federal, 'the competencies of the federal level should fluctuate between *one and all but one category of action* without obtaining the approval of the rulers of the constituent units' (Riker 1964: 5–6). Hence, a political structure that makes the

- central and regional levels of government so strongly interdependent with each other that the federal level cannot take *at least one* decision without the involvement of the regions or vice versa ceases to be federal.
2. Preventive or first-line health care and public awareness policy in welfare matters, coordination of youth and housing policy with the municipal level, provision of cultural and sports facilities, provincial transport infrastructure – i.e. in particular secondary roads, domestic garbage collection.
 3. Of both regions, Northern Ireland had the strongest tradition of administrative autonomy: a Northern Ireland civil service has operated in parallel to a (UK) Home civil service. Following the first Northern Irish experience with devolution (1921–72), the Northern Ireland civil service was made responsible for the implementation of ‘reserved’ matters, i.e. matters in which the Northern Irish parliament (Stormont) gained legislative competence. Its members were transferred from the staff who previously worked in the British government departments in Dublin. The suspension of devolution in 1972 (‘direct rule’), led to the creation of a Northern Ireland Office (and minister or secretary of state) based in London and Belfast. The Northern Ireland Office assumed control of the previously autonomous Northern Irish civil service. Other British ministerial departments retained their responsibility for overseeing the implementation of policies that were never made subject to home rule (Rhodes et al. 2003: 37–9).
 4. ‘Like a decree, an ordinance may repeal, amplify, amend or replace prevailing (national) legislative provisions and is subject to the same judicial control by the Court of Arbitration [Supreme Court]. Unlike decrees however, ordinances are subject to limited judicial review in the ordinary courts, as well as, in certain cases, limited administrative control by the federal authorities to protect Brussels’ international role and its function as the capital’ (Alen and Ergec 1994: 17). The Flemish insisted on the possibility of limited judicial review by the ordinary courts. They feared that if Brussels was recognized as on a par with the other Regions, the Flemish would be outnumbered by two predominantly French-speaking Regions.
 5. In this context, it may be noted that next to the UK, Belgium is the only case in this book without *Regional* or *Community* constitutions. The German, Austrian and Swiss regions have their own constitutions, which fully respect the provisions of the federal constitutional framework. The Spanish regions have their Statutes of Autonomy which serve as de facto regional constitutions. They (co-)determine the organization of regional public life within a centrally agreed constitutional framework. The Belgian Regions and Communities lack constitutions for two main reasons. Community and regional powers are still in flux, making the emergence of stable regional constitutions premature at this stage, let alone the agreement on a list of exclusive federal legislative powers (see above). Second, and related to the previous points, the specific position of the Regions or Communities in the Belgian political order is contested. For instance, a recent attempt by some Flemish academics to draft a Flemish constitution started from the premise that the Communities should be turned into the most important regional layer of government and that the status of Brussels as a Region should be reduced (Clement, Pas et al. 1996). Such a constitution would violate the terms of the present federal constitution and provoke major discontent among the French-speakers. In many ways, this exercise enabled these Flemish academics (and the members of the Flemish Parliament who commissioned it) to voice their protests and to draft a Flemish constitution that would comply with a federal constitution *of their liking*.

6. A third example of formal asymmetry concerns the unequal distribution of legislative powers in the educational field. In Flanders, enacting primary legislation in this area remains the exclusive prerogative of the Flemish Community Government and Parliament. In French-speaking Belgium, it is a shared responsibility between the French community government and parliament and the French Community Commission (COCOF), a body bringing together the French-speaking members of the Brussels Regional Parliament and executive. To overcome the financial needs of the French Community Government, part of the French Community expenditures financing education are drawn from the budgets of the Brussels Capital and Walloon Regions. To this purpose, the COCOF received legislative authority. The Flemish Community Commission, the Flemish counterpart to the COCOF, does not possess similar legislative powers.
7. The ACC has influenced federal-regional relations at the margins by means of its 'preventive control' function; this is a form of abstract review which arises when a federal government believes that a regional *bill* (hence not yet a law) falls under its authority or vice versa. In such circumstances, the court must ask for the opinion of the governments that are not directly involved, and on the basis thereof frame a binding interpretative opinion. Between 1920 and 1988 some 70 statements of this sort were made; relatively few in number but not entirely negligible for clarifying federal-regional competencies (Welan 1988: 67). In addition, the federal and regional governments can contest regional and federal laws respectively. Remarkably, a third of the members of most regional parliaments can also contest the constitutionality of regional laws.

5. The centre, the regions and the party system

1. With the exception of Switzerland. The Greens were considered as a state-wide party although they file candidates in only 14 of the 26 Swiss cantons.
2. Similarly, the Italian Northern League (Lega Nord) combines a right-wing populist agenda with a demand for strong regional autonomy of the economically best-performing Northern Italian regions. It does not file candidates in elections south of Tuscany (Tarchi 1998: 150; Gold 2003).
3. The most prominent example of a new 'non-state-wide party' in a non-historical region is the Coalición Canaria, a political force in the Canary Islands, which combines an agenda for more regional autonomy with a politics of patronage and brokerage (Pallarés and Keating 2003: 239–55). In the regional elections of 1999, it attracted 36.5 per cent of the regional vote and formed a regional government coalition with the Partido Popular, whose conservative orientation it generally shares. Only ethno-regionalist parties in Catalonia (CiU) and the Basque Country (PNV and EA combined) received a slightly better outcome in the regional elections of 1999 and 2001 respectively. While the aggregate vote for ethno-regionalist parties was above 50 per cent in the Basque Country and Catalonia, it fluctuated around 40 per cent in the Canary Islands.
4. Exceptions are the Community senators in the Belgian Senate and the members of the German Bundesrat, the federal second chamber. In Switzerland, some federal MPs are also members of a cantonal legislature (see Chapter 6).
5. Helmut Kohl served as party leader in the federal lower house when he was first elected as chancellor. However, he had served as Premier of Rhineland-Palatinate before entering the federal lower house and becoming CDU chairman there.

6. In the case of the London mayoral pre-selection process, the central party organization even adjusted the pre-selection rules so as to dilute the influence of the party grassroots who clearly favoured the candidate who was opposed to the central party, Ken Livingstone (Hopkin 2003: 230). Ultimately, Ken Livingstone was elected to the position, but as an Independent candidate (also the pre-selection of the Conservative candidate for the London mayoral position, Steve Norris, was imposed from above, as the London selecting committee had removed him from the shortlist after their preferred candidate, Lord Jeffery Archer, was forced to resign; Hopkin, 2001: 353).
7. The authoritarian approach of the Freedom Party contrasts sharply with its legacy as a party of undisciplined regional oligarchs, encompassing different tendencies and factions (from free-trade liberals to ethical conservatives, often with a past experience in the Nazi party). A federal party secretary general was not installed until the late 1970s. Until then the regional party wings overshadowed the central party branch. The bad showing of the Freedom Party in recent federal and regional elections undermined Haider's grip on the party and, in line with the party's legacy, brought back a certain degree of regional factionalism (Dachs 2003: 127–30).
8. Although conflicts between both regional party front-men (Karl Schnell and Robert Thaller) had a long history, they erupted after a secret deal between Schnell and the local Social Democrats was leaked to the press. It was revealed that Schnell and the local SPÖ branch had agreed on the division of posts in a future regional executive. This so-called *Datenklauaffäre* (the file containing the proposed distribution of mandates was 'stolen' from an SPÖ party computer) paralyzed the entire Freedom Party and with it the stability of the regional government.
9. That said, unlike what is common among coalition governments elsewhere, the proportionally composed regional governments can decide without consensus. In the event of disagreement, the leading party (which also chooses the *Landeshauptmann* or governor) can overrule its junior coalition-partner(s). The governor also assumes a strong position in the allocation of ministerial portfolios across party lines (Pelinka and Rosenberger 2003: 225).
10. The *Proporz* system has been criticized because it blurs the clear-cut distinction between government and opposition. Initially conceived as a mechanism that gave the Social Democrats and Christian Democrats a combined grip on the spoils of regional office, the *Proporz* rule has enabled the populist Freedom Party to enter regional governments first and use them as a power base for conquering the federal level. In 1989 Haider seized the governorship of Carinthia, the first governorship not to accrue to a Social or Christian Democrat in the post-war period. The inroads of the Freedom Party in regional politics increased the relevance of regional elections. With the consent of the Christian- and Social Democrats, the proportionality rule has been relaxed in some regions, allowing both parties to restore their grip on regional executive politics (Luther 1999: 66).
11. The same applies for the much smaller Communist Party (Izquierda Unida) which in Catalonia campaigns as the *Iniciativa per Catalunya* (Pallarés and Keating 2003: 243).
12. This may be different if, despite a majoritarian electoral system, one of the major players is an ethno-regionalist party. In Europe at least, we do not find proper examples to test this hypothesis. Most regional elections are held under a form of PR; Quebec would make a good case study.

13. The small size of some Swiss cantons leads to the election of only one or two representatives to the federal lower house, in effect turning general elections into elections that use a majoritarian formula. As a result, in some of these cantons several state-wide party branches (say all three of the bourgeois parties) have linked their party lists, and campaign under one banner, facing competition from another state-wide party branch (say the Social Democrats) or even a cantonal party.
14. Sometimes the federal party executive may favour the formation of coalition governments that do not correspond with the federal government–opposition divide. For instance, the regional elections in Bremen (May 1999) could have produced an SPD-Green cabinet. Against all expectations, the federal SPD executive did not encourage the Bremen SPD division to swap its then-CDU coalition partner for the Greens. An SPD-Green coalition would have been consistent with the composition of the federal government and handed the federal government a controlling majority in the Bundesrat. Most likely, the federal SPD party leaders tolerated a Grand Coalition in Bremen, because it was considered as conducive to restraining the left-wing faction within the SPD and to weakening the influence of the Greens at the federal level.

6. Intergovernmental relations and public policy

1. The constituency for the direct election of the Dutch-speaking senators is made up of Flanders and Brussels, that for the election of the French-speaking senators coincides with Wallonia and Brussels. Hence, citizens who live in Brussels can choose to vote for Dutch- or French-speaking candidates (just as they do for the election of the members in the lower house).
2. Next to the comparative analysis on welfare states by Obinger, Castles and Leibfried; in a recent volume of *Regional and Federal Studies*, Keating and McEwen bring together a set of authors who analyse interregional policy divergence in multinational federations or devolved states. Gallego touches upon aspects of divergence in welfare policy in Spain in a recent volume by Moreno and McEwen 2005.

7. The centre, the regions and plurinationalism

1. Furthermore, more than a third of the French-speaking inhabitants of Brussels are of non-Belgian origin.
2. The importance of religion as a marker of national identity has diminished. The 1990 census data demonstrate that 47.3 per cent of the Swiss population (citizens and non-Swiss citizens) called themselves Protestants, compared with 43.3 per cent who see themselves as Catholics (Steinberg 1996: 206). This means that at the very least some of the German-speakers must be Catholic (given that non-German-speakers scarcely represent 35 per cent of the Swiss population). The linguistic and religious cleavages coincide insofar as the Catholics live predominantly concentrated in the group of Italian- and French-speaking cantons and the reverse is true for the German-speakers. However, only slightly more than half of the French-speaking population is Catholic, and, among the total group of Catholics, German-speakers still outnumber French-speakers (McRae 1983: 76–7).

3. However, the French Community Commission can also enact primary legislation in French Community matters in Brussels, to which purpose it can draw from the budget of the Brussels Capital Region, thus establishing another example of institutional asymmetry in the Belgian model.
4. Wolf Linder calculated that 30 per cent of all the votes, coming from the small cantons, would have been enough to block a popular majority in favour. Conversely, a yes vote to the treaty would have required the consent of at least 59 per cent of the Swiss population in order also to reach a majority in at least 12 of the Swiss cantons (Linder 1998: 75).
5. This section draws heavily from a chapter entitled 'Personality vs. Territoriality. Belgium and the Framework Convention for the Protection of National Minorities' that was published in Swenden 2004c.
6. The country that best approximates an all-round personality approach to linguistic politics is Canada. In Canada, the *federal* government employs a policy of nation-wide bilingualism, providing citizens with an opportunity to be served in French or English, irrespective of their place of living (Réaume 2000: 252). More concretely, either language may be used in the federal legislature, the federal courts, in communication with the federal government or federal agencies. Federal statutes are published in both languages, and, 'where numbers warrant', education should be available in the minority language (Yalden 1981).
7. After World War I, the districts of Eupen, Malmédy, Sankt-Vith and Moresnet (now Kelmis) were transferred from Germany to Belgium. With approximately 70,000 inhabitants, they now make up the small German linguistic community.
8. In principle, these cantons could open up their schools to minorities should the 'numbers so desire', but Kenneth McRae mentions that French-speaking Geneva has done so without restrictions, as far as education in a private German school is concerned, while a comparable school in German-speaking Zurich could only offer instruction in French for a period of three years (McRae 1983: 148).
9. The data force respondents to rank three competing sources of identification (Switzerland, language group and canton) in decreasing order of identification. In this sense, they do not allow for dual identifications and therefore cannot be compared with the data presented for Belgium, the United Kingdom and Spain.
10. Local elections use an open list PR system and prohibit cross-party voting. Hence, voters may either vote for a party, or for a candidate (Dutch- or French-speaking) on a mono- or bilingual party list. When bilingual party lists are formed, the share and position of candidates who represent the smallest language group (in Brussels, these are the Flemish) is made sufficiently high to warrant the election of a number that corresponds with their representation in the relevant municipality (Swenden and Brans forthcoming).
11. In the alternative-vote system, only one candidate per constituency is elected (hence, the system belongs to the majoritarian family), but she must assemble an absolute majority of votes. Electors should number all the candidates in their preferred order of preference. The candidate with the lowest total number of first preferences is eliminated first and her remaining preferences are subsequently redistributed among the candidates who are still in the running. A candidate with a plurality of (first preferences) may thus fail to be elected, because she has not assembled sufficient transferred preferences from other candidates. In a multi-ethnic society, this may be owing to a lack of appeal to voters whose first preference is cast for a candidate representing a different ethnic group.

12. Kris Deschouwer and Philippe Van Parijs suggested what such a piecemeal reform may look like. They propose the election of up to a fifth of the present members of the lower house in state-wide districts. This would add some 'centripetal' spin to the electoral system, without upsetting the current balance of powers all that much (Deschouwer and Van Parijs 2003). Alternatively, one could suggest that the extra members that may be added to the federal lower house as a result of the envisaged reform of the bicameral system, should be elected in state-wide constituencies (see Chapter 6).

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