

**REGIONAL AUTONOMY IN THE
EUROPEAN UNION**

by

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INTRODUCTION

During the election campaign of 1992, the issue of regional government was seriously raised in UK political debate for the first time in over a decade. The prospect of an opposition victory and the consequential creation of devolved parliaments for Scotland and Wales, plus regional governments in England, meant that constitutional questions became a major point of conflict between the political parties. The subsequent victory of the incumbent Conservative government put paid to any chance of reform. Indeed, it is reported to be the belief of those around John Major, that it was his defence of the Union that acted as a catalyst for this surprise victory. Although the chance of immediate reform was gone, the can of worms had been opened and the debate on regionalism in the UK has continued.

As an interested observer of the above events, the constitutional debate surrounding the 1992 election struck me as profoundly misinformed. It was as if the UK debate was taking place in a vacuum, impervious to developments beyond the shores of these islands. Politicians on both sides of the divide defended positions which were wholly based on supposition or conjecture. It was claimed that since such reforms had not occurred in the UK before, conjecture was therefore the only method of assessing the effects of such changes.

The Conservative party consistently argued that the choice for the UK was to be a single unitary state or a collection of independent ones. There was in effect no middle way. Nationhood or nothing, in other words. Labour, by contrast seemed stung by concerns that their proposed Parliament would increase taxes and constantly spluttered that it wouldn't, because..... well it just wouldn't! Finally, the nationalists maintained that "home rule" was pointless and could not achieve anything, certainly not nationhood in the long term.

As something of a traveller, it was patently obvious to me that these arguments were unsubstantiated to say the least. Had I not visited the Hamburg Parliament, where according to John Major, the impossible had been achieved; devolved government within a single nation-state? A mere glance at the foreign news pages of a quality paper would have kept readers informed of the momentous events in Spain over the previous decade. The end of the dictatorship had created “home rule” in many areas of Spain, yet it had not collapsed, indeed it seemed to be thriving.

At this point I must declare an interest in the events and issues I study in this thesis. I believe in devolved government within the UK, specifically (but not exclusively) in relation to Scotland. However, I do not regard it as a half way house to nation-state status. It is a method of governance in its own right and one which seems to operate successfully in Europe. Yet despite the widespread use of regional systems on the continent, knowledge of them seems pitiful in the UK. This thesis resolves to fill this gap and examine how these systems operate, their advantages and pitfalls and how they might apply to the UK.

My reasons for undertaking this thesis are more than these rather parochial ones, however. For a long time I have been troubled by the acceptance of the nation-state paradigm, within which all governmental discussions take place. As a historian, I knew that this concept was relatively recent, yet it was accepted in legal and political works as absolute. Not only that, but students of political systems seem oblivious to the problems of the nation-state (and the legitimisation of single identity nationalism), that accompanies it.

I contend that the Eighteenth Century concept of the sovereign nation-state is unsuitable for democratic systems in the twilight of the Twentieth Century. It creates insurmountable problems of economic management, democratic choice and most seriously “ethnic” conflict. We must look elsewhere if we are to improve the governance of the world’s population.

The first chapter in this thesis focuses on the mythical status of the nation-state within present political and academic circles. In addition, the insurmountable problems that dog this concept are discussed. It is argued that the nation-state cannot be a stable system of government for the Twenty First Century. It is, by its very essence, flawed.

Although I may wax lyrical on the inappropriate nature of the nation-state concept as the paradigm of territorial government, this is not in itself very helpful (as has been pointed out to me by several colleagues).^{*} What is needed is an alternative. If the nation-state has no rationale for being the paradigm of territorial government, where can such a concept be found?

I turn for help to the much quoted (and rather misunderstood), concept of subsidiarity, recently incorporated into the text of the Maastricht Treaty. This concept does not, by itself, answer the question of how governance should be achieved but by accepting two principles it changes the debate surrounding the question. Firstly, it refers to functions being undertaken by the most suitable level and does not accept the principle of sovereignty, crucial to the nation-state paradigm. If the nation-state is not the most suitable level of government, then it should not undertake the policy in question. Secondly, it is held that the most suitable level is that closest to the population. It is argued that governance closer to the governed is a self evident virtue. In terms of subsidiarity, we are not talking of decentralisation of authority from the nation-state to the local or regional level, but of each level holding authority in its own right, be it local, regional, national, European, or any other level, existent or otherwise.

The acceptance of the subsidiarity principle is implicit in chapter three, where the growth of regional government as a European phenomenon is examined. Countries as diverse as the unitary United Kingdom and Federal

^{*} Particular thanks must go to Dr. Henrik Olsen of Copenhagen University and Steven Brown of the University of Sheffield. At several parties, I think we bored the other revellers to death with our discussions on this point!

Republic of Germany operate policies at a “regional” level, between the national and local tiers. There is the acceptance that this tier is necessary. This chapter also examines the other reasons behind regional development and how this has influenced their development. This chapter concludes part one.

Part two turns away from the theoretical rationales for regionalism and towards the practicalities of regional governance in the EU. Chapter four gives the methodology for this study, which is divided into three broad categories; structure, finance and functions. The focus of each of these categories is the operation of regional autonomy. The reference to autonomy is central to this section of the thesis. The rationale for regional government is based on the taking of policy decisions away from the national level. This is reliant on autonomy. Without autonomy, the region is merely an administrative level. For regions to exist as an alternative to the nation-state, they require independence of action.

As far as possible, each section avoids national descriptions of the regional systems. This allows the region to be studied as a separate unit, divorced from the national level. Although, this is not always practical, it allows a more pan-European approach to the issue and most importantly, aids the comparative study.

This comparative theme is found throughout the thesis but reaches its focus in the final two chapters of the work. This third part examines two broad questions, raised at the beginning of the work, using the studies compiled in part two. The first of these questions considers the theoretical tenet explored in part one, namely does the region offer a viable alternative to the national level. In essence, are we approaching a “Europe of Regions”? This answer to this is, as yet, emphatically no, but there are signs that the regions’ role in Europe is increasing. The development of this tier will aid the translation of subsidiarity into political reality.

Finally, my personal starting point to this work is addressed. What can the UK learn from European examples of regional government? As we approach

another general election where the constitution is to be a major campaign issue, it seems the politicians have still learnt little from continental experience. Much is said of the *Länder's* tax raising powers (in fact, they have none) in relation to the question of tax raising powers for the Scottish Parliament. In contrast, little mention is made of the fact that none of the regions which do possess such powers over income tax, have ever used it. This is just one example, but there are many more. In the UK we are in the enviable position of learning from others' mistakes and, equally importantly, their successes. We do not need to rely on supposition to discover the impact regional government would have. The evidence is before our eyes. Perhaps this thesis will encourage Britain's latter day Nelson's to use their telescopes more constructively.

PART ONE

1 - The Paradigm of the Nation State

1.1 Introduction

The primary unit of territorial government in the Nineteenth and Twentieth Centuries has been the nation-state. This is the paradigm within which all debates on the organisation of government are conducted. Discussions on territorial organisation are either described as "national", "international" or "supranational". For example, all legal systems are either organised within nation-states or on an international basis. The reason for the paradigm's dominance in theoretical discussion is due to its importance in the practical world. The entire globe is divided into nation-states, of varying sizes and populations, but all possessing the same rights, as nations. Primarily, these are: equality in relations with other states and the right to organise and run themselves without interference (Wallace, 1986, p3). These "rights" are usually referred to as sovereignty.

Within the EU, this means Luxembourg has a seat on the Council of Ministers while other areas of much greater population and size are not represented. The Luxembourg accords even allow the smallest member-state to protect its "national" interests through its veto. Thus "national" interests are protected but not those of non-national areas. Why should one area gain special protection of its interests while another does not?

Despite the fundamental importance of the concept, few question the nation-state paradigm itself. The model contains at its heart what I shall term the concept of "hard borders". This sees the nation-state's borders as permanent and

absolute. The nation-state is the unit for organising all policy, be it cultural, economic, etc. The nation-state boundary is the point at which a new policy area begins.

The problem with this approach is that other modes of governance are generally examined in the nation-state context. This is a serious limiting factor when discussing methods of territorial governance other than the nation-state. It also begs the question, why should nation-states have this privileged position in the study of territorial government? It is a principle aim of this thesis to approach the question of regional government from a new angle, trying to avoid the nation-state paradigm as the context of study. It is therefore necessary to question the adequacy of the nation-state paradigm before embarking on a study of the role of regional governments themselves. In this first chapter, an attempt will be made to accomplish this.

The first section concerns the fundamental basis of the nation-state's legitimacy, namely the "nation". The partition of the globe into the nation-state packages that exist today is based on the existence of these "nations". It is necessary therefore, to challenge the rational nature of this concept. It is my contention that the "nation" is a mythical concept with no organic basis. Instead it has been used to legitimise the territorial coverage of existing states. The genesis of current national boundaries is explained in the second section.

The purpose of this thesis is not only to show that the hard bordered nation-state does not represent a satisfactory normative method of dividing the globe, but that the diverse interests of the population can be better served by a modified structure. It is a fundamental precept of the "hard border" concept, that the nation-state can represent all the interests of the population satisfactorily. If this is the case, then there would be no reason to alter the nation-state paradigm, whatever its lack of legitimacy. The claim of the nation-state to embody the population's cultural, ethnic and economic interests is challenged in section three of this chapter. In fact the nature of these interests is such that no combination of nation-state boundaries

will ever be satisfactory. It therefore becomes necessary to explore other methods of governance besides the nation-state.

The inability of the nation-state paradigm to address population interests has led to the creation of new territorial units since 1945. On one level the supra-national organisations such as the European Union, World Trade Organisation, N.A.T.O., etc. have been constructed to address issues beyond the scope of the nation-state. In parallel with this, sub nation-state tiers, most noticeably in the form of regions, have developed to undertake policy in territories smaller than the nation-state. This weakening of the nation-state paradigm and the "hard border" idea has left a theoretical vacuum in the area of territorial government.

The development of these new modes of governance has led to the recent increased interest in subsidiarity by all levels of government. The incorporation of the concept into the Treaty on European Union has now brought the concept to the fore. Although the theory remains controversial, the debate surrounding it allows a re-assessment of the methods of governance outside the pre-supposition of the "hard-bordered" nation-state but within the protective umbrella of the EU. The importance of this concept will be explored in the next chapter.

1.2 The Legitimacy of the Nation-State

The current ideology supporting the existence of the nation-state consists of two main pillars. The "organic" view suggests that the nation-states of the globe represent normative divisions by being the political manifestation of "nations" or "peoples". This idea, based upon Hegel's theory of political identity is probably tacitly accepted by most people, though few will ever have considered why. A second school would argue that whatever their genesis, nation-states are a satisfactory method of fulfilling the interests of their populations (i.e. they work). These methods of legitimisation, it should be noted, are in no way dependant on

each other. Indeed, the second defence of the nation-state paradigm was developed to counteract a weakening of the former argument.

The neo-Hegelian, or "organic", view of the nation-state enlarged upon Hegel's theory of the state as an ethical community. The existence of this community was grounded in the concept of *Geist* (or spirit). The practical manifestation of this was the state. Hegel argued that only through participation in the "ethical community" of the state could the individual become free, possessed of purpose, reason and will. The neo-Hegelian view took these ideas and replaced the idea of "ethical community" with that of nation. The mystical spirit that Hegel based his theory of the state upon was equated with the late eighteenth-century notions of "nationalism", and a legitimation for nation-states was born (Dyson, 1980, p129). The nation-state, in representing the *Geist*, was therefore an historical and normative concept. It was consequently the "natural" unit in which people should live.

Although the neo-Hegelian thesis has looked increasingly vulnerable, this is not an argument for re-assessing methods of territorial government. The pragmatic defence of the nation-state concept would ignore such theoretical legitimation. Even if the idea of historical "nations" is a myth, and there was no national *Geist*, there can be little argument that something akin to it now exists within most nation-states. The pragmatic nationalist would argue that the normative basis of the nation is immaterial. What matters is that nation-states exist today and the vast majority of the global population identify with them. Furthermore, the alternative to the present structure is far worse. If a nation-state collapses the result is invariably bloody war. The present system may not be perfect but it works and is preferable to the alternative. If this is true then the theoretical arguments are largely immaterial.

1.2(a) The Myth of Nations

The legitimacy of the current global delineation of borders is based upon the concept of the "nation". Each nation-state is the territorial representation of a

"nation" (hence the name). Without the concept of "nationhood" the present territorial configuration loses much of its normative legitimacy. It follows that if the concept of the nation is not a given, then the division of the globe into nation-states should enjoy no primacy in the theoretical study of territorial government. It is therefore vital to understand what nations are, and how they were formed. Unless they can be given the status of a natural norm, then the nation-state system must be assessed rationally against other models of territorial government.

Those who defend such an approach to the division of the globe often expose the contradictions within it. In the UK, for instance, we admit the existence of the Scottish, Welsh and English nations yet simultaneously there exists the British "nation". Those in Scotland or Wales who wish to establish separate nation-states are described as nationalist, and denigrated by British parties for being such. However, those British parties still claim the government has authority over the British "nation". How can British nationalism be somehow positive and Scottish nationalism negative? Indeed if the basis of the territorial boundaries of the British government is the existence of a nation, surely if a part of that "nation" wishes to form its own, the British government would oblige!

Equally, those who oppose European Union generally do so on grounds of national self-determination. However, these same anti-Europeans are generally those most vociferous in their defence of current nation-state borders against those "nations" within their boundaries which wish self-determination themselves. This is obviously a contradictory position. If one supports the coming together of different cultures under one nation-state then the logical extension of this is to support supra-national institutions in general. If, on the other hand we support the right of "nations" then surely this must apply equally to those within nation-state boundaries as well as those possessing nation-states themselves? "Nation-statism", in this sense seems merely a convenient political tool rather than a coherent concept.

It is a common misconception that nations are a concept dating back into early history. This is understandable, as today the concept seems permanent, and

indeed, it is in the interests of many nation-states and nationalists to perpetuate this myth. Implicit in this perception is that the nation preceded the nation-state. Indeed for the territorial legitimacy of the nation-state to rest on the idea of nations, the nation must predate the state that represents it.

The first problem that emerges in any discussion of this topic is finding a definition of "nation". There are three competing normative definitions, neither of which fits the concept of nation completely. The origin of the term nation comes from the Latin "natio" - to be born. This is the ethnic definition of the nation, based upon common racial links. In the modern world such a definition is impossible and indeed the intermixing of races that has occurred throughout history makes it very unlikely that such a definition was ever plausible. The cultural definition of a nation is at first glance more appealing, but equally incorrect. There are over 8,000 languages in the world, yet a maximum of 800 "nations" and even fewer nation-states. If indicators other than language are used, then huge problems of defining when a culture begins and ends make this definition unworkable.

The final attempt at a definition involves "membership". Basically, a nation exists when a population say it does. Again there is a problem with this definition. At what point does affinity for a "nation" cause it to exist? 51%, 100%? In addition there are several "nations" on the globe which large sections of their population would claim not to belong to e.g. Britain, Spain and Turkey. As a consequence of this there are many more self-identifying nations than nation-states, which would suggest that by this definition there is little correlation between nations and nation-states (Gellner, 1983). The problems with normative definitions of nations suggest that this approach is false. The other approach, pioneered by Gellner, has been to discover how nations were formed, rather than attempting all encompassing definitions. The implication is that there may be no normative definition, only an empirical one.

Debate continues over when the "birth" of nationalism actually occurred. On one side, there are medieval historians who claim its genesis to have been as early

as the Fourteenth Century (Tipton, 1972). On the other there are the likes of Keldourie (Keldourie, 1961), Gellner (Gellner, 1983) and Keating (Keating, 1988), who see the birth of nationalist movements and the concept of "nationhood" emerging largely at the beginning of the Nineteenth Century. The medieval scholars may be right, in that some sort of national sentiment existed in certain states, prior to the 1790's, but this was not the political concept we have today. The first mention of "nationalism" appears in 1798-9, when the Jesuit Abbé Barruel used it to describe the antagonism shown towards foreigners (Gildea, 1987, p54). This would suggest something was different in this period, that required Barruel to resort to a new phrase.

The two sides of the argument are not incompatible and Orridge has achieved a plausible synthesis of the contradictory ideas. He argues that although there may have existed something that could be loosely termed as nationalism in the period prior to the late Eighteenth Century, it only achieved its modern genesis in the later period (Orridge, 1981). Certain features that distinguish the idea after this date were missing in earlier manifestations. Specifically, the sentiments that preceded it, lacked the ideology that "nations were the natural and only true political units" (Tivey, 1981, p4). It is this ideology that has been the basis for modern nationalism and the nation-state. However, the acceptance of this ideology as the basis for territorial units of government did not come about by chance. It owed its "birth" to the specific circumstances of the period.

The territorial legitimacy of government before the late Eighteenth Century was not a serious theoretical problem. It was based upon the legitimacy of the ruling dynasty who, in turn, relied upon a complex combination of divine authority, conquest and inter-marriage to legitimise the territorial control they exercised. There was no idea that the king was representative of the nation. Power flowed from the king to his subjects, not vice-versa. In consequence, allegiance was owed to the king and his nobility, not to any idea of a "nation" (Rudé, 1964, chapter two). The success of republicanism and democracy altered the position markedly. By denying the existence of divine authority, the governments replacing it were faced

with a lack of legitimacy. They may draw claim to their political legitimacy from the "people" but which "people"?* The people were conveniently defined as those within the borders of the, previously absolutist, state. These were the "nation", of which the government and parliament claimed to be the legitimate representatives.

Some nation-states experienced this birth of nationhood sooner than others. This seems to have been linked to the establishment of some form of democratic government. If democracy exists, however restricted, it denies absolute divine authority, therefore needing some other means to legitimise its territorial scope. It is arguable that such a process took place, to a limited extent in Scotland[†], England[‡], the Swiss Tyrol[§] and the United Provinces^{**} (modern Netherlands). Explaining these exceptions is beyond the scope of this brief discussion but in all these examples, some form of non-absolutist regime had been in existence earlier than elsewhere in Europe. Nevertheless, in none of them was the concept seen as the all encompassing ideology of today.

The important point to note, in all cases, is that (with the exception of Germany and Italy) the "nations" reflected the boundaries of the monarchist states which had preceded the new states. The "nations" of Europe are therefore not norms in themselves, but rather reflections of territorial divisions created by political realities at the time absolutist government fell.^{††}

* Examples of the use of this concept "the people" can be most famously be seen in the American Constitution (1787) and the French Rights of Man (1789).

† see, for example, Belhaven's speech in the Scottish parliament during the Union debate of 1706

‡ see, for example, William Shakespeare's Richard III, Act 2, Scene 1 "This blessed plot....this England"

§ The Swiss Revolt involving the mythical William Tell falls into this category

** "The Dutch Revolt" which occurred during the War of the Spanish Succession could also be seen in this light

†† A concise description of nation-state building is contained in Chapters 2 & 3 of Keating, State and Regional Nationalism, 1988.

In the case of Germany and Italy, the existence of "nations" prior to the unification process can be argued. However, this is almost certainly not the case. People may have seen themselves as German, but only because they spoke the language. This was not necessarily an allegiance to the German "nation". The task of the new states was to build these German and Italian nations. As Massimo d'Angelio famously announced in the first session of the Italian parliament, "We have made Italy, now we have to make Italians" (Grinrod, 1968).

The work of Ernest Gellner has gone a long way to debunking the idea that nations and nationalism are natural phenomena. It was instead a consequence of the new systems of governance emerging in the late Eighteenth and early Nineteenth Centuries. The creation of nations was thus based on the state boundaries already in existence, the genesis of which was is described below. He argues that the evolution of what we term a "nation" requires a nation-state to create it and an industrial society to aid its development (Gellner, 1983).

The development of a national culture, and thus a "nation", is caused by the replacement of high and low culture and religion, with a state culture. The two prerequisites for this occurrence are a state and industrial development. Industrial society loosens ties between the populace and the locality, creating a mobile and culturally heterogeneous society. It is in the interests of the state that only one culture (including language, etc.) exists within it. This makes communications and mobility of the populace easier and enhances the industrial economy. That the culture which is imposed is the one dominant amongst the elites of the country is not surprising.

This imposition of one culture over another is not a new phenomenon, neither is it unique to nation-states. The dominant elites of a territory have often attempted to impose their culture upon the elites of a conquered territory. In France the monarchy, based in the Ile de France, attempted to impose its culture of French speaking, Roman Catholicism throughout the nobility and church of its territory (Richard, 1992). At times this imposition of the dominant culture and religion

would have violent consequences, as the extermination of the Cathar religion in the South of Modern France demonstrated (Richard, 1992, pp.6 & 23).^{*} In general, however, the imposition of cultural changes on a society by the dominant elite was restricted to the ruling nobility. If changes occurred at a lower level it was by accident rather than design. Only if the lower culture was a threat to the hegemony of the ruling elites, as differences in religion were perceived to be, were attempts made to alter the cultural affinities of the lower classes.

In the post-monarchist states the imposition of the "national" culture was directed at the entire population, as it had to be in the new industrial age. Naturally, the dominant culture of the controlling elites would be the one imposed. As the dominant elite post-absolutism was of the same culture as that prior to the change of regime, the dominant culture would remain unchanged. This meant that Castilian Spanish, French, English, Dutch, etc. became the languages of the whole nation-state. To achieve this "nationalisation" of culture, Gellner argues a state must already exist beforehand. The imposition of a culture over a territory needs a monolithic educational system, which only a state can provide. It is not an organic process. In extreme cases the minority cultural affinities may even be outlawed as a threat to national unity (e.g. Scots Gaelic or Catalan). Here again, there must already be a state apparatus to implement such policies and indeed to perceive the minorities as threat to the "national" culture.

Thus as Gellner puts it, nations are not "re-awakened" as romantic nationalists describe it, but rather invented by men, as a consequence of political events. Rather than being a rationale for the nation-state, they are a consequence of it. Without the existence of the nation-state there could be no nationalism, yet the moral authority for the existence of the nation-state is that it represents the territorial

* The Cathars were a religious order, popular in Occitan France in the 14th Century. They believed ownership of property was un-Christian and thus lived in poverty. This creed was perceived as a threat by the propertied classes of the North and the Papacy. After a prolonged military campaign, the Cathars, who received the support of the local population were exterminated. France used the resulting power vacuum to annex the territories.

embodiment of a nationality. Without this authority, the nation-state's claim to "organic" legitimacy is defunct. However, if the borders of the nation-states do not reflect the existence of "nations", what do they represent?

1.2(b) Current National Borders

If the existence of "organic" nations was not the criteria by which the territorial divisions of the globe were arranged, are there any rational criteria reflected in the globe's divisions? Other normative reasons advanced for the current divisions of the globe are "ethnicity", culture and language. These, closely linked, concepts are also given as prerequisites for the existence of a "nation", but here we are only concerned as to whether the nation-states of the globe reflect these differences.

There are numerous examples to deny this hypothesis. If nation-states represent territorial areas where a common language exists, surely Austria would be part of Germany and Catalonia would be a separate nation-state. Similarly if "ethnic" or cultural homogeneity were the criteria by which the world was divided, would not the Palestinians or the Kurds possess states within which their "nations" could exist? The partition of the globe into nation-states obviously does not reflect cultural, ethnic, religious or linguistic divisions (or indeed any other normative variations). Nation-states exist where little or no homogeneity is evident (e.g. Sudan^{*}) while equally, areas with a high degree of affinity may have several nation-states (e.g. Scandinavia). If linguistic, cultural and "ethnic" differences are not the criteria by which the nation-states of the globe are divided, then what are?

The division of the world into nation-state packages has not been determined by any underlying normative concept. The divisions have occurred due to power-struggles and political dealings between elites. In Europe the majority of

* In Sudan the Islamic and Christian populations are governed by the same unitary government. With the end of Southern (Christian) autonomy Islamic law is applied to the minority Christian populace. This has led to a bloody civil war.

divisions, with a few exceptions, reflect the process of dynastic expansion and warfare between ruling families, up until the Nineteenth Century. In the rest of the globe, the divisions are due to colonial wars between European nation-states, political compromises between those same states or more unusually, indigenous dynastic expansion on a model similar to that witnessed in Europe.

Since the focus of this study is the European Union, it is helpful at this stage to examine how the member-states of the EU came about. With the exception of Germany and Italy, the current boundaries of the member-states within the EU were all established as a result of conflicts between ruling elites (usually monarchist dynasties). Geography also played its part in this, as the territorial ambitions of a prince may be thwarted by his opponents controlling a geographical feature suitable for defence.

In France the victors were the princes of the Ile de France. These families, by conquest, marriage and political dealings enlarged the land they controlled, from the immediate area around modern Paris until by 1589 they ruled the territorial area of modern France.* In the process they drove the English kings from the mainland of Europe and gained control over an area of diverse cultures and language. Breton, Catalan, Basque and the Occitan languages (among others) were all spoken in the area under their rule. Indeed in 1795 less than 50% of the population of the French republic actually spoke French (Beer, 1980). In Spain the story was similar with the Castilian monarchy enlarging on a power base in central Iberia to defeat or come to political arrangements with the kings and rulers of the rest of the Iberian peninsula, a process which reached its zenith in the 1512 invasion of Navarre (Elliot, 1970, pp.140-141). Again a multitude of religions, cultures and languages were under the control of the Caitlin regime. In Britain the situation was not dissimilar, with the dominant dynasties being based around the South East of England. The Unions with Scotland (1603 & 1707) and Ireland (1803) were political deals with the ruling

* The accession of Henry, King of Navarre, to the French throne, secured the borders of modern France (with a few exceptions such as Lorraine) (Knecht, 1991, p72-83)

elites of these areas (who had in turn come to dominate their respective territories) by which the ruling elites of England were able to enlarge their domain.

These expansions are typical of the formation of most European nation-states, though in Belgium the ruling elites were the French speaking middle-class based in Brussels, rather than a monarchist dynasty. The two other notable exceptions would seem to be Germany and Italy where a Nineteenth Century unification process led to the creation of the nation-states we see today. In fact this was a smokescreen for expansionism. Although the German and Italian nationalists wished to unite the peoples speaking their respective languages within one state, the final outcome was a Prussian takeover of the German speaking areas and a Piedmont takeover in the Italian peninsula. If the true intent had been language unity, why did Italy lay claim to French and German speaking areas? Similarly, if language had been the basis for Prussian expansionism, why did Bismark engineer the defeat of his fellow Germans from Austria, and thus exclude them from the German state, in his bid for German unity? Once again, territorial expansion was the force which defined the boundaries of the modern state, legitimated by the rhetoric of national unification.

It is certain that the mass of the population had neither cared about nor understood the "national" unification going on around them. South Italians are reputed to have thought *L'Italia* was King Victor Emmanuel's wife! The 99% yes to unification claimed in the referendum is also somewhat surprising when huge sections of the population were illiterate (Keating, 1988, p43). If such widespread support for unification existed, one doubts the need for the 250,000 troops used to subdue the South, resulting in the deaths of 7,000 people in battle, 2,000 executions and 20,000 imprisonments (M. Salvadori from Keating, 1988, p44). If this was support, one wonders what rebellion would have been like!

The fact that Europe's boundaries have come to be drawn through dynastic conflict and political intrigue should come as no surprise. As Smith points out, all decisions over territorial division of power, however couched in administrative and

constitutional rhetoric, are political (Smith, 1985). However, in the case of the nation-state, the boundaries that divide us have assumed an air of permanence. They have achieved the status of a norm that is not only undeserved but is irrational. It is undeserved since the borders that cover the globe have little or no relation to the world we live in. They cross cultural, religious, ethnic and linguistic boundaries which are not permanent in themselves. Neither do they reflect climatic, natural or geographical differences. This in turn has the consequence that the nation-state packages do not address economic or political realities. The desires of one territorial area will be at variance with that of its neighbour, yet both may be under the jurisdiction of the same nation-state.

1.3 Nation-State fulfilment of population interests

It has now been established that nation-states are not normative entities. It has further been recognised that the borders enclosing them do not reflect current economic, social or cultural realities. Rather, they reflect political actualities at the time the borders were established. In most cases this means the late Eighteenth and early Nineteenth Centuries. That a concept, constructed to address the political needs of regimes two centuries ago, is still the basis for our organisation of territorial government is surprising. However, this is not a reason, in itself, to re-assess the paradigm. If the nation-state concept is able to address the interests of the global population satisfactorily, there would be no argument for change.

The removal of the "mythical" quality of the nation-state undertaken above, allows a rational assessment of the concept. In the following section, the ability of the present nation-state paradigm to address population interests is questioned. The problems encountered by nation-states in addressing the economic, social and cultural desires of the population are, I argue, a consequence of the concept itself. The solutions to the problems outlined below, require removal of the concept of hard bordered sovereignty.

It is therefore time to examine alternatives to the nation-state concept. Within the EU we are uniquely placed to re-assess our methods of territorial governance without the worry of external protection, which has dogged any such discussions in the past. The protective umbrella of the EU allows re-organisation without chaos. I would certainly not deny that national identities are important, but they are not a suitable method of organising all government. The concept of the hard bordered nation-state is not capable of providing acceptable government to large sections of the community. It is therefore rational to examine alternatives.

1.3(a) Economic Interests

The "economic" interests of individuals today are varied and complex. We demand a successful economy that will provide a good standard of living, yet still retain an unpolluted environment for us to live in. The question is whether the hard borders of nation-states is the best method of delivering these "economic" demands.

As mentioned above, the boundaries of nation-states do not reflect economic realities. This is as true in Europe as anywhere else. Few, if any, European nation-states can be said to be one economic region (Albania could arguably be an exception). Instead, nation-states consist of several regions with economic needs which can differ enormously. In the UK for instance we have the economy of the West Highlands of Scotland, dependent almost entirely on subsistence agriculture, tourism and fishing, while the economy of London is based firmly on financial services. This divergence of economic needs is not confined to areas within nation-states. Economic factors do not recognise national boundaries. Throughout Europe, economic regions exist that transcend national borders. The rural economy of Ireland does not stop at the British border. The county of Fermanagh has much more in common with Donegal than it does with London, or indeed Belfast.

The consequence of this is that trade and economic development are restricted by the artificial national borders. Instead of the economic problems of the

region being addressed in an economic forum covering the entire region, the problems must be addressed in the context of the nation-state. When an economic region is enclosed entirely within the borders of a nation-state the problem of cross-border regions is removed, but other difficulties remain. The economic interests of one region will be different from that of another. If economic policy is undertaken on a national level, the policy requests of the more powerful regions will be likely to outweigh those of the less influential areas. In consequence some economic regions will suffer, whichever decisions are undertaken by the nation-state. In addition, although an economic region may not cross national-frontiers, it may have much more economic common ground with other regions, outside the nation-state, than with its counterparts within it. The "hard-border" philosophy again erects barriers against co-operation between regions of similar interests.

Fiscal federalism puts a similar argument in fiscal terms (Von Hagen, 1992). Nation-states do not reflect optimum economic areas, as already stated above. Therefore, the fiscal policies needed by each economic region will vary, not from nation-state to nation-state but from region to region, irrespective of where the national boundary lies. In addition the concentration of fiscal powers at a higher level would not solve the problem, with regional variations still needing regional fiscal policies.

The desire for a clean environment is a further area where national borders have no effect. Pollution created in one nation-state may cause environmental damage to nation-states far from the source. Thus one nation-state can no longer protect the environment within its borders by acting unilaterally. Ironically, it will often be an economic disadvantage for a state to enforce strict environmental protection when competing with states which are less eco-friendly.

Within nation-states, environmental interests are not necessarily best dealt with at the state level either. What may be regarded as an acceptable environmental risk by nation-state governments may be seen somewhat differently by those living

close to the problem. Once again there is a failure of the nation-state to represent the desired interests of the population.

The practical effect of these contradictory forces on the nation-state has been two-fold. On the one hand, the failure of the nation-state to cope with the increasingly global nature of many sectors of society has led to the creation of supra-national organisations. Primary amongst these, and most relevant to this thesis, has been the European Communities and now the European Union. Simultaneously, there has been the creation of regional bodies, beneath the nation-state. The development of these two paradoxical forces is explainable only in terms of the nation-states' failure to cope with economic realities.

The formation of the European Coal and Steel Community was specifically designed to address an issue that had dominated European politics for decades. Namely that the area encompassing Eastern France, Luxembourg, Southern Belgium and the German Ruhr, was one economic region. This vitally important hub of the continental economy was not consistent with national borders. This had caused a great deal of conflict between the competing nation-states, each wishing to control the natural resources, etc. that lay on the others' territory and thus control the entire region.*

By forming a European Community in these policy areas the cause for conflict was eliminated. Furthermore, this Community allowed a larger, cross-border perspective to be taken. This Community has now developed into the European Union, via the European Economic Community. The driving force behind this process has been principally economic. It rests upon the premise that nation-state boundaries are a hindrance to the expansion of trade. A larger free-market, beyond the confines of the nation-state, will encourage economic growth and

* The Franco-German wars of the past hundred years were, to a large extent, a consequence of this. The French insistence of control over the Saar area after Versailles peace settlement, was certainly as a result of this.

increase prosperity. To facilitate this, a sizeable degree of nation-state authority has been transferred to the European arena.

At the same time as this process of power transference to the European Union, there has occurred a process of disintegration within the nation-state itself. The inability of nation-state governments to cope with regional disparity has led to the formation of regional authorities. This is obviously the focus of this thesis and the ways in which regional units have addressed the interests of the population will be explored in chapter three. The formation of regional authorities to reflect economic reality is part of the same process that has led to the genesis of supra-national structures such as the European Union. We are not witnessing a process of decentralisation or centralisation but rather a disintegration of the nation-state as the territorial paradigm of government, and the end of the concept of "hard-borders".

1.3(b) Cultural and Ethnic Interests

As explored above, a vital part of the nation-state ethos is the existence of a single national culture within the boundaries of a state. This has meant the dominant culture being imposed throughout the territory of the nation. This obviously means the eradication of cultural affinities, other than those of the nation. Indeed, failure to adhere to the "national" culture could result in exclusion from the "nation".

Gellner argues that such attacks on cultures, differing from the central regime, give two options to the minority cultural affinities, either assimilation, or formation of their own nationalism. The original response of those cultural affinities at odds with the dominant group was assimilation. However, increasingly cultures have begun to use the same rhetoric of nationalism, used to legitimise the nation-state's borders, to their own advantage. If the existence of a nation is the necessary corollary for the existence of a nation-state, then these cultural minorities have begun to claim this status for themselves. If the nation-state they are part of claims to be a "nation", and a minority culture, or ethnic group do not agree with this, then

surely they themselves must be a "nation" separate from that of the nation-state and thus deserving of a separate state. If no separate state has existed previously (as in the case of the Basques, in contrast with Scotland or Catalonia), the legitimacy of the claim must be based on "ethnic", cultural or linguistic differences from the parent nation-state that distinguish this group as a separate "nation".

This is the root of "ethnic" nationalism. It exists in nation-state form in Germany and Israel, where the legitimacy of the state is based on it being the "homeland" of the ethnic German or Jewish nation. In Germany especially, German ancestry can guarantee the right to German nationality, yet a person who has lived in Germany for their whole life, but has no German "blood" will find German nationality extremely hard to obtain.

This is the dangerous consequence of the nation-state myth. To have the right of self-determination there must exist a nation. As we have seen, nations are not organic, so ethnic and cultural affinities become the basis for the definition. This leads inexorably to the consequence of ethnic nationalism. The abhorrent idea believes that if you do not belong to the "correct ethnic group", (an undefinable concept) then you have no right to be in the nation-state, which is the territorial representation of it.

This is not an argument for a plethora of new nation-states, to reflect the "real" ethnic or cultural divisions of the globe. This would merely exacerbate the problem, not solve it. The drawing of permanent all purpose boundaries, and thus the whole nation-state concept will never be a solution to the problem of territorial government, for two reasons. Firstly, unlike the concept of nation-state boundaries, the divisions in society fluctuate. Cultures, language, etc. are not static. They develop and alter, in both content and territorial coverage. If cultural, linguistic and religious affinities are fluid and the borders of the nation-states are not, then even the most accurate reflection of these differences in territorial terms will become obsolete. This also applies to criteria regarded as less normative, such as economic requirements or social needs.

The second reason for the nation-states' incompatibility with global realities is that people do not live in ethnic, linguistic, cultural or religious units which are territorially definable. No division of the world can ever reflect the variations of belief, culture, etc. that exist. Any attempt will always leave an unhappy minority. If for instance the Basque territories in France were granted independence with Euskadi in Spain, the large numbers of French speakers living in these areas would be dissatisfied.

The tragic consequences of the "hard-border" philosophy can be seen most clearly in the violence of the former Yugoslavia. Each faction lays claim to their own nation-state or "homeland". This approach is understandable as the international community will not prevent the persecution of minorities within other nation-states (e.g. Kurds & Shi'ites in Iraq, the Karen & others in Burma, the Tibetans in China, native Indians in South America, the list is endless). The reality is that such clear divisions do not exist on the ground. Wherever the divisions are placed, there will be some "foreign" individuals within it. The solution is to evict them. In this case no nation-state solution will ever end the fighting, unless the racists are successful in dividing the "ethnically pure" from the "enemy". This is the logical consequence of the "hard-border" idea. To create a true nation we must drive out those opposed to it. The fact that in Balkans people are being killed and driven from their homes because of their surnames is the terrible consequence of the nation-state obsession.

The former Yugoslavia is by no means alone. In Euskadi (the Basque country), E.T.A. still wages its war against the Spanish state, in pursuit of a Basque homeland. In Northern Ireland, two cultures fight over which nation-state the territory should belong to. In Corsica and Brittany, separatist groups have fought the French state for the past thirty years (Savigear, 1980, pp.116-120 & Fortier, 1980, pp.149-151). There have been countless other violent clashes between nation-state authorities and those wishing to belong elsewhere, including the long and bloody struggle between the Turkish state and the Kurdish separatist group (P.K.K.).

The sanctity of nation-state boundaries goes much of the way to explaining these conflicts. A nation-state will go to enormous lengths to prevent the erosion of its borders, even to the point of spilling blood (Birch, 1978, p340). This seems even to be the case when the people it wishes to contain within its boundaries do not wish to remain. This in turn encourages those in areas which see themselves as different from the dominant ruling group to strive to achieve nation-state status themselves. After all, the message of the nation-states themselves is that, they are the primary unit of government. If nation-state status can be achieved then the culture which was formerly part of another state can have its own seat at the table. If nation-state status is not achieved then it will have nothing, unless the dominant nation-state deigns to give up some of its power.

In the world of the nation-state, the possession of a state for your culture, and thus the recognition of your "nation", is everything. Anything other than a nation-state is nothing. The borders of the present day do not reflect the variety of peoples that populate the globe, but then again no combination of nation-states can ever accomplish this. It therefore follows, that to resolve the cultural and ethnic conflicts that dot the globe, there must be a re-assessment of methods of territorial government.

1.4 Conclusion

As the above argument has shown, the nation-state enjoys no normative status. It is an artificial unit of territorial governance, like any other. In addition, it enjoys no claim to represent the interests of its population, in either the economic or cultural spheres. Furthermore, "hard-bordered" nation-states have failed to fulfil the interests of their populations. However, it is the concept itself that is flawed. There is no configuration of nation-states that will ever fulfil the demands of the global population.

All the interests of the population are never served by one territorial unit. The areas within which a population's interests are satisfactorily represented vary depending on the specific interest in question. In Belgium for example, economic and cultural regionalism are separated, with the economic Regions having authority over a different area from the cultural Communities. In addition, sporting representation is dealt with at the national level. Attempts to make this a regional area of competence caused a political storm in Flanders and Wallonia. The interests of the population thus need several overlapping tiers of authority, not one "hard-bordered" unit as advocated by the nation-state system.

I term the need for non-sovereign and perhaps overlapping units of governance, "soft borders". This does not deny the need for nation-states, merely that they should not be the only legitimate level of power, from which all else springs. There is, I believe, a need for the separation of cultural, economic and social needs to reflect the interests of the population more closely.

The consequence of this development has been a weakening of the nation-state/hard-borders concept, with new units of territorial government evolving. The new units have been both supra-national and sub-national, though defining them in terms of the nation-state is somewhat misleading. These new methods of governance are evolving away from dependence on nation-states for their existence and no longer justify themselves in terms of the nation-state. Instead, new methods of justification and legitimation are needed to cope with the eroding of the previous world order.

In recognition of this, the European Union has turned to the concept of subsidiarity as an underlying principle of the new Europe. This concept, advanced by the UK government as a means of defending the rights of nation-states actually gives all tiers of the Union, and beyond, a legitimacy unconnected with the nation-state itself. It is this development that will be examined in the following chapter.

2 - Subsidiarity In Theory And Practice

2.1 Introduction

Since the Maastricht negotiations of 1992, the term "subsidiarity" has received a high degree of prominence in discussions surrounding European integration. This has been despite the fact that very few people, lawyers included, can define what it means. Perhaps to the surprise of the wider population, politicians and academics have spent a great deal of time debating the precise nature of this novel concept. In fact, it is the contested nature of this term that has caused the political interest. Depending on the interpretation of the concept its effects could vary enormously. This has led to the unusual sight of arch-rivals, such as the Scottish Nationalists and the Conservative UK government, proclaiming it as a positive development. Both see it as vital to the democratic development of Europe, though they differ somewhat on its precise definition and application. In addition, several governments and regions claim responsibility for its inclusion in the Union treaty and therefore assert that their interpretation is the correct one.

The support subsidiarity has received from regional movements and regional governments suggests its importance to the development of the regional tier. The significance of the concept lies in its ability to legitimise territorial government without reference to the nation-state paradigm. By relying on the interests of the population to determine the most suitable model of government, the region or supra-national authority can claim legitimacy with reference to subsidiarity and not from the sovereignty of the nation-state. The concept certainly does not deny the existence of the nation-state tier, nor that it still has a role to play. It can, however, give an alternative source of legitimacy for new systems of government (e.g. regions and the E.U.). Furthermore, it does not necessarily accept

the principle of "hard borders" developed within the nation-state concept. If one accepts subsidiarity as a guiding principle, perhaps "hard bordered" units of governance are not the best method of achieving it. To a great extent, as the following chapters will demonstrate, this is merely giving "constitutional" recognition to political developments. The regions in particular have risen to prominence and some of them exhibit little regard for the nation-state of which they are a part. Rather, they see themselves as European and having no less legitimacy than that of the member-states. What is perhaps most surprising is that a concept with such potentially wide ideological implications has been included in the Treaty of European Union itself.

The Chapter discusses three distinct themes of the subsidiarity debate in the context of its new found significance. First, the development of the subsidiarity concept in Europe, with reference to the classic definition of Pope Pius XI. The wider concept christened by Pius has two variants which some have argued to be separate principles. It has been used in the context of the state versus society debate as well as in relation to issues of territorial governance. It is the contention of this work that this is a misunderstanding of the principle, with both "variants" being merely the application of a single concept at different levels. The discussion of subsidiarity's genesis is completed by examining the concept as practically applied in some nation-states. These are briefly examined as models of how the practical application of the term may be achieved in the E.U. itself.

The second theme of the chapter covers the appearance of the term in the Treaty on European Union. It is its inclusion in this document that has brought the term to prominence and made it relevant to the development of the European Union. Defining the term using the text of the treaty alone has been attempted but the context in which the expression is actually mentioned means that any attempt at a literal definition soon runs into difficulties. This makes further attempts at a definition essential. These must include not only the *travaux préparatoires* but also the theoretical lineage of the concept examined above.

First, the "minimalist" approach advanced by the UK government, among others, is examined. This limits the concept to restrictions on Union competence, in relation to member-states. This argument rests primarily on the *travaux préparatoires* of the treaty and the claim that the term was inserted under pressure from the UK government. By laying claim to its inclusion, the UK government also claims its definition.

Next, what I term the "global" approach is studied. This sees the concept applied in a more general manner, not merely affecting member-state/Union relations. The basis for this wider interpretation of the term rests on reference to other articles of the treaty and the wider philosophical context.

Finally, the conclusion to the chapter examines the consequences of subsidiarity to the E.U. with reference to the preceding discussion. An hypothesis on subsidiarity's effect in the European Union is presented with regard to the possibility of judicial involvement in the form of the E.C.J.. Although the practical implementation of subsidiarity in the European Union is fraught with difficulties, it is of major ideological importance in the new Europe. Specifically, the term allows a new philosophical approach to questions of government. It will never give us an answer to this question, but it allows a rational debate to take place.

The development of the concept could be of major importance to the development of the regional level. As a way of avoiding the sovereign nation-state as a starting point, it thus forms the theoretical basis for this thesis. The rest of the work focuses on the rise and importance of the non-sovereign region as a *sui-generis* form of territorial government. It is thus not concerned with "decentralisation", which assumes the nation-state as the primary font of legitimacy. The focus is instead on the development of a new type of governance self-legitimated by the subsidiarity concept.

2.2 Definitions of Subsidiarity

The classic definition of Subsidiarity is generally regarded as that contained in the 1931 encyclical of Pope Pius XI. He defined the concept in the following terms:

"Just as it is wrong to withdraw from the individual and commit to a group what private enterprise and industry can accomplish, so too it is an injustice, a grave evil and a disturbance of right order, for a larger and higher association to arrogate to itself functions which can be performed effectively by smaller and lower societies. This is a fundamental principle of social philosophy, unshaken and unchangeable."*

This concept was used by the Pope as a defence against fascist centralisation, especially in areas traditionally controlled by the Catholic church. Pius XI used this term in a specific context to defend his authority. The Catholic church is not renowned for its support for decentralisation in other areas.

This was not the first mention of the concept itself. Indeed, it has been evident as a principle for several centuries. This has, however, become the "classic" definition of the idea as it was the first time these ideas of minimal government was defined as "subsidiarity".

This definition of subsidiarity is not quite as clear as it may seem at first sight and it exposes the dual nature of the concept. In the first section of the above quotation, Pius recognised the state versus society context of the principle; "...it is wrong to withdraw from the individual and commit to a group what private enterprise and industry can accomplish". The second segment introduces a slightly

* *Quadragesima anno*", para 79-80, 1931, from a translation in Wallace & Wilke, 1990, p12

different angle, stating that when intervention is appropriate it should be at the lowest possible level.

It has been suggested that these views of the subsidiarity concept are distinct and even irreconcilable (Kol, 1993). In the following section, the two contexts of the subsidiarity principle are examined separately before a synthesis of the two branches is presented. It is hypothesised that these two branches of subsidiarity are not distinct, but rather represent its application at different levels of the same scale. That is, the individual v. state context is merely the lowest level of the subsidiarity concept in its application to the allocation of power to levels of government.

2.2(a) *The State v. Society Context*

The genesis of the subsidiarity concept is vague, but it seems to have been applied first in relation to this conflict. There are many similarities between Pope Pius's definition and ideas of liberty, expressed by those such as Mill (Mill, 1859) or even classical theories of anarchism (e.g. Proudhon) (Pennings, 1993, p154). In 1854, even Abraham Lincoln defined legitimate government in a way that would now be described as subsidiarity:

"The legitimate object of government is to do for a community of people whatever they need to have done but cannot do at all, or cannot do so well for themselves in their separate and individual capacities. In all that people can do individually as well for themselves, government ought not to interfere." (Kliemt, 1993, p3)

Use of subsidiarity in this context is a method of defining which tasks should be entrusted to the state and which left to individuals and voluntary associations. When the state operates, it can demand the participation of the population, but this is only legitimate when voluntary actions cannot undertake the

task. In this setting, the concept restricts the state's intervention to the minimum necessary. If a task can be achieved by individuals acting voluntarily, without the compulsory intervention of the state, then the state should not become involved. This argument is somewhat similar to the "Market Failure" argument advanced by Adam Smith in the late Eighteenth Century, whereby the state should undertake those tasks necessary for the smooth functioning of the market (e.g. infrastructure) or where the market itself could not supply the service, despite it being a "Public Good" (e.g. Education) (Smith, 1812, pp.570-571).

The non-controversial nature of this concept is further emphasised by its application by the Dutch Calvinist church and the German Catholic hierarchy. Both used the idea as justification for arguments against the state's increased powers. In the Dutch case this was due to the Calvinist philosophy of self-help, popular in several Protestant cultures in the 1890's (Pennings, 1993); while in Catholic Germany this was to protect tasks traditionally undertaken by the church, but being usurped by the state in the 1960's (Kleimt, 1993, p4-9).

The diverse agreement on some sort of "subsidiarity" principle in this context is also its greatest weakness. Although, as shown above, the Vatican, Calvinists and secular philosophers of many schools all agree on a minimum level of involvement by the state. Agreement as to what this "minimum involvement" entails is slightly more contentious. Although it is relatively un-contentious to state that the individual should be given the greatest possible freedom, opinions as to what constitute areas in which the state must act are far more controversial. Socialists, for example, would still expect the state to intervene to re-distribute wealth, as this could not be achieved voluntarily. In contrast, a free-market liberal would limit state involvement to ensuring a free and open market. Furthermore, the Vatican is not renowned as a champion of decentralisation, and its view of the proper levels of authority necessary to conduct certain tasks would differ somewhat from anarchists such as Proudhon!

The debate is therefore not really about the subsidiarity principle itself. It is widely accepted in Western democracy that individuals should have the freedom to pursue their destiny with as little interference from the state as possible. Difficulties arise, however, when one decides the extent of state intervention necessary. Methods to resolve this tricky question have been advanced. Delors has mentioned the need for efficiency to be an overriding factor in deciding which areas should be undertaken by the state (Hailbronner, 1993). Kol has gone slightly further by arguing for a combination of social and commercial cost-benefit analyses (Kol, 1993, pp.2-3). In this he sees a method of deciding, not only which tasks should be undertaken by the state (i.e. those that are non-profitable), but also those tasks which should be undertaken at all, specifically through the use of shadow prices for socially desirable goals (e.g. environmental protection).

The problem with the debate surrounding subsidiarity is that those goals which are regarded as socially desirable depend on the political beliefs of the individual. Thus subsidiarity in this context does not seem to advance the debate very far. It merely allows a new framework within which the debate that was already in progress, can be conducted. It does not really offer anything new in the continuing discussion surrounding the "correct" amount of state intervention. This is not so in relation to the argument surrounding the level of government at which this involvement should take place.

2.2(b) The Territorial Context

In the above discussion, the state v. society context of subsidiarity was explored. This uses the concept to debate which tasks should be conducted by the state and which left to individuals and voluntary associations. In the second section of Pope Pius's statement, he mentioned a further application of the principle, and it is this which is of most relevance to this study. If the subsidiarity principle favours individuals against the state, then it also favours smaller groups against larger ones. In other words the division of tasks within government should also work on the premise that the lowest authority possible should exercise the relevant task.

Although use of the term in this context has achieved recent prominence, this variant of the concept also dates back to at least the Eighteenth Century. As early as the 1790's Adam Smith advanced such an idea as part of his economic and political theory:

"Even those public works which are of such a nature that they cannot afford any revenue for maintaining themselves, but of which the conveniency is nearly confined to some particular place or district, are always better maintained by a local or provincial revenue, under the management of a local or provincial administration..." (Smith, 1812, p37)

Across the Atlantic a similar approach was being adopted in the United States with regard to their Constitution. In response to worries concerning the new Federal Government's ability to enlarge its powers over the States and individuals, the Tenth Amendment was introduced into the American Constitution (Sunquist, 1987, p706):

"The Powers not delegated to the United States by the Constitution or prohibited by it to the States, are reserved to the States respectively, or to the people" (United States Constitution, 10th Amendment)

This was the first example (and perhaps the first in relation to regions?) of the practical use of the subsidiarity concept, in either context. It is discussed more fully later (see page 41). Many of the philosophers who applied what became known as subsidiarity in the private/state sphere examined above, also used it in reference to arguments surrounding the optimal level of decision making within the

state. Smith has already been mentioned but Mill too applied the idea to the "community" in defence of the usurpation of powers by another, larger "community", (Mill, 1861).

Since the 1931 encyclical the use of the concept in reference to appropriate levels of government has increased. Due to the fact that most government in the Western World is organised on a territorial basis, it is inevitable that the term has been used in debates surrounding the territorial division of government. In relation to this it is equally unsurprising that the term has mainly been invoked to defend smaller territorial units against more powerful larger ones*, or to argue for the existence of smaller units of government within unitary nation-states.#

This "negative" use of subsidiarity's territorial context, as Kliemt describes it, is not the only application of the term possible, but it has become the dominant one in the debates surrounding the territorial application of the principle, especially since the Treaty on European Union was signed. Prior to this the principle had been inserted in articles 4.2 & 4.3 of the European Charter of Local Self Government.+ This stated that:

* See Article 30 German Basic Law for instance. This is discussed more fully below.

Arguments resting on subsidiarity have been advanced by many regionalist groups such as those in Scotland, Catalonia and Flanders (among others) advocating increased territorial autonomy. This is discussed more fully in chapter 3

+ Although six Council of Europe Members have failed to adopt the Charter, the only E.U. members are the UK, Ireland & Finland. That the nation-states of the British Isles should join the company of such giant superstates as San Marino & Malta, (the other one being Switzerland which already possesses arguably the most devolved system of local governance in Europe), says much for their attitude to sub-national government. Indeed the UK stated that relationships between sub-national and national government were a matter for national legislatures alone.

"Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.

Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy" (Council of Europe, 1985)

This "negative" use of the term must be used in conjunction with its "positive" antithesis (Kleimt, 1993, p1). Although power should lie at the lowest level of government possible for the satisfactory completion of a task, this may mean an increase in power for a higher level which can execute the task better than the lower level could. The theory does not give an assumption that lower levels of government, or indeed any level of government, will benefit from it. In the example of environmental protection, the use of the subsidiarity principle would see certain areas of this field needing to be exercised at the highest level possible (i.e. the globe). It may not be possible, for many reasons, to create such an authority, but nevertheless subsidiarity would require the execution of certain tasks at the highest practical level of governance.

Kol hints at this in his paper, noting that subsidiarity should apply from the levels of town and region to "a customs union or some more loose form of co-operation, extending to world level". Although this seems to be the logical conclusion of subsidiarity, I believe he does not go far enough. Indeed the acceptance of subsidiarity on a global scale would necessitate a form of global authority for at least some functions. In essence, acceptance of the principle of subsidiarity is acceptance of the need for world government. The development of

the United Nations, and the World Trade Organisation in particular suggests, the majority of national governments do accept this, at least to some degree.

The territorial context of subsidiarity still runs into difficulties when one actually attempts to define how the different tasks of government should be allocated. As a result of this, debates surrounding subsidiarity place much emphasis on the balancing of efficiency with liberty or accountability. Delors, in particular, has emphasised the efficiency criteria of the concept. In addition mention has been made of the fact that any intervention by the higher authority must be "reasonable" (Hailbronner, 1993).*

It is immediately obvious how weak such attempts at defining permitted intervention by higher authorities are. The first problem is again one of definition, i.e. what is "efficiency" or "reasonableness"? Even if this problem can be overcome, there seems little prospect of a meaningful frame of comparison being created between these concepts. How many units of efficiency are needed to nullify a unit of accountability?

As was seen with the public/private context of subsidiarity, the introduction of the subsidiarity concept itself does not answer the questions surrounding the optimal division of territorial government. The concept should not be discarded, however. Unlike in the state v. society debate, subsidiarity is still a useful concept in discussions surrounding territorial government. Although the precise definition of the optimum level of government continues to be somewhat contentious, agreement that this level should be the lowest necessary is a major shift in Western political thinking. The concept gives a rational basis on which to argue for the optimal level of government, removing the nation-states' privileged position. If government is to be based at the optimal level for efficiency and democracy, the nation-state level becomes merely another tier which must be rationally assessed according to these

* Although Dr. Heilbronner's remark was interpreted as reasonableness, the concept he was expressing might be better described as proportionality.

criteria. In essence, subsidiarity gives a new framework in which the debate surrounding territorial government can be conducted without relying on the paradigm of the nation-state for its legitimacy.

2.2(c) A Theoretical Synthesis

As the brief discussion presented above shows, there are several ways in which the subsidiarity principle can be interpreted. This is not to say that these interpretations are incompatible. It is certainly not to argue that the two contexts where subsidiarity has been applied are somehow separate principles. The opposing view, advanced by Spicker, presents interpretations of subsidiarity as contradictory and thus not one concept but several. This would make the term virtually useless. He has listed six concepts where the idea of subsidiarity has been evoked. These are: subsidiarity (on the German model mentioned above), sphere sovereignty (the Dutch Calvinist view), self-determination, residualism (both Liberal principles), states' (or regional) rights (as per the U.S. 10th Amendment, see above) and finally Pluralism.

He then goes on to point out how each of these concepts is in conflict with at least one of the others. In consequence, no formulation of the principle can reconcile all subsidiarity's variants (Spicker, 1993, pp.10-12).

I believe this examination of differing conceptions of subsidiarity is too pessimistic in its conclusion. Although there is great disagreement as to where power should lie according to the subsidiarity principle, it is possible to distil a basic underlying concept from the various views expressed on the subject over the last two hundred years. This principle is evident throughout each of the six variants Spicker illustrates. It is that individuals should have the greatest independence that can be afforded to them. This principle is equally fundamental in the context of both the territorial and state/society uses of the term.

The assertion that subsidiarity is not a definable concept is therefore a failure to understand the nature of the expression. Instead of examining the

contradictions inherent in all the uses of subsidiarity, it is necessary to examine the common concepts underlying its use. These are that each individual should be as free to conduct his or her affairs with as little interference as possible. In consequence of this, a tier of government should only exercise authority when individuals cannot do so voluntarily. The principle, that if state involvement is necessary, it should be organised within as a small group as possible, is merely a logical extension of this. The two contexts of subsidiarity are therefore different levels of the same principle. The private v. state context is an integral part of the whole subsidiarity principle, not separated from the governmental level context. In each case, the same basic principles of subsidiarity apply. What actually constitutes satisfactory execution of a task, and thus the correct tier of governance (including voluntary action), then becomes the contentious issue. However, debates on the "correct" level of authority must then take place within the rational framework of the subsidiarity concept.

When the subsidiarity concept is applied, the principle remains the same, whatever the context. Government must involve itself to the minimum extent necessary. This will leave the greatest possible control in the hands of individuals and voluntary communities. To achieve this, the legitimate state must use the least intervention necessary for the "public good", thus minimising the effects on individual freedom. In addition, the exercise of state authority must be as close to the citizen as possible, to ensure maximum control by the population concerned. By placing the intervention in the hands of the lowest tier of government, the task will be achieved in a manner as consistent with the views of the individuals concerned as possible. It is important to note that this also encompasses the democratic idea since, if communities, etc. are to manage their affairs at the lowest level, they must manage it themselves. This will be greatest when the unit of democratic governance is directly elected by the population concerned. This therefore assumes democratic control over all tiers of government.

The concept's application to territorial government inverts the common premise underpinning the organisation of most nation-states. It claims authority

should originate from the individuals and voluntary communities, being transferred to government only when necessary. When regarded as a sphere suitable for government, legitimacy will rest with the lowest level, passing to higher tiers only when necessary.

In addition, the transfer of authority from each lower tier to each higher one requires evidence that the higher tier is significantly better at performing the task than the lower level. To use legal parlance, the burden of proof now lies with the higher unit of government. This is in direct conflict with the nation-state principle which places authority at the national level, although it can be devolved to lower tiers, or transferred to supra-national bodies.

Problems arise when one attempts to decide when tasks should be transferred from the individual to the state or from a lower tier of territorial authority to a higher one. As mentioned above, agreement on what constitutes an ability to perform an action "effectively" (Quadragesima Anno, translation from Wallace & Wilke, 1990) is extremely difficult, if not impossible. However, the principle does exist as a practical concept in at least three legal systems. In the next section, these practical examples are assessed.

2.3 Subsidiarity in Practice

Subsidiarity, as a political concept, exists in the Calvinist tradition of the Netherlands and in the constitutional systems of both the U.S.A. and the Federal Republic of Germany. It is helpful at this stage to observe how subsidiarity operates in these three systems.

The term is used in the Netherlands in relation to Social Security Policy. The Calvinist tradition in the Netherlands regarded the role of the state as limited and, ironically, had many similarities with the Roman Catholic principle outlined above. During the early part of the Twentieth Century, the Dutch government wished to introduce a form of compulsory social insurance. The theoretical problem

of forcing the individual to become a member of the scheme was tackled by use of the term "subsidiarity". The state is only permitted to intervene in this field where the individual (or in theory a group of individuals smaller than the state) is unable to address the issue (Pennings, 1993, p153).

Although in the Netherlands subsidiarity has only been explicitly used in the private/public context, the concept has also been applied territorially. Although not mentioned specifically as subsidiarity, the Dutch system of a decentralised unitary state has seen a large amount of tasks being placed at levels beneath that of the nation-state (Wolters, 1993). In the Netherlands, at least, the two "contexts" of subsidiarity have been applied concurrently.

In other countries, notably federal states, the concept of subsidiarity has not only been applied in the territorial context but also given a legal basis. Indeed, as mentioned above, the U.S. and Germany both have "subsidiarity clauses" in their constitutions. These texts, in theory, give power to the constituent parts of the federation (or the people) unless specifically stated otherwise. In other words, these clauses recognise the lowest authority as the default level of government. Although this may sound grand, in practice the effect is somewhat limited.

In the U.S., the 10th Amendment has been reduced to a dead letter by the courts' recognition of the need for free trade throughout the federation as paramount. This gave increased powers to the federal authorities under the banner of the free market (Sunquist, 1987, p734). In practice, the efficiency of the federal authority to organise the free-market is regarded as superior to the claims of the states as lower levels of authority. In Germany, although the concept expressed in article 30 G.G. has been referred to by the Federal Constitutional Court, it has never been explicitly relied upon.

The practical implications of the subsidiarity clause contained within the Treaty on European Union are likely to be minimal if the above examples are followed. The controversial nature of subsidiarity means it is not ideally suited to

judicial review. Nevertheless, the E.C.J. is known for its teleological approach in applying vague principles in European Treaties. Should the E.C.J. take such a route, its interpretation of the term's scope could have wide-ranging effects on the future of the Union.

2.4 Subsidiarity in the T.E.U.

In most of the discussions surrounding subsidiarity, in relation to the T.E.U. (Treaty on European Union), emphasis has been placed on the concept's mention in article 3b, however, as the following section shows, this attention is unwarranted. This article does not, in itself, define the term in relation to the treaty. Nevertheless, the attempts to do so are explored below.

The real controversy surrounding subsidiarity in the T.E.U. comes from the failure of article 3b to be self-defining. This leads to two major schools of thought regarding subsidiarity's application in the context of the European Union. The UK government has attempted to minimise the wider effect of the term by referring only to article 3b in conjunction with their interpretation of the rather minimal *travaux préparatoires*. The opposing view recognises the broader application of the principle. The basis for this view relies on the concept's appearance elsewhere in the text, specifically in article A and the previous usage of the term in Europe, explored above. These two competing claims are examined below.

2.4(a) Article 3b and the literal approach

Within the T.E.U., revising the treaty of Rome, subsidiarity is only specifically mentioned once. Under the new article 3b of the E.C. treaty the principle is mentioned, *prima facie*, only to limit the actions of the Community. The full article is as follows:

"In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty" (T.E.U., 1992, Article G(5))

With such a minimal mention, one may wonder what all the fuss has been about! However, past experience of E.C. treaties and their interpretation by the E.C.J., has shown that minimal references in the text can have a profound effect.* Furthermore, the wider concept of subsidiarity, as explored above, is mentioned in several other articles.

If only article 3b is considered, interpretation of the term's meaning is fraught with difficulties. A literal interpretation has been attempted by Teixeira, but, although a useful aid to interpreting the whole article, it does not define the concept itself (Teixera, 1993). This interpretation relies on the phrase following the word "subsidiarity" being a definition of the term itself. However, to read the article in this way would require a huge feat of grammatical acrobatics. Instead, the phrase following "subsidiarity" and the subsequent paragraph are both caveats to the original phrase; "in areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity". The

* See for example, the E.C.J.'s reasoning in the Van Gend en Loos case [1963] C.M.L.R. 105, concerning the development of the principle of "direct effect". This conferred rights on individuals not mentioned in the treaty itself.

phrase "only if", makes this conclusion inescapable. If the section of article 3b following the term was intended as a definition of subsidiarity, it would be worded, "as defined by...", or a similar phrase. "Only if.." does not have this effect.

Article 3b alone is thus of little effect. Finding a definition of subsidiarity in article 3b is an impossible task and it is necessary to look elsewhere. It is at this point that arguments surrounding the definition in the treaty really begin. On the one hand, those such as the UK government use the *travaux préparatoires* of the treaty to define the term minimally, applying it exclusively to Member state/Union relations. On the other, those such as UK local authorities have advocated a wider approach, applying it generally to inter-governmental relations throughout the Union.

2.4(b) Competing Theories of Subsidiarity

The interpretations of subsidiarity, in relation to the European Union can be divided into two schools. First, the "minimalist" approach, which relies on a strict interpretation of article 3b. Those supporting this explanation see the use of the term article 3b as a method of protecting member-state authority against the Union. I argue that such a view is a misconception, but the UK government, in particular, continues to advocate the virtues of this minimalist approach.

In opposition to the minimalist school is the more "global" approach. This sees the application of this concept as a principle governing the general allocation of authority to tiers of government and individuals, as opposed to a specific rule governing member-state/community relations. In essence, subsidiarity is an overall "constitutional" principle in the European Union.

The former view avoids the theoretical arguments surrounding the concept. It instead relies principally on the UK governments' claim to have forced the term's inclusion in the treaty. If this was the case, then the theoretical argument is irrelevant, the term being defined without reference to its previous usage. It is therefore important to discuss this claim first.

2.4(b)i The "Minimalist" Theory

The Minimalist case is relatively simple. The UK government claims that it was through their pressure that the term subsidiarity was introduced into the final Maastricht treaty (Hurd, 1993). It therefore follows that the UK interpretation of the term is the correct one. In other words, since the UK government introduced the term, they should know what it means. However, the British government's claim to have defined subsidiarity, in the context of the European Union, is not borne out by the facts.

The first mention of the concept in relation to the future direction of Europe came from the German Länder, not the UK government. A meeting, in 1988, between Jaques Delors (President of the European Commission) and *Länder* representatives, used the term "subsidiarity" to describe the need for bottom up accountability in the new Europe, sentiments not unlike those expressed in article A(T.E.U.) (see below) (Wallace & Wilke, 1990). The support for a subsidiarity clause in the Union treaty itself was later expressed both by the German delegation, and their Belgian counterparts (Agence Europe, 1990, p4). The arguments surrounding Community/Member-state relations, though vocal, were not couched in terms of subsidiarity. When the concept was finally raised in relation to this issue, it did not deny the wider implications of the idea, which had been previously addressed (European Communities, 1989).

The claim of the British Government to have defined the concept in terms of it's "minimal" application is weakened further by two closely linked indicators. Firstly, the UK government has no definition of the term itself and secondly, if the term was to be applied exclusively between the Member States and the Community why use this principle at all?

In February 1990 the Legal Adviser of the Select Committee on European Legislation (House of Commons) was asked to produce a note on the subsidiarity concept. In his reply, the term is described as having no "precise identity". He then

enlarged upon the several ideas of subsidiarity put forward, finally arriving at a definition which he felt could "command the greatest level of support" (Wallace & Wilke, 1990, p22). That such a question needed to be asked, does not suggest a coherent definition in the UK prior to the T.E.U. agreement. Basing the most suitable definition on measures of support hardly suggests a firm policy on the issue by the UK government.

The UK's claim to have secured subsidiarity's inclusion in the T.E.U. "thanks to our [the UK government's] efforts" is therefore flawed (Hurd, 1993). The minimalist approach, limiting the concept to Member State/Community relations, thus cannot rely on the UK's claims. On a more theoretical note, if this had been the only intention of the concept there would have been no need to use the term "subsidiarity" at all. It seems inconceivable that the British government would have put forward this vague principle solely to protect member-states' interests, especially when no coherent definition was available in the UK. The variety of definitions that were presented were also at odds with those being expressed in Europe. The impact of the term is thus likely to hinge on the appearance of the concept elsewhere in the treaty.

2.4(b)ii The "Global" Approach

Article 3b is not the only use of the concept in the T.E.U.. Article A of the Common Provisions (Title I), uses the general principle, without mentioning the term explicitly:

"This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen" (T.E.U., 1992, Article A)

The specific use of subsidiarity in article (3b), could refer only to relations between member states and the Community. As such it would seem to confirm the status of the Union as a nation-state club, rather than a truly European body. Article A, on the other hand, seems to give a different view of the new Union, emphasising the idea that decisions should be taken "as closely as possible to the citizen". In this context, no mention is made of the method by which such decisions should be taken, and certainly no specific mention is made of the nation-state as the conduit through which decisions should be undertaken. If this is taken in conjunction with Article 3b, a very different view of subsidiarity's role and this article can be reached.

Interpreting article A as a definition of subsidiarity is enhanced by the discussions of the term outlined above. The definition advanced by Pope Pius in 1931 bears a striking resemblance to the concept outlined in article A. In addition, though many views of subsidiarity exist, the underlying principle is that authority should be exercised at the lowest level possible, or, "as closely as possible to the citizen" (see page 39). There is thus little doubt that article A contains the T.E.U.'s concept of subsidiarity. This has a profound effect on the interpretation of subsidiarity throughout the treaty. Although article 3b does mention the specific Member State/Community boundary, it also asserts that Community actions should be taken in "accordance with the principle of subsidiarity", thus not necessarily applying the term exclusively to the member state. As we have seen from the discussions of subsidiarity above, the concept asserts that decisions should be taken at the lowest level possible. Thus, if decisions are to be taken in "accordance with the principle of subsidiarity", this removes any reference to the member states and means only that decisions should be taken within the framework of the subsidiarity concept. Bearing this in mind, what role can the concept play in the continuing development of the E.U.?

2.5 Subsidiarity in the E.U. and the role of the E.C.J.

Even when the UK's "minimalist" interpretation is discarded, the concept remains open to interpretation. Furthermore, there remains no legal precedent in the countries where the principle exists. Taking this in account, what role, if any, is there for the concept in Europe, particularly in relation to the regional tier? The following section assesses the practical consequences of the term's inclusion in the Union treaty.

Despite the UK's protestations to the contrary, the effect of the subsidiarity principle on the specific member-state/Union divide will, in practice, be minimal. As far as member-state/Union relations are concerned all decisions of subsidiarity have been left to the Union in any case (European Council, 1992). In the majority of cases where the Council exercises authority the decision will continue to reflect the interests of the member-states. Where power at present lies with the Commission, some member-states had hoped to restrict its activities with reference to the concept. In fact, no change in policy can seriously be expected, as lip service to ideas of "subsidiarity" and "proportionality"* has always been paid by the Commission. The Commission would not have intervened in a policy area in the past without arguing such intervention was necessary, so why should the specific introduction of subsidiarity into the T.E.U. change anything?

As for a legal interpretation of the concept, applying to all tiers of European government (and specifically regions), much will depend on the E.C.J.'s attitude to defining and enforcing the idea. The practical difficulty with this development is how non-nation-state entities could involve the court in any breach of the subsidiarity principle? Under articles 169, 170 and 173 of the Rome Treaty, only nation-states and Community institutions can bring an action before the E.C.J. directly. If this were to continue, only Community actions infringing nation-state

* This principle states that the means used are to achieve a given end and must be no more than that necessary to achieve that end. Steiner, 1988, p43

competencies could be challenged, unless the European Parliament could be persuaded to intervene for the unrepresented tiers of authority. The obvious answer to this would be for regional bodies, etc. to begin an action in the national courts and then ask for an article 177 referral to the E.C.J. This threat was obviously anticipated, and feared, by some Member States, who declared the concept to be non-directly effective, in 1992 (and thus unsuitable for an article 177 decision) (European Council, 1992). However, the E.C.J. has paid little attention to political statements by member states purporting to interpret treaty articles in the past. There is little to suggest the court will alter its stance, thus rendering the Edinburgh statement meaningless (Heilbronner, 1993). In any event, the regions' submission to the Inter-governmental conference of 1996 include rights of audience before the Court and thus, if accepted, could remove this barrier.

The status of subsidiarity as a legally enforceable concept nevertheless remains far from certain. Even if the concept was deemed as having legal effectiveness, the methods to determine which level of government was appropriate would be highly controversial. Thus any involvement in this area could be a political minefield for the E.C.J. The only courts previously given the opportunity to use this concept have side-stepped the issue (U.S. Supreme Court and German Federal Constitutional Court). Could it have been for this very reason? That the German Federal Constitutional Court did not use it at the height of its judicial activism in defence of the Länder (see Appendix I.4), suggests that even a highly political court, such as the E.C.J., may decide this particular potato is just too hot.

The legal future of the concept in the Union may have a great deal to do with how judicially active the E.C.J. perceives itself, if and when the issue is raised. The E.C.J. has surprised lawyers and politicians previously, not least with the Francovich decision when all were declaring the end of the E.C.J.'s tradition of judicial activism.* It could do so again. If it does, much will depend on the E.C.J.'s

* *Francovich v Italian Republic*, E.C.R. [1991] I-5357

attitude towards the Edinburgh declaration and its interpretation of Article A of the T.E.U.

That the concept's legal role is uncertain does not render it unimportant. Indeed, its inclusion in the treaty may have an effect far more profound than as a legal method of defending member states/regions', etc. against Union "aggression". Potentially, subsidiarity offers the basis of a European constitutional jurisprudence. Kleimt has argued that, to be effective, subsidiarity must be written into the treaty in several specific ways, including rights of secession for territorial units (using the successful example of Jura in Switzerland) (Kliemt, 1993, p12). Nevertheless, as it stands at the moment, subsidiarity may give us a basis on which to build the constitution of Europe, free from the prejudices of the Nineteenth Century nation-state system. It gives the opportunity to discuss a more effective system of government for Europe, without relying on the legitimacy of the nation-state as its theoretical anchor. This offers a substantial ideological platform for regions (and indeed other levels of governance) to claim validity in their own right, without being perceived as merely sub-divisions of the state or supra-national bodies.

2.6 Conclusions - Subsidiarity and the new Constitutional Debate

The enduring effect of the subsidiarity debate may therefore be a political one. Subsidiarity gives a post-nation state paradigm in which territorial government can be discussed. Although the specific criteria for the division of power may still be very contentious, the subsidiarity concept removes the need to legitimate other forms of government in relation to the nation-state. Instead, legitimation is based on population interests, however vague this concept may be. This applies to supra-national bodies, such as the Union itself, but of more relevance to this thesis, to sub-national authorities or areas, specifically regions.

The discussions surrounding this issue have given greater impetus to decentralisation claims in Europe, although they are not strictly couched in these terms anymore.* The acceptance of the idea that people should be governed at the lowest level possible, gives no special status to the nation-state. In this way subsidiarity has updated the ideas of decentralisation used in earlier generations. No longer must arguments be made for the devolution of power from the nation-state. Instead the nation-state itself must defend its legitimacy against claims by communities demanding that control over large areas of policy should lie with them.

The enduring legacy of subsidiarity within the E.U. may be the final removal of the nation-state as the paradigm within which all other constitutional mechanisms must be framed. It may give the theoretical basis on which a more stable Europe, not centred around the nation-state concept alone, can be constructed.

It is into this new constitutional environment that the regions are emerging. The importance of the subsidiarity to the regions (and thus this thesis) is in removing the need to see them in terms of nation-state. By using the subsidiarity concept explored above, the regions can claim to be the legitimate unit for the undertaking of certain state functions.

The development of post-war government has seen the creation of a plethora of sub-national units of government, both democratic and non-democratic, in the name of decentralisation. However, these changes have been achieved under the assumption that sovereignty still lies at the national level alone. Other units gain their legitimacy from the national tier and are limited by it. Regional interests are invariably seen as beneath "national" ones while international relations have

* See for instance the Euskadi nationalist (P.N.V.) party's proposals for a new Euskadi "state". They do not claim a "nation-state" in the traditional terms. This is also true of the recent campaigns of the Scottish Nationalist Party, who have used as their slogan "independence in Europe".

remained exclusively under national control. This has made any study of the region as a new type of authority difficult. For this reason, the regions have often been seen as another type of local authority, merely operating within the national paradigm and regarded as inferior to it.

It is my contention that this image is wrong. The region is a *sui generis* form of non-sovereign authority, filling a gap in the territorial organisation of government, which the nation-state can never plug. This is acknowledged by even the most unitary E.U. member-states through the existence of non-democratic regions. This recognises the need for the regional level, though denying it the democratic element demanded by subsidiarity. The principle of subsidiarity gives these areas a legitimacy untarnished by fears of "micro-nationalism", which many increasingly self-confident regions have grasped.

In the rest of this thesis the emphasis will be on this model of governance. The focus of part II is the regions' practical challenge to the nation-state's primacy. The right of the regions to exist can be based, using subsidiarity, on their status as the most appropriate structure of governance for many policy areas. This thesis recognises this and studies regions, as far as is possible, without reference to the national paradigm.

3 - The Rise of Regional Government since 1945

3.1 Introduction

The fifty years since the Second World War have witnessed the rapid evolution of regional government in Western Europe. Why such a development should occur has been the subject of much academic debate and the issue remains a controversial one. Nevertheless, it is clear that the erection of regional structures reflected the belief that the state was unable to address all the interests of its population on a national basis. Some examples of the practical difficulties experienced by centralised nation-states are explored below. It was a combination of these difficulties which led to the growth of the non-sovereign region. The use of this level in resolving some of these problems is the theme of this chapter.

The role of the regions in enhancing democracy is examined first. The collapse of democratic regimes in the 1930's, and the ensuing carnage of World War II, had a profound effect on regional government. The ease with which democratic regimes were removed throughout Europe was seen by many as a system failure. By placing too much power potentially in the hands of too few, the system had failed to protect the constitutional order. One solution was perceived to be the splitting of power along federal or regional lines. However, some regional movements turned to the right during this period and a few actively advocated the nazi cause. This enhanced the image of regional government as reactionary and anti-democratic, making the regionalisation of government in some states markedly unpopular in the post-war years.

In the second section, the thorny issue of Regional Identity is explored. The failure of the nation-state to address the interests of non-nation-state populations

has, in recent years, brought the regional issue to the forefront of politics. In almost every member-state of the EU and beyond, organisations have challenged the legitimacy of national authorities to exercise sovereignty over significant areas of their territory. These groups and the "rise" of regionalism they represent, have played perhaps the principal role in the development of the regional government itself. Regional autonomy presented a political outlet for such non-national identities without necessitating secession from the nation-state.

The development of "functional regionalism" within the nation-states of the EU is the final element examined in this chapter. This concept, gradually accepted in most states, recognised the need for administration between the local and national levels. In consequence a plethora of regional units of management, often lacking democratic accountability, were created. By developing these functional regional units, nation-states tacitly accepted their failure to administer the entire territory as a single unitary entity. By resorting to a middle level of territorial management they further recognised the need for a regional tier. The failure to make these new bodies regionally accountable created further stresses within the system. This often gave further impetus to the regional movements themselves.

A combination of these factors has led to the growth of the regional tier throughout the EU. The widespread nature of this development was such that, by 1987, democratic regional government existed in eight of the twelve E.C. members. Of the other four, two had developed a regional management tier. The question remains, however, are they merely a method of shoring up the nation-state or do these units exercise meaningful autonomy to address the interests of their regional population?

3.2 Democratic Interests

In chapter two's discussion of subsidiarity the concept of democracy closer to the population was touched upon. The virtues of smaller government have long

been emphasised by libertarians (see for example, Mill & Smith, page 35 above). In territorial terms this means being "close to the people" it claims to represent. This need for proximity refers both to population and territory. The larger the population under the control of a single government, the less responsive it will be to the needs of individuals or smaller groups. Equally, the larger the territory under the control of one authority the less likely it is to respond to the needs of a section of it. Through smaller units of territorial government there will exist a closer relationship between the individual and the state. This in turn leads to an increase in democratic accountability, responsiveness and involvement. By devolving authority over certain policy areas to a lower tier of government, democratic legitimacy will be enhanced.

A further argument in favour of dividing sovereignty to regional government recognises the dangers inherent in placing an excess of power in few hands. This argument, popular in the United States, advocates the use of powerful regional units to reduce the authority vested in the national level. This further layer of democratic legitimacy and power acts as a bulwark against authoritarian or over-powerful central regimes. This argument came to prominence during the creation of a regional tier in much of post-fascist Europe. The following section assesses the claims of democratic enhancement that have accompanied calls for regional government and the effect these ideas have had on regional autonomy itself.

3.2(a) Regionalism and Democracy

Governance by the lowest level possible increases the responsiveness of government (Mill, 1861).^{*} By placing government within a regional or local context, issues pertaining to the specific geographical area can be debated more fully. In a "national" context local or regional issues can be swamped beneath a multitude of more general concerns. When national elections are held, the dominant issues will be those common to the entire national territory, or issues predominant

^{*} For a general survey see Smith, 1985, pp19-30

in the more populous regions. In either case the issues of concern in other localities are less prominent. This leads to a government responsive only to certain issues and specific territorial concerns. Although “national” issues may be important, regional concerns must also be addressed if the government is to truly represent the electorate's wishes.

The existence of regional or local tiers allow the policy choices of electors in smaller territorial units to be expressed more clearly. Policy preferences differ from individual to individual and also from area to area. Thus, decentralising the decision-making powers of government to a lower level will reflect more accurately the policy priorities demanded by that population. Without this, national politics will dictate the policies pursued at regional level. In a worst case scenario, some regions of a democratic nation-state may vote for a set of policies diametrically opposed to that supported by more populous areas. In a unitary state this will result in the policy priorities of the more populous areas being represented in the national government, and thus applied nationwide, while the opinions of less populous regions can be disregarded.

This scenario is clearly demonstrated in the UK, where large areas of the territory within the UK express preferences for social-democratic policies (e.g. Scotland, N.E. England and Wales) yet policies supported by other, more populous, regions (e.g. S.E. England) are imposed upon them. This can lead to the policy preferences most suitable for one region (generally the centre) being applied over the whole country despite different policy preferences existing elsewhere. This reduces the responsiveness of the democratic system to demands from the populace, and detracts from the democratic nature of the entire system. In addition this can cause increased intra-regional tension within the nation-state, as one area feels its wishes are being subordinated to those of another.

The increased responsiveness created by a regional tier brings with it an increased level of democratic accountability. Regional/local tiers of government can be held more accountable for regional or local policy decisions than can a national

seat of authority. Regional administrative decisions and management may not be tested at the ballot box if the national electorate regards the regional policy error as irrelevant in terms of national issues. Thus, a democratic regional tier will lead to a more accountable form of government. The more centralised a system of government, the less accountable to the electorate it will be.

A further step from this theory is that advanced by those such as Jefferson and De Tocqueville (de Tocqueville, 1835). This could be termed the classic, federal theory of decentralisation. According to this thesis, a devolved system of government not only encourages accountability, but actually acts as a defence against authoritarianism. Jefferson described the defence of states' rights under the U.S. constitution as "the surest bulwarks against anti-republican tendencies" (Smith, 1985, p26). This idea of decentralisation protecting liberal democracy is referred to as the "countervailing power" argument, by Wolman (1990, p35). However, he wrongly dismisses it as being concerned with the control of central government rather than the independence of regional or local government.

It is possible that central government could theoretically be subject to limited control by local or regional government, but this is rather unlikely. In practice, the most common "federal" method of control, exercised over the central state in regionalised systems, relies on the autonomy of the regional units in certain specific spheres being able to limit the authority of the centre. A central state lacking authority over enforcement institutions such as the police, the judiciary or even the army (as in peacetime Switzerland) will find an authoritarian takeover much more difficult to achieve than one where central control over these areas is total. This theory of a "countervailing power" is most evident in the constitution of the Federal Republic of Germany, although it was originally based on United States practice. As a direct result of the lessons learnt from the nazi takeover in 1933, the post-1945 West German state left control over the police and judicial systems to the regional authorities (the *Länder*) (Schweitzer et al, 1995).

The perceived democratic benefits of decentralisation have been severely criticised by the likes of Riker and Fesler. They argue that Mill's view of individual liberty being logically applied to a group or community is fundamentally flawed. The liberty of the community (or in this case, the region) obviously guarantees the community's freedom against encroachment from the centre, however, it does not follow that this will assure the liberty of the individual. As Riker has shown in the U.S., individual liberty can be restricted within a community or region against the wishes of a central authority. His example of the southern states of the U.S.A. enacting racist legislation against the wishes of the federation during the Nineteenth Century is certainly persuasive (Riker, 1964, p142). The fact that this continued up until the 1960's makes such an argument even more apposite.

Fesler has also cast doubt on the assertions that decentralisation will bring about an increase in accountability and responsiveness in general. Smaller units of government will be more open to domination by local elites, according to his counter-argument. If this is the case, then the regional government will be responsive to the demands of regional elites and accountable only to them (Fesler, 1965, p543).

However, is it fair to describe these as flaws in the concept of decentralisation or rather flaws of government common to most liberal democracies? There can be no doubt that the federal system of the U.S. allowed the existence of laws abhorrent to the majority of U.S. citizens. To say that this was as a consequence of the regional system is another matter. If all governments from local to federal were covered by effective restrictions regarding human and civil rights, the racist laws of the South may have faced effective challenge. With reference to subsidiarity, effective enforcement of regional civil and political rights should perhaps be ensured by agencies at the national level. In contrast, the regions (and/or a supra-national tier) should possibly act as the watchdog of the federal level where issues of rights are concerned. The rights themselves should be universally applied across a territory encompassing an area far beyond the nation-state. To subject individuals to huge variations (and abuses) of civil and human rights between

nation-states, all in the name of "sovereignty", is as wrong as abuses by a regional tier. The difference is that the "hard-bordered" sovereign nation-state has no significant challenge to its authority, while a region may be subject to national control.*

That centralised national regimes do not necessarily observe human rights is amply demonstrated by the plethora of authoritarian nation-state regimes that continue to dot the globe. The German nazi dictatorship of 1933-45 is the most well documented example of centralised authoritarianism. Not only did this occur at the level of the nation-state, but the glory and unity of the nation was one of its central themes. Furthermore, in this racial state, the idea of decentralisation was not only an anathema to the system but was viewed as the enemy of the nation. The regime's view is likely to have been affected by the experience of the nazi takeover, where the last democratic bodies to survive and the only ones to seriously challenge it were the pre-1933 Länder (Craig, 1981).

That the weak devolved system of Weimar Germany failed to stop the nazi takeover, should nevertheless not be seen as a failure of decentralisation per se. By 1933, democracy itself was deeply unpopular and one wonders whether any constitutional system could have stopped the events of 1933. The nazi example nevertheless shows how a centralised system can deny democracy throughout a huge territory, in the same way as a regional unit within a decentralised system (e.g. the southern states of the U.S.A.). The difference is that in the later case, if one tier of government abuses its power, others exist to challenge it. Most importantly, no one level will control all the power necessary for an authoritarian takeover. A collapse of democracy at one level does not necessarily mean the end of democracy in the territory. There will remain reservoirs of democratic legitimacy at other levels, with constitutional authority to challenge the threat.

* There are numerous examples of this but 1994/5 witnessed mass executions of Muslims in Bosnia and Tutsi's in Rwanda. In neither case did the international community intervene (with the notable exception of unilateral French action in Rwanda).

Equally, criticisms that a regionalised government will be susceptible to local elites are certainly valid, but the same charge could apply to the national level. The domination of a government by an elite is a problem which exists in democratic systems of government from local to national. That such a dominance can exist at any governmental level suggests that the problem lies with the system of electing the democratic government, rather than the territorial organisation of the state.

The criticisms levelled against local/regional devolution are therefore valid, only to the extent that they apply to government in general. All systems of democratic government must guard against the domination of power structures by elites as well as the abuse of human rights by a majority. This can occur in the smallest town council to the highest multi-national organisations. To avoid it we need democratic systems devised to avoid minority domination and based upon rational norms of human rights. Such enforcement agencies could exist at the national level or higher. This is well beyond the scope of this thesis and is not an issue of territorial government.

3.2(b) "Internal" Fascism

In Germany, Italy, Spain and to a lesser extent Portugal, the regional issue has been to the fore in attempts to create a sustainable democratic system. During the 1930's the democratic structures in each of these states collapsed, to be replaced by authoritarian dictatorships. Each of the fascist dictatorships were able to topple the legitimate democratic institutions. Only in Spain did the attempt to do so result in violent resistance, and even here the forces of the democratic government were defeated by those of the authoritarian groups ranged against them. In Spain, significant numbers of the populace opposed the democratic regime with such vehemence that they were willing to fight for its overthrow. All other fascist takeovers were achieved by semi-democratic means. Though intimidation, etc. was part of the nazi arsenal, it cannot be avoided that the party that gained the most votes in the German elections of 1933 was the N.S.D.A.P.

The fact that several pre-1930s democracies had been overthrown by democratic methods, or at least with the support of large sections of the populace, was not lost on the constitutional framers of the new democratic regimes.* One of the prime objectives of the post-fascist constitutions was to make an authoritarian takeover impossible. With this in mind, a federal or regional structure was seen as desirable. As explored above, the federal argument for decentralisation sees the existence of legislative bodies, with control over certain state institutions, as a counterbalance against the power of the central state. In addition, the argument advanced by those such as Fletcher (Daiches, 1979) that a decentralised state was less able to engage in war than a centralised nation-state was a further reason for considering a federal or pseudo-federal system. As in the early 18th Century, when Fletcher wrote his work, the Europe of the late Twentieth Century was tired of war.

With this in mind, regional devolution became an integral part of the constitutions of the new democratic states. The time differences between the establishment of these post-fascist states was, of course, vast. The constitutions of Germany and Italy (1949 & 1948) pre-dated those of the Iberian post-fascist states (Spain, 1978 & Portugal, 1976) by almost thirty years, but the emphasis placed on the regional devolution of power is strikingly similar. This is not to say that regional devolution has been implemented in all these states. The Italian regional system was only fully implemented in 1970, while, to date, only the two Portuguese offshore regions have been established.†

It was all very well for the framers of the new constitutions to wax lyrical on the benefits of split sovereignty. It was something completely different for the

* For the Italian constituent assembly debate see Cassese & Torchia, 1993. For Spain see Montserrat, 1993. A description of the arguments surrounding the German debates on the Basic law is contained in Paterson & Southern, 1991, pp144-146. The practical expression of Portugal's commitment to democratically decentralised government is contained in article 6 of the Portuguese constitution (Portuguese Government, 1989).

† The islands groups of Madeira and the Azores have the status of Autonomous regions. The Portuguese Constitution also provides for the creation of several municipal regions, but as yet this has not been implemented (Portuguese Constitution, 1989 revision, Section VIII Chap. IV).

national authorities to implement such ideas once some degree of normality had returned. Further incentives were needed to force the hand of the re-constituted national governments. These can be divided into two broad categories:

1: The role regions played in opposing to the regime

2: Regional nationalism (explored more fully later)

The first of these factors was vital in the cases of Germany, Italy and Spain. In all these states, regional institutions had either attempted to stop the fascist takeover or, alternatively, the regional movements had opposed the authoritarian regime during the time it was in power. Either way, moral arguments for a degree of regional devolution helped to back up the intellectual case for regional government.

In Germany, as already noted, the *Länder* of the Weimar regime were the longest surviving opponents of the Nazi regime. In states such as Hamburg, the strong regional & socialist identities acted as a focus for resistance to the regime. (Indeed Hitler never visited this rebellious city, for fear of assassination). The fact that the Weimar system of regional devolution was so unbalanced (in favour of the centre) was perceived as a major reason for the failure of the *Länder* to act as an effective check on authoritarianism. This encouraged the Allied powers to press for a stronger federal element in the post-1945 Basic-Law (Schweitzer et al, 1984, p180).

In Italy, anti-fascist partisans had operated in most of the Mediterranean islands. In Sardinia, for instance, the fascist regime was overthrown prior to allied occupation. The lack of central control over Italy in the post-1945 chaos meant that in many cases the regional resistance movements presented the new Italian

government with a *fait accompli*. They had therefore no choice but to grant special concessions to these areas or risk secession (Spott & Wieser, 1986, p222). In response to this, four "special" regions were created, each negotiating its own constitution or "statute".*

It was in Spain, however, that the regional communities played the greatest role in the struggle against anti-democratic forces. During the civil war the Basque & Catalan governments were granted autonomy and fought a bitter struggle against the Nationalist forces (Gonzalez, 1987, section 2). This opposition came at a heavy cost in lives. With the final fall of Barcelona, and thus the end of the republics of both Catalonia and Spain, many Catalans and Basques fled across the border.† During the fascist regime itself, the Basques and Catalan again suffered heavily. Both languages were banned in public and all the vestiges of Catalan & Basque culture and institutional independence were removed. However, the Basque and Catalan regions became a focus for the resistance to the regime. This was mainly peaceful in Catalonia, but the Basque response was violent (Clark, 1980).

The success of the Basque terrorist group (E.T.A.) in damaging the fascist regime must not be underestimated. The attacks on the fascist authorities seriously undermined the government's attempts to present Spain as successful and settled under the fascist dictatorship. Furthermore, the assassination, by E.T.A., of Franco's second in command‡ almost certainly spelt the end of the dictatorship in Spain (Clark, 1980 & Minority Rights Group, 1985). With his replacement dead, Franco was now left without an heir. The grooming of Juan Carlos proved to be a fatal mistake for the fascist hierarchy.

* The four "special" regions created were Valle d'Aosta, Sardegna, Sicilia and Trentino-Alto Adige.

† The Catalan Generalitat remained a government in exile for the entire period of Franco's dictatorship.

‡ Admiral Carrero Blanco, Franco's Prime Minister - 1973

The role regional governments and movements had in overthrowing authoritarian regimes gave great weight to claims for regional autonomy after democracy had been restored. By challenging the previous authoritarian regimes the regional movements acquired a moral claim for autonomy and in some cases presented the government with such severe practical problems that their demands could not be ignored. The success of these opposition movements against brutal regimes had been notable. If the new democracy failed to deliver change, the regional movements were liable to damage the legitimacy of the fledgling state. If the country was to continue as a unit, regional concessions would have to be granted.

3.2(c) "External" Fascism

The effect of the nazi period on regional development was profoundly different in France and Belgium compared to the experiences recounted above. In these states, the post-war consensus saw regionalism as an ally of authoritarianism rather than democracy. The actions of some regionalist groupings, in allying themselves with the nazi takeover confirmed the view that regionalism was a reactionary concept. It was the national level which was seen as resisting the fascist occupiers. This was a great over-simplification, but political expedience meant post-war French & Belgian politics would perpetuate this myth.

In both of these countries, sections of the regional movement publicly allied themselves with the nazi regime. In return for this support they received a degree of "autonomy". In Brittany this led to the creation of a Breton "army" and assembly, (both pro-nazi and having little support or independence) (Fortier, 1980, pp.145-146). Some Flemish nationalists also followed this path and supported the nazis as a means of increasing their powers against the Walloons (Cullen, 1990, p350). This association between some regionalist groups and the occupying nazi forces had a detrimental effect on moves towards regional decentralisation in the post-war period. Rather than the centralised nature of the state being seen as a contributing

factor in the rise of fascism, it was the regional bodies themselves which were seen as supporting the nazi occupation.

This was, of course, a gross over-simplification. The membership of the Free French Army movement "Breiz Atao" (free Brittany), far outnumbered the eighty members of the nazi Breton "army" (Beer, 1980). In the Auvergne, where the maquis fought their fiercest battles, and suffered their heaviest losses, the motto of the resistance was *à Nous Auvergne* reflecting the regional roots of the movement. Nevertheless, in the eyes of the populace, collaboration could be neatly associated with the regionalist movement. Such an association was in the interests of the new leaders of France, as it avoided embarrassing questions about the occupation, that even today are rarely addressed.

The post-war perception that regionalism was a reactionary concept severely dented calls for regional decentralisation in these countries. There was little support for creating a structure which many considered as being a threat to the democracy of France (the fact that the Vichy regime had dabbled in regional administration did not help matters). Nevertheless, even in those states where arguments for regional government received a serious setback, economic issues soon brought regionalism back to the fore.

3.3 Interests of Identity

A "sense of place" may be a very unscientific concept, and somewhat hard to quantify, but this nevertheless has had a profound effect on the regional issue. Indeed, it could be argued that this abstract notion has had the single most important influence on the development of a regional tier. With the "self-determination" of peoples recognised as a fundamental right in the U.N. Charter (U.N., 1948, Articles 1,55 & 56), and later in the International Covenant on Civil and Political Rights,*

* The UK is a signatory of this Covenant.

(I.C.P.R., 1966, Articles 1.1 & 2.2) identity has assumed a legal persona. Although originally interpreted as applying only to colonial territories, a wider view of applying the principle generally has emerged since the 1960's (Harris, 1983, pp.95 & 101 nt.5). Recently, Rosas has argued convincingly that there now exists a right of internal self-determination (Rosas, 1993). In this scenario, the emergence of a political will in favour of regional government has far reaching consequences for International Law.

Since the 1960's it has become increasingly obvious that the interests of many populations, as regards territorial identity, have not been completely fulfilled by the nation-state paradigm. This decade was marked by an apparent upsurge in sub-nation-state identities, in conflict with the nation-state itself. This has continued to be a feature of European politics. The following section briefly evaluates this "new" sense of "micro-nationalism" or regionalism and its impact on regional government.

3.3(a) The "Rise" of Regional Identity

There can be little doubt that the rise of regionalist or "micro-nationalist" movements throughout Western Europe has played a large part in the rise of regional government. Although persuasive arguments exist for the establishment of regional government, it was the perceived threat of regionalist movements to the existing political orders that persuaded centralised nation-state regimes to act (Smith, 1985, p48). In extreme cases, regional political parties became so powerful that regional devolution was inevitable, the question was only how it should be achieved and the form it should take. In others the regional movements have been less powerful and their impact more subtle.

The recent literature on Western European regionalist movements is immense.* However, unlike academic interest in this subject, regional identities

* See for example; Lawrence, 1973; Rokkan & Urwin (Ed.s), 1982; Foster, 1980

within the nation-states of Europe are not a recent phenomenon. Despite the best efforts of many centralised regimes to homogenise the territory under their control, Europe is littered by regional/national identities that do not correspond to nation-state borders. In France, there is a patchwork of regional affinities that correspond to the pre-1789 provinces, as well as those which cross into neighbouring nation-states. Similarly in Germany, Italy, the United Kingdom, Spain, Belgium, Portugal and the Netherlands there exist strong regional/national identities within the present nation-state. In many cases these are based on language such as Occitania in Southern France and Euskadi in modern Spain.* In others, such as Bavaria and Scotland, affinity is to a previously independent state and the distinct institutions and culture that remain. A further group includes areas such as Catalunya and Bretagne where regional/micro-national identity is due to a combination of the above (Petrella, 1980). These regional identities are no more or less organic than the "nations" explored in Chapter one. However, like existing nation-states, the populations of many regions have a strong identity, often in parallel with national affinities.

If micro-national or regional identity is not new then neither is support for regional movements and resistance to nation-state regimes. After the unification of Italy (1860-70) regional revolt in areas of the new nation-state was common. The Piedmontese control and centralisation imposed on the fledgling state caused its citizens to turn to violent rebellion (Gildea, 1987, p197). Similar violent methods had been used in Scotland (the last being 1820) (Ellis, 1970), Spain (Gildea, 1987, p229) and France (Rudé, 1964, pp.139 & 144). The most successful of these violent uprisings was of course in Ireland, where the insurrection led to the secession of part of the United Kingdom. Though, even in this case, most of the population supported the option of regionalism rather than outright secession until the UK government's insensitive handling of the 1916 rebellion.

* The E.C. Sponsored, European Bureau of Lesser Languages, based in Dublin, recognises 40 languages in Europe in addition to the nine official languages of the EU. In total 50 million people (out of Europe's population of 344 million) speak at least one of them.

By the mid-Twentieth Century, such regional unrest seemed consigned to history. Regional identities, though still in existence were not a political issue. Regional organisations were concerned more with specific issues such as retention of local culture and protection of regional economic interests, than with any wider political picture. In Occitania, for example, many organisations successfully campaigned for the defence of the Occitan language but these groups had little or no interest in political affairs. The groups that did put a political complexion on regional issues were generally seen as parochial or eccentric and enjoyed little support. These opinions were often well founded as the few regionalist organisations that did have political views, generally harked back to a mythical and reactionary society. Those political parties or movements campaigning on a platform of regional government or autonomy were very much peripheral to the political debate. The nation-state was perceived by most people as the paradigm of territorial organisation in the political sphere.

Since the 1960's, the debate surrounding regional questions has undergone dramatic change. It is this metamorphosis of opinion that is seen as the "re-awakening" of regionalism. However, rather than an increase in regional affinity, there seems to have been a widespread politicisation of the whole territorial question. In the 1960's, regional demands became distinctly political. The focus became not a single issue such as language or culture but was instead focused on the achievement of some degree of regional control over regional affairs.

Increasingly Western European regional movements turned to the democratic process to achieve their goals. This does not mean that the success of regional parties is necessarily a good indication of support for regional government. Indeed many regional parties have been spectacular failures, most notably those standing in French elections (Beer, 1980), with the exception of Corsica* (Boisvert,

* In the Regional elections of 1982 the Corsican regional parties achieved around twelve percent of the votes cast. This placed the moderate U.P.C. as the joint second largest party (seven seats) in the assembly.

1988). This certainly does not seem to reflect popular opinion on the issue. According to opinion polls, 55% of the French population support an increase in the powers of regional government, despite the minimal support for regional parties (Le Monde, 13-14/10/91). Nevertheless, the notable success of some regional political parties such as in Belgium and Italy has given many nation-states little choice but to compromise.

3.3(b) Consequences of Regional Movements

The politicisation of regional questions has had one of two effects. Depending on the strength of the regional movement in question, centralised states have found it necessary either to create entirely new systems of regional authority or to democratise existing regional structures.

In the case of Catalunya and Euskadi, the nationalist parties (the ICU and P.N.V. respectively) were, and continue to be, the largest in the regions concerned. It was therefore almost impossible to ignore their demands for autonomy in a democratic state. In Belgium too, moderate nationalist parties grew at such a rate that there was little choice but to create some sort of regionally devolved structure as they demanded. Failure to do so would have endangered the existence of the nation-state, and even threatened violent consequences. In other states, however, the process has been more subtle.

In Scotland, the Nationalist party (S.N.P.) has never exceeded 30% electoral support at a general election, yet their successes have had a profound effect on the politics of the country. Fear of secession forced all the UK parties to support devolution in the 1970's. In the case of the Liberal party, this had long been their policy, in contrast, for the Conservatives to accept the devolutionary principle required a major policy change. Labour in turn were forced to re-discover a policy which they had previously championed, but had conveniently forgotten when in power. Without this shift of stance, a continued drift of support to the nationalists was regarded as inevitable. Although support for regional government existed prior

to the 1970's, it was the success of the regionalist party (in this case the S.N.P.) which forced political parties to alter their stance (Marr, 1993).

In France, regionalist movements have had little or no direct electoral impact, yet they have still succeeded in getting the reformed French left to accept at least some of their demands. In Scotland, the UK parties adopted a regionalist stance to draw votes from the nationalists. In contrast, the French P.S. (Parti Socialist) incorporated several regional groups pressing for democratic decentralisation and thus increased their base of electoral support (Keating & Hainsworth, 1986, pp.43-50).

The major difference between the Scottish and French examples is that the Conservative government of the UK reneged on its commitment to give "something better" to the Scots than the proposed assembly of 1979. Instead it has become staunchly opposed to any form of democratic decentralisation to the Celtic fringe or England. Across the channel, the success of the P.S. in the 1982 elections led to an immediate implementation of their regionalisation policies (Schmidt, 1990, p110). The success of this policy was evident when the right wing opposition, which had vehemently opposed the reforms, later complained that they were being implemented too slowly. Furthermore, when the right returned to power, the only substantial change was to change the name of the *Commissaire de la Republique* back to that of *Préfet* (Schmidt, 1990, p112)!

The failure of the UK opposition to topple the Conservative government and thus implement a program of regional decentralisation in Scotland and Wales does not mean that the "rise" in regionalism has not also had a profound effect in the British Isles. Now one cannot talk about any issue concerning Scotland, without someone relating it to the constitutional question. Equally, without the heightened profile of the Scottish and Welsh issues, one doubts whether the English regional question would even have been seriously considered.*

* It is now party policy for both the UK opposition parties (Liberal-Democrat and Labour) to create an English regional structure.

Throughout Europe, the politicisation of regional issues has changed the parameters of debate. No longer can the nation-state be seen as the only legitimate outlet for political identity. Instead, the constituent regions of Europe have achieved higher prominence, and even in nation-states such as the UK, where democratic regional reform has not been introduced, the "rise" of regionalism has certainly placed the territorial legitimacy of the nation-state on the agenda.

3.4 Functional Regionalism

Democracies in post-war Europe have also experienced regional strains unconnected with issues of regional identity. Notably, the growth of concepts such as welfare provision and planning gave an unexpected impetus to arguments for regional decentralisation. The growth of these fields led to a re-assessment of the role of both central and local authorities. From this change in roles, traditional levels of government (i.e. local & central) were often perceived to be unsuitable. For this reason, central governments were forced to introduce new regional tiers to cope with new responsibilities. By creating such levels of authority, the central authorities recognised the need for regions, *de facto*. However, the authorities thus created were un-democratic, centrally appointed, bodies. Such organisations, unaccountable to the population they control, raise issues of democratic accountability (Smith, 1985, pp.51-52).

3.4(a) Economic Regionalism

The growth of economic planning in the post-war period had far reaching effects for the development of regional government. The majority of Western government, by following the French indicative model, created the need for some type of regional structure (Sharpe, 1993a, pp.12-14). This form of planning favours a regionally structured, territorial plan. The consequence of this was a need for regional organisations to draw up and administer these plans. Where no regional tier of government existed, regional units had to be created.

The French model, developed in the 1950's, led to the creation of regional economic areas. Without these, a realistic plan could not be developed, as the needs of one region differed markedly from those of another. In a parallel development, *forces vives* movements sprang up. These bodies created a regional co-operative framework for politicians, business and employee organisations among others. The government response was to "tame" these bodies by incorporating them into the new regional structure. This was achieved in 1964, through the establishment of the C.O.D.E.R. (*Comité d'Expansion Économique Regionales*) regional development committees. These boards (to replace the *Sociétés de développement régionales* - S.D.R.s, established in 1955) consisted of 25% elected representatives, 25% government appointees and 50% professional nominees. Their tasks were minimal and consisted mainly of advising the regional prefect on regional portions of the national plan (Keating & Hainsworth, 1986). Despite the fact that the government appointed Prefect took all the important decisions, there was, by 1964, a definite regional structure emerging in France. The regional prefect (established 1964) was the executive of an administrative region (one of twenty two *Conscriptions d'action régionales* - C.A.R.s), advised by the region's C.O.D.E.R..

In the UK, Italy, Germany, Belgium and the Netherlands a regional element was established as a vital element in the economic planning system, although the extent of democratic involvement varied widely. Even in Spain, a degree of indicative planning was introduced by the fascist regime (Richardson, 1975). In Germany, Belgium and the Netherlands existing tiers of government (the *Länder* and provinces respectively) were used as the regional elements in the national plan, but in the UK and Italy this was not possible. Although, in theory, the Italian state was designed as one incorporating a number of devolved regions, in fact only the five "special status" regions had been established (see Appendix I.5). In the UK, of course, no such regional devolution was even planned.

The regional component of the Italian national economic plan was supplied by Economic Planning Committees (C.P.R.E.s) during the 1960's (Zariski, 1987, p128). In the UK, this was achieved with the creation of eight English planning

regions and one each for Scotland, Wales and Northern Ireland. The institutions in these regions closely mirrored those developed in France, with a nominated (and advisory) representative council and an executive board of civil servants. These were to advise and report on the regional portion of the eventual national plan (Keating & Rhodes, 1979, p5). The common feature of the regional structures in France, Italy and the UK was the advisory nature of the democratic element. The centre was loathe to lose power to a sub-national body.

In the examples of Germany, Belgium and the Netherlands, the existence of a tier capable of contributing regional input to the national economic plan meant these authorities gained planning authority. The growth of national planning had little lasting impact on the structure of the states, but did enhance the role of the regional level. In unitary states, however, the effect was two fold. The central government recognised the need for a regional authority, and created the regional institutions necessary for it to function. This in turn gave further impetus to regional movements and enhanced regional identity. More importantly it invited the question, if regional authorities are necessary, why are they not democratically accountable?

3.4(b) Welfare & Service Regionalism

The use of economic management in post-1945 Europe enhanced regional identity and created strains on some unitary states which proved difficult to sustain. In semi-regionalised states, such as the Netherlands and Belgium, the tensions were less evident, while in smaller states, such as Denmark, the regional planning episode had next to no impact whatsoever. In these countries, and indeed many of those unitary states already mentioned above, regional issues were raised by the growth of the welfare state and increased pressure on governments to provide diverse services at optimum levels of efficiency and accountability.

In Scandinavian countries concern was expressed at the centrist nature of welfare provision. The only Scandinavian E.C. member (at that time), Denmark,

reorganised the regional level as a direct result of this concern (Hansen, 1993, p312). Prior to the reforms of 1970, the regional level had been controlled by the state and headed by the Prefect. The existence of such a regional administrative tier again gave ammunition to those wishing for democratic regional devolution. In the event this tier was democratised and granted responsibility for several welfare and health services (see appendix I.2).

The situation in Belgium, the Netherlands and the UK was less clear cut. Although welfare and service regionalism occurred in these countries it is only in Belgium that regional governments emerged. Even in Belgium, it was the ethnic cleavages and regional identities that were the catalysts for regional devolution, not welfare or service issues.

The need for a regional tier in the N.H.S. has been accepted in the UK since 1948. Although the current boundaries are to be enlarged, the new authorities still accept the need for a regional level in health service provision (The Guardian, 21/10/93). Regional levels also exist in the organisation of the English police forces, where several local authority jurisdictions are under the auspices of one police authority. Other regional service provisions included the, now defunct, Regional Water Authorities, although the newly privatised companies remain regional. Regional offices and field agencies of government are also evident throughout the UK, as Keating and Rhodes show in their study of the W.Midlands (Keating & Rhodes, 1979). They discovered the Ministry of Agriculture, sections of the dept. of Trade and the then Dept. of Industry, as well as the Dept. of the Environment, all operated regional offices.

In England, this has not led to a demand for democratising the regional tier of government. One reason for this could be the non-coterminous nature of their territorial boundaries. Although the regional planning boundaries have often been used in discussions surrounding English regionalism, they are by no means universally accepted (Sharpe, 1993b). The powers afforded to these units, at least until recently, have been such that they are generally ignored by the population. A

combination of these factors may have led to their effects on the English regional debate being neutralised.*

This is not the case in Scotland or Wales. In these territories the existence of fixed and mostly non-contentious borders gives a greater regional identity to the established deconcentrated authorities. This is heightened by the existence of the "Offices". The Scottish and to a lesser extent, the Welsh Office, exercise authority over a diverse range of policies. Whereas in England these powers will be distributed through Whitehall, or even to their regional offices, in Scotland and Wales these are, to a large extent, transferred to Edinburgh or Cardiff (perhaps more importantly, the population perceives this to be the case) (Constitution Unit, 1996a). The regional persona of these deconcentrated government bodies is much higher than the regional offices in England. This in turn serves to highlight the lack of direct democratic control over them.

In the Dutch case, the situation is reversed. Local loyalties are very much with the province, but it is increasingly clear that this level of local government is under pressure. The Dutch practice of creating operating areas for service provisions, with no relationship to each other, is not dissimilar to the English model and, again, it emphasises the need for a tier of administration above that of the provinces (Toonen, 1993). The debate in the Netherlands on this topic has continued for years. Several attempts to reorganise the regional tier have failed.†

3.4(c) Functional Regionalism and Accountability

The existence of regional institutions to govern economic planning, welfare or services has given further impetus to calls for democratic regional government. By setting up these sub-national bodies, the central authorities have accepted the

* The present UK Conservative government restructured the regional administrative system (on efficiency grounds) by establishing a common regional structure throughout England. English demands for regional government would seem to be stronger in the wake of this.

† The last attempt was in 1977; see Netherlands Ministry of Foreign Affairs, undated, p35

efficiency arguments of decentralisation. By creating them at a regional level they have conceded the need for this tier to exist. If this is accepted, then it follows that such regional bodies should be directly responsible to the regional population. This effect is heightened in areas such as Scotland and Wales where a large amount of discretionary power is held by the "Offices" and their associated Quangos.

By creating these regional institutions in an effort to deconcentrate power, the central authorities are accused of failing in their democratic duty. If regional institutions are necessary, as the governments of France, Italy, the UK and Denmark have accepted, it is reasonable to suggest they should be democratically accountable. In the cases of Italy, France and Denmark, this argument proved too strong. Only in the UK has the central government refused to make such regional institutions democratic. This failure of the British government to address regional unrest, especially in Scotland and Wales, continues to put strain on the relationship between the constituent parts of the UK

3.5 Conclusion

The development of regional government in Europe has not been a simple process. Several factors have combined to pressurise central authorities into decentralising their nation-states. Underlying all these developments, however, has been the failure of the centralised nation-state to adequately represent the interests of a proportion of its population. With a devolved system of government, more of these interests can satisfactorily be addressed.

The interests of democracy have not been fulfilled by the centralised nation-state. Authoritarian regimes were created throughout the European nation-states of the 1930's and it needed World War Two to restore democratic systems. In a regionalised system, such a process is perceived as less likely, with power being devolved to several tiers, rather than being concentrated in one all-powerful level.

In a similar vein, the democratic aspirations of self-determination have not been addressed by the centralised nation-state. The identities of the population are only partially represented by the nation-state, if at all. The politicisation of this in the 1960's has led to the increasing calls for self-determination or *autogestion* (literally self-management in French) now evident throughout the nation-states of Europe. These interests are increasingly not expressed through demands for nation-state status, but rather for regional autonomy within the wider state and the European Union.

Finally, centralised nation-states have had increasing difficulty in fulfilling the economic and political interests of the population, especially in the areas of welfare and service provision. The need for a regional tier (and indeed lower forms of governance) has now been accepted by all central governments. If such levels are created but are not accountable to the region they govern, then this leaves them open to claims of being undemocratic, adding further fuel to the regionalists' cause.

The current regional impetus in Europe has been created through a combination of the factors listed above. This is certainly not to say that the region should be the only, or indeed the most important, level of government. This would merely recreate the problems of the "hard-bordered" nation-state explored in chapter one. Using the principle of subsidiarity, it is clear that certain functions and tasks are best performed at a regional level. From both a functional perspective and to represent the interests of the population, the region has a role to play. Since 1945, this evidence has become overwhelming, causing several nation-states to devolve varying degrees of authority to democratic regional authorities throughout the EU. This may have been as much a response to the threat posed by such tensions on the nation-state as active support for regionalism, but the effect has been the same.

The question addressed in the rest of this thesis, focuses on the extent to which such regionalisation has occurred. In the first three chapters the nation-state's ability to deliver the diverse needs of its population has been questioned. The incorporation of subsidiarity into the T.EU allows a fresh framework in which

alternative methods of territorial government might be legitimised. The region can, and has, emerged to take a place in this new structure. The following work examines the emergence of the autonomous region as a new actor in the governance of Europe. Rhodes cast doubts on the European federalists vision of the demise of the nation-state and the emergence of a “Europe of Regions” (Rhodes, 1978). In 1996, how many of these doubts were justified?

PART TWO

4 - Methodology

The first three chapters of this thesis outlined the inherent problems encountered by the "hard-bordered" nation-state concept. These make the provision of democratic and stable systems of government difficult under this model. There is, however, no theoretical need to always operate within this paradigm. This is made practical by the supra-national protective umbrella afforded by the European Union. Under this, changes to systems of territorial governance may be contemplated without fear of "national weakness". The region is one such territorial unit, often mentioned as an alternative to the sovereign nation-state, indeed a "Europe of Regions" has been a common expression in discussions surrounding the development of the European Union. It does not mean that the nation-state and the region are mutually exclusive. The incompatibility is rather between the sovereign "hard-bordered" state and the autonomous region, possessing its own legitimacy, distinct from that of the national level.

The main body of this work attempts to assess the extent of regional government in Europe in the early 1990's. To what extent does it challenge the nation-state as the primary unit of governance and perhaps more importantly does it offer a real alternative? Is the development of the regional tier a new departure in territorial governance, as advocated by Fletcher (Fletcher, 1706) and more recently by European Federalists (Rhodes, 1978) and Galtung (Galtung, 1973)? Alternatively, does it represent the continuation of the nation-state paradigm either through smaller regional units possessing the characteristics of their larger predecessors or acting merely as units of territory for the easier governance of the member state?

This survey addresses these issues with reference to the "autonomy" of the regional units. Before one can speculate on the regional unit's ability to challenge the predominance of the nation-state, the ability of it to operate freely must be gauged. There can be no talk of the region emerging as a new method of governance unless it has "independence of action", from the national level. This does not necessarily mean the region has to undertake policies significantly different from those undertaken at the national tier. Regions may also use the freedom, to conform. Potential autonomy can therefore be as important as actual variations of policy (Foster, Jackman and Perlman, 1980). Variations in policy may also be caused by factors other than the independence of policy making authority (V.A.T. rates in Portugal is a good example, see chapter 6.1(h)). Part II is divided into three sections covering all aspects of governmental independence, namely structural, financial, and functional autonomy.

The nature of this work is intentionally broad, thus sacrificing depth of study for a wider approach. The three wide categories mentioned above together create an overall picture of regional autonomy. As yet there is no such overall comparison. Previous work in this area has focused instead on individual national systems or compilations of national studies rather than being truly comparative in nature. At present therefore, research into only one aspect cannot be placed into a wider perspective.

This work is an effort to fill this gap in current research. By bringing together information from a number of sources and presenting a Europe wide discussion of the regional issue, it aims to facilitate deeper comparisons in the future. To do this a "shallow" approach must be used. Taken individually, the legal structure, financial framework or functions of the region (or indeed any type of government), do not explain government independence. It is the, often complex, combination of the three that produces overall autonomy.

4.1 Basic Structure and Definitions

The existing material on regions in the European Union is quite basic and rarely comparative. Surveys have been carried out by the Council of Europe*, the European Parliament (European Parliament, 1993) and the Trans European Policy Studies Association (Engel & Van Ginderachter, 1993), but these have been limited in scope. With the exception of the latter, they also address regions in conjunction with local government, something that is often unhelpful. It certainly does not aid a discussion of regional autonomy if the data required to assess it is included with that of "local" authorities. One further work, edited by Sharpe, has explicitly attempted to examine the regional tier in a European context (Sharpe, 1993a). The "meso" level, as this volume refers to it (to avoid the definition problems discussed below), is analysed in eight of the fifteen member-states of the Union (although Sweden was not a member when the book was published). Even this work does not cover the entire Union and more importantly studies each regional structure separately, by nation-state, with contributions by national observers.

All these works are valuable (indeed I refer to them constantly in the text), but they do not remove the gap which this work attempts, at least partially, to fill. Each of them studies the rise of regions in their individual national contexts. Although this is obviously unavoidable in some cases, I believe that the growth of the European Union and the creation of a new, *sui generis* and supra-national, type of state means the regions must be studied in this context as much as is practical. For this reason, the emphasis of the work is comparative. Where possible, regions are compared as regions in their own right without reference to their parent nation-state. Only then, does it become obvious that, for example, distinct regional spheres of competence are emerging Europe wide. However, within nation-states the regions can and do differ markedly, sometimes allowing easier comparison with "foreign" regions than those within their own nation-states.

* Structure and operation of local regional democracy, series of national studies for all Council of Europe states. For individual study references see Bibliography under Council of Europe, 1993

This study has two aims. Firstly to bring together data from a wide variety of sources to form a detailed picture of regional governments in the European Union. Secondly to use this to assess the regional tier's role in that Union and question whether we really are seeing a "Europe of Regions" or merely a facade, behind which the nation-states continue to dominate proceedings.

One of the greatest problems in working on regional government, is actually defining what a "region" is. This was the reason for use of the word "meso" in the Sharpe edition. However, I think to use another term such as "meso" is superfluous. It is avoiding the issue somewhat to create a new term and then place the units of governance which one wishes to study within it. Although this is bound to occur to a degree in any case, it is perhaps slightly dishonest to invent a new term to cover up the fact. Secondly, the term as used by Sharpe *et al*, is a definition of "middle" government, between the nation-state and the local authority. This must naturally define the region in terms of the nation-state, something that is to be avoided if one wishes to study the region as a separate political force. Furthermore, it can lead to complications, where more than one "meso" level exist (e.g. France, Germany, Belgium). This is obvious from the text of this work where different national authors interpret the term differently.*

I think, however, that this is a rather over-emphasised problem. Chapter one emphasised that the nation-state is not an organic territorial division. I think it is safe to assume that the same is true of the region. As with the "nation", one's regional identity is a part (with varying importance) of overall identity. This is also true of economic or social territorial areas. The "hard-bordered" concept will fail at the regional level just as it did at the national. I would contend that the "region" as a geographical term should not overly concern political discussions of these territorial units. Rather, I see the regional authority as a form of government, distinct from local and national which may (or may not) cover a geographical area commensurate with a geographical region.

* See Delmartino's difficulties with Belgian provinces and Communities/Regions (Delmartino, 1992)

A regional government is a non-sovereign body, responsible for more than traditionally local affairs. In most cases it has the ability to make policy differing from the national norm (at least in theory). When the establishment of regional government is considered in the UK, this is what is being referred to, not the establishment of a large local authority (though this may be what happens in practice). The region is imbued with a sense of legitimacy, beyond that of the local unit, which allows it to claim devolved powers which the local unit would never be awarded (being regarded as too small).

There are undoubtedly recognisable geographical divisions throughout the EU, many of which do not correspond with political units. An attempt at a typology of geographical units is given in Table 1. It is difficult to define these territorial divisions in strict terms, such are the variations between them. Nevertheless, what most observers would regard as the "regional" level can be broadly defined as having a population of over one million (but less than 15 million) and a territory of at least 10,000km². Under this, somewhat arbitrary definition, several areas which are nation-states are included while some political "regions" are excluded.

Political regions are not defined in terms of the geographical definitions, used above. These comprise a territorial unit of government, existing the local and national tiers. Most importantly, it is perceived as a focus of policy (at least in theory) and often exhibits a legitimacy closer to that of the national level than local government. Whatever its official status, the region is seen as more than a mere administrative level. It is expected to answer economic and social issues far beyond that expected of the local units. A typology of the "political" divisions of the EU is included in Table 2.

It is obvious from these divisions that political and geographical units do not always coincide. Thus a city, which would come under the geographic definition of a province or district may be afforded the political status of a region (e.g. Hamburg, Paris) due to its special status. Furthermore, units possessing the political status of nation-states can be the size of regions or even districts. This work, due to its political nature, focuses on the political definition regions,

specifically those with democratic government. Some mention is also made of those geographic regions possessing a tier of deconcentrated authority.

Table 1 - Geographical definitions of territorial divisions in Europe

European Level	National Level	Regional Level	Provincial Level	District Level	Local Level	
European Union	Belgium	Regions or Communities	Provinces	Arrondissements	Communes	
	-	Denmark	Amter	-	Kommuner	
	France	Régions	Départements	Arrondissements	Communes	
	Germany	Länder	Kreis	Bezirk	Municipalities	
	Greece	Regions	Nomos	-	Communes	
	Italy	Regioni	Provinces	-	Municipalities	
	-	Ireland	Provinces	Counties	-	
	-	-	Luxembourg	Districts	Communes	
	Netherlands	Euro-Regions (proposed)	Provinces	Regions	Municipalities	
	Portugal	C.C.R.s and Island Regions	-	Districts	Municipalities	
	Spain	Autonomías	Provinces	Various	Municipalities	Mancomunidas
	United Kingdom	English Regions	Counties	Districts	Parishes	
		Scotland	Regions	Districts	Communities	
		Northern Island	-	Districts	-	
Wales		Counties	Districts	Communities		

Table 2 - Political definitions of territorial divisions in Europe

European Government	National Government	Regional Government	Regional Administration	Local Government	Local Administration
European Union	Belgium	Regions or Communities	-	Provinces & Communes	Arrondissements
	Denmark	Amter	-	Kommuner	-
	France	Régions	Regional Prefect & Various others	Departements & Communes	Arrondissements
	Germany	Länder	-	Kries & Municipalities	Bezirk
	Greece	-	Regions	Nomos & Communes	-
	Italy	Regioni	-	Provinces & Municipalities	-
	Ireland	-	-	Counties	-
	Luxembourg	-	-	Communes	Districts
	Netherlands	Provinces	Various	Municipalities & Regions	-
	Portugal	Island Regions	C.C.R.s	Municipalities & Parishes	Districts
	Spain	Autonomías	-	Provinces, Municipalities & Mancomidas (+ regional variations)	-
	United Kingdom	-	English Regions	Counties, Districts & Parishes	-
		-	Scottish Office	Local Authorities & Communities	-
	-	N. Ireland Office	Districts	-	
	-	Welsh Office	Local Authorities & Communities	-	

4.2 Methods

4.2(a) Structures

Chapter five is the first comparative chapter of the thesis. It aims to examine the constitutional framework within which the regions of Europe operate. This is one of the most common methods of studying any form of government. In itself it does not give answers to the actual operation of the government in question but it does give a necessary basis from which to advance. It is rather like a skeleton on which the flesh and bones of finance and functions can then be hung. In itself the skeleton does not tell us what a person looks like, but without it the superstructure is rather pointless.

There is a relatively large amount of material available in this area. Comparative lawyers have long been interested in the constitutional workings of other countries and some have focused on federalism. Unfortunately, most works in English have been limited in scope to the classically federalist countries (i.e. Germany and the U.S.). Nevertheless, the rise in regional government has led to several volumes outlining the local and regional structures of EU member states. Generally these have been compiled by national contributors or the governments themselves. As a consequence of this some definitions vary between studies.

Appendix one is the result of my work in compiling these materials with chapter five drawing comparisons between European regional structures. This includes all the regional structures of Europe, including those which are not democratic. These "deconcentrated"* systems devolve administrative authority to nationally appointed figures not directly responsible to the regional electorate. These systems operate in three EU member states, including the UK and preceded

* The French term for administrative decentralisation

the introduction of democratic regions in Denmark and France. Although they are not dealt with explicitly in this thesis, they are referred to, especially with relation to the UK. Importantly, they represent national recognition of the need for regional government, though not for the need to democratise it.

Although chapter five (and the accompanying Appendix D) is the most straightforward section of the thesis, it still presented significant research difficulties. The first problem was language. I have been limited in the main to works written in English or French. This necessarily means I am heavily reliant on secondary sources compiled by other authors. Many of these works are very basic, (this is the main problem with the volumes mentioned above). A more serious issue has been contradictions and the vague nature of some works. It is patently obvious when one becomes more acquainted with this topic that many authors have made statements on topics that they have not researched. Where a contradiction is evident I have attempted to follow my original reading. By using primary sources and contacts within the regions and nation-states concerned I believe that most of these discrepancies have been removed.

The reasons for the inaccuracies in some of the published texts are easy to understand. Information on regional government is not that easy to come by. For example regional constitutions or statutes are rarely available in anything other than the national (and perhaps the regional) language. In addition, when direct contacts with regional or national organisations are used, the definitions can be such that finding the exact material required can be very difficult. Any gaps in the work are nevertheless my own omissions (and are pointed out) but every effort has been made to gain the information required.

Chapter five itself is divided into two broad sections. The first examines the regions' place within their domestic political structures. The second concerns their status outwith their national borders and specifically within the European Union. In both cases, the aim is to examine activities common to regional systems. Where relevant, contrasts between the experience of different regions are emphasised. An

assessment of the European regional framework is presented at the end of this chapter. Is it pertinent to speak of a common regional tier or are they so different that one can only discuss them in terms of their national situation? Obviously I argue the former and contend that although there are some huge differences between the structures of certain regions, there are some comparisons to be drawn. Notably some regions of Europe exhibit more similarities than others allowing the construction of three structural types. These are explored during this chapter and used as a basis for the comparative discussions in chapters six and seven.

4.2(b) Finance

Chapter six focuses on the financial independence of the regional tier. In recent years financial power has become regarded as the most important factor in the independence of any government. Although this can be over emphasised, the financial independence of the regional tier is a vital component of regional autonomy. For this reason a disproportionate amount of this thesis concerns financial matters.

Previous attempts at studying regional finance have been haphazard. A few texts have presented some work concerned with this topic (for example Smith, 1985, Chapter 6). In general these comparisons have been vague and some have not compared like with like. The common problem of lumping local and regional government is also prevalent. Where these studies are relevant, they are listed in the text. The reasons behind such a lack of work in this seemingly important area are obvious. It is very complex to compare financial autonomy across national boundaries as I have found to my cost. This is not helped by the plethora of methodologies in use. The most common is to compare finance from taxation and central government grant. The higher the latter method, the less autonomy enjoyed by the region. This, in my opinion, is a false dichotomy. Unless the regional unit actually sets the tax rate then the tax is not regional. In essence it is a form of grant, controlled by the central government. Although not entirely at the discretion of the central authority, it is certainly not an independent source of revenue.

It is this independence of revenue that is the real measure of financial autonomy. This principle underpins the methodology used for assessing financial autonomy. I identify four broad categories of financial resource ranging from most independent to least. These are:

1. Independent Finance
2. Borrowing
3. Block Grants
4. Specific Grants and Mandated Expenditure

By examining the reliance placed on each source, by the relevant regional authority a picture of financial autonomy can be constructed. The detailed nature of these types of finance is explored fully in Chapter six itself.

The methodology used is thus deceptively simple. Compare the reliance of each region on each type of finance. The regions with the higher reliance on the more autonomous methods (with some caveats) have the greatest financial autonomy. Overall, the impact of independent regional finance Europe wide can be compiled by examining the amounts raised by regions in each of the categories and comparing them to overall government revenues in the Union. Although somewhat crude, these methods aim to give the first assessment of regional financial power in the Union.

In practice, the exercise proved anything but straightforward. When embarking on this project, I was informed by one economist that such a comparison was impossible. The reason for his pessimism was soon apparent. Information on regional finance suffers from several major research difficulties. Firstly, it is often

published in a form not readily compatible with other regional accounts. Secondly, even finding such information could be a mammoth task as regional figures would often be included with local government or be hard to obtain at all. Even then, the methods of recording such information are so varied that it is often extremely difficult to understand the figures at all. This was the case even when I took queries to economists and accountants in the field. Finally, and perhaps most worrying, some texts published by academics of the countries concerned contradict each other and some (one in particular) obviously did not understand the figures themselves.*

My original hope had been to rely as much as possible on national studies to understand the basic financial structure of the regions concerned. This would allow a division of resources into the four categories discussed above. Additional usage of more recent financial materials could then be used to determine the proportion of financial resources from each category. Apart from the lack of texts in English or French on this subject (which was expected) the works that do exist were often very vague in nature.

Due to the nature of this work, most secondary works had to be taken at face value and heavy reliance placed upon them. This meant that when one proved to be factually inaccurate, much of the work based on it had to be re-written. One of the more obvious examples concerns the German tax structure which one academic claimed was national with the exception of the Beer tax. This is wrong, but I did not discover this until asking specific questions of officials in the German finance ministry after my suspicions were aroused, late in the thesis (the Bund now controls all tax rates, with the exception of some which accrue to local authorities). Less blatant inaccuracies cropped up from time to time but perhaps the most recurrent difficulty was in the ambiguity of some works. Many authors obviously quoted

* In work by Toonen, figures used to show provincial income and expenditure (used in different tables) are wildly different. The reason for this is a peculiar Dutch method of measuring these amounts but the author neither explains this or admits that the figures make no sense as they are.

from other works without actually understanding what the texts meant, while others did not reference the sources of their materials. For example, some German authors constantly quoted the meaningless tautology that regions were responsible for regional and local taxes. Few distinguished between types of taxation or mentioned whether rate control lay with regions.

With difficulties associated with some secondary sources, greater reliance than intended was placed on primary sources. This change of emphasis created new difficulties. The most obvious concerned getting hold of the actual materials.* Many countries produced regional accounts that were not immediately compatible with their national ones (never mind regions in other countries). Getting a breakdown of regional income and expenditure proved even harder. One of the reasons for this was certainly a problem of definition. For example a block grant in one country would be considered a specific one in another. More confusing were the different methods of compiling figures, some of which varied between departments in individual member states.

Overall, however, some semblance of comparative statistics were constructed. In some cases these were only available as national averages but where possible and relevant individual regional breakdowns are given. In Portugal where regional government covers only part of the nation-state national averages are obviously meaningless.

Three difficulties in my method were discovered during the actual compilation of the comparative study. Firstly, my method does not take into account the “gearing” effect of independent finance. This phenomenon makes a small reliance on independent finance even less useful than its monetary value would suggest. This is due to a smaller tax base requiring a disproportionate increase in tax rates to create the required increases in expenditure. For example, if

* Some countries such as Denmark now charge for such information. The information bureau is a self standing agency.

a region relies on grants for 99% of its income while the remaining 1% is raised through independent finance, in theory it still has the ability to raise its own revenue and increase its budget. However, for even a 1% increase in overall expenditure the will have to double its tax rates. If it relied on independent taxation for 2% of its budget, the increase would need to be only 50% to raise the same revenue. Thus the rate increases are disproportionately higher when financial autonomy is lower. Financial independence may actually be less in practice than the figures suggest.

The second difficulty with this method concerns the study of specific or hypothecated grants. In certain states, notably the Netherlands, the regional tier has been given extensive administrative powers financed by specific grants from central government departments. This "extra" finance means that overall, regions have a much greater reliance on these grants than block or independent finance. Does this mean they have lost their autonomy or retained it and actually extended their role? Such an issue is beyond the crude methods employed here. This question perhaps needs further investigation in the future.

Finally, the definitions used above do not match with those used in individual member states (indeed none would). This has led to some difficulty in placing different finance resources within a category. Some "specific" grants are actually relatively free from constraints in comparison with some "block" grants. Hopefully, the correct decision has been made in placing a funding source in the relevant category. If there are mistakes they will be found in the more obscure forms of finance which were often difficult to investigate. These are all relatively insignificant in monetary terms.

Despite these imperfections I believe chapter six does offer the first European comparison of regional finance and its bearing on autonomy. Although the figures may not be perfect, the results are accurate enough to fulfil their purpose, i.e. to assess financial autonomy in the regions of the EU.

4.2(c) Functional Autonomy

Chapter seven concludes the comparative section of this thesis by addressing the issue of functional autonomy. Existing studies of regional functions in Europe are relatively superficial. The T.E.P.S.A. (Engel & Van Ginderachter, 1993) and Council of Europe (Council of Europe, 1988) works on the subject generally restrict themselves to listing regional powers. It is the intention of this chapter to get beneath this rather cursory approach and examine in more detail what regional actually do in some of these areas of policy. For example, if a region is responsible for transport does this mean it can take the railways into public ownership or merely run a few bus services?

Where possible, national studies were used and there are some excellent articles and books covering some of the member states studied. Where this was not possible, the task proved surprisingly difficult. Enquiries to regions or member states concerned often drew the response, regions are responsible for x, y and z with little explanation as to what "responsible for" actually meant. This is most confusing when a policy area is shared between levels. The responses that the region manages the regional portion of a policy area is somewhat of a tautology.

Once again, difficulties were also encountered with regards to definitions. Regional systems in many countries refer to framework, concurrent and administrative powers among others, but unfortunately the definitions vary from country to country. The classic categorisation of functions into administrative and legislative also caused some problems as although legislative functions are naturally assumed to carry more autonomy, this is not always the case. "Administrative" functions can have significant policy leeway. In some cases the freedom is such that these powers become highly autonomous tools of regional policy (e.g. regional rail authority in France).

The attempts to avoid mere lists were not always successful and sometimes, due to time constraints, a degree of ambiguity remains. Nevertheless, enough

accurate material was obtained for the purpose of the thesis. The chapter itself focuses on five broad areas of policy and considers regional involvement in each. The conclusions aim to recognise common regional functions throughout the EU. I believe these show that it is no longer true to talk of national policy in several diverse (and often unconnected) policy areas and that at least in the areas of Health, Education and Environment the region is a major policy maker throughout the EU.

4.3 Conclusion

The main aim of this section of the thesis is to present a comparative study of regional government in the European Union, with a view to addressing two questions. These are tackled in the final two chapters, which comprise part 3 of the thesis.

In the first of these, the work presented in part 2 is used to examine the growth of regions as a European phenomenon. Does the extent of regional autonomy in 1996, allow us to talk seriously of a “Europe of Regions”? Alternatively, are the regions merely the means by which nation-states can continue to operate as the primary unit of governance in Europe, while defusing sub-national tensions? In addition, if the region is a significant policy actor in Europe, does the concept itself promise a new approach to government or merely more of the same?

In the final chapter, the role of the region in the UK is examined, in the light of experience from the continent. Some general points are made regarding the organisation of any prospective regional tier, with reference to their operation on the European mainland. More specifically, several questions, which have been raised by opponents of regionalisation in the UK, are addressed. The European experience offers a wealth of information upon which we may draw, to answer the UK’s present constitutional difficulties.

A series of Appendices is collated at the end of the thesis to aid further research. This includes a list of the financial resources used in the thesis and some useful addresses in European countries.

5 - Structural Autonomy

The following Chapter presents the constitutional framework within which European regional governments operate. This relies heavily on work I have undertaken on individual member-state systems. To save space and avoid repetition, the bulk of this is contained in Appendix I. These individual country studies contain a brief history of the regional tier; a description of their structures and a discussion of their constitutional status. The intention of the main body of the thesis is to focus on comparative and pan-European issues, however this Appendix remains fundamental to the whole work.

5.1 Constitutional Autonomy

“Constitutional autonomy” is used here to describe the formal rule structure within which regional governments operate. In other words, the official boundaries of independent action defined by constitutional and legal restraints. This term is used in a broad sense to cover the status and operation of the region both within and outwith the state. For this reason, international and EU relations are also addressed in this chapter. The intention is to assess the status of the various regions operating in the EU and find common characteristics.

The constitutional autonomy of a regional government is certainly not the definitive statement on a region's independence. As will become clear, the official status of a region may bear little resemblance to the actual situation. Nevertheless, it is a vital component in the regional puzzle and a natural place to start.

There are seven main components to constitutional autonomy. Each of these has a significant effect on a region's ability to function independently and together they form a framework within which the region can operate. It does not necessarily

reflect the practical ability of regions to pursue policy, but constitutional restraints on a regional authority are likely to have a significant effect on its operation.

The seven areas of constitutional autonomy identified are:

1. Legal protection
2. Organisation freedom
3. State oversight or “*tutelles*”
4. Nation-state representation within the region
5. Regional access to national policy making
6. International relations
7. European Union relations

Legal protection refers to the security enjoyed by the regional government under the legal order of the nation-state. At its weakest the national authorities may be free to abolish or alter regional authorities at will. In contrast, a strong regionalist constitution will protect the regions from abolition and general interference by the national authorities. In most cases the role of the national courts is crucial to the region's constitutional status.

The organisational freedom of regional authorities refers to their ability to alter the structure of governance within their territory. This applies both to their own institutions and those of sub-regional governments. If a high degree of regional autonomy is enjoyed in this area, the region may develop structures markedly different from the national norm. This in turn gives the electorate a greater say in the organisation of regional and local institutions. In theory, this should lead to the creation of local and regional institutions which are closer to the needs of the population.

The exercise of strict national scrutiny over sub-national units has had a major influence on regional (and local) autonomy in Europe. Devised in France, to oversee the *Départements*, the *tutelle* (see Appendix I.3) was used to control local (and later regional) policies *a priori*. Although, less prevalent today, the continued existence of such a system obviously has serious repercussions for regional autonomy. Closely linked to the *tutelle* has been the operation of deconcentrated tiers of regional government (often administering the state supervision) which continue to administer policy within the region. The continued existence of such bodies may also affect the region's competences. The fourth area of constitutional autonomy studied, covers these institutions.

The final piece of the domestic constitutional structure examined is the extent of regional access to national decision-making. This complex issue remains important to the region as long as it operates within the national structure. If the national level has the power to encroach upon the authority of the region, such access may be vital in the defence of regional autonomy. The German *Länder's* use of the *Bundesrat* undoubtedly falls into this category. The stronger such involvement is, the greater chance of the Region defending its position against the national level. However, the effect of this, often collective action, on regional autonomy is less than clear.

International aspects of the constitutional autonomy of regions are dealt with in section 5.2.

5.1(a) Legal Status

The legal status of a regional authority is traditionally seen as the primary indicator of its autonomy. For this, a federal system is regarded as giving more independence to its constituent units than a non-federal one. The categories of federal and non-federal are the most commonly used distinctions in the study of territorial government. This distinction is important, but it fails to address the difference between non-federal regions. In fact, the regional authorities of the EU

can be broadly divided into three formal categories; federations, constitutional regions and non-constitutional regions.

The Federal Republic of Germany, established in 1948, is the oldest surviving federal nation-state within the EU.* The federal nature of the German state is underlined by article 20(1) of the Basic Law:

“The Federal Republic of Germany shall be a democratic and social federal state.” (German Basic Law, 1991)

With the acceptance of a new constitution, finally approved on 5th May 1993, Belgium also recognises itself as a federation. The revised text of article one now reads:

“Belgium is a federal state composed of Communities and Regions.”
(Belgian Constitution, 1994)

These statements of federal intent have been underwritten by further sections of their relative constitutions (see Appendix I.1 & I.4). In both cases, the regional tier cannot be abolished and under almost no circumstances can the federal authorities assume control over their constituent states. This includes when a state of emergency develops. The only caveat is that the German *Bund*, with the consent of the *Bundesrat* (see page 115 & Appendix I.4), may enforce constitutional duties on individual *Länder* when they fail to comply (Article 37 G.G.).

* The F.R.G. was not the first, however. This distinction probably goes to the United Provinces of the Netherlands which lasted until the French the invasion of 1795.

This contrasts with the situation of those regional governments within the second “constitutional” category. In Portugal, Italy, the Netherlands and Spain the regionalised structure is enshrined in the constitution, yet the nation-state is not classed as a federation. In all four countries, the regional democratic authorities can be dissolved at the behest of the national government. The reasons for doing this can be “acting contrary to the constitution”, or national security, neither of which is clearly defined (Portuguese Constitution, Article 236 & Italian Constitution, Article 126). The net result is that if an anti-regionalist regime was established in these countries the regional authorities would be under threat of dissolution, though only as a temporary measure unless a constitutional amendment was passed. Within this group there are huge variations, however. The Portuguese island regions and the Spanish *autonomías* enjoy protection close to that of a federal state, while the Dutch provinces are merely guaranteed safety from total abolition and the right to be regulated by law.

In Portugal, only section VII of the constitution (relating to the island regions) has been implemented. The Portuguese failure to establish mainland regions is very similar to the Italian experience pre-1970 (see Appendix I.5). This common experience emphasises the inferiority of regions in both Portugal and Italy to their nation-state. With the exception of “special regions”, the establishment of regional government has been made possible, but not certain, by the respective constitutions. In legal terms, “ordinary regions” are dependent on national authorities not only for much of their authority but also for their very existence.

The final group of regional governments, with little or no constitutional status, comprise France and Denmark. In these countries, the existence of a regional authority is not covered explicitly by the founding document of the nation-state. Instead, regional authorities rely entirely on ordinary acts of the national parliament for their legal legitimacy. This gives these regions no constitutional protection and therefore leaves them theoretically vulnerable to dominance by national governments.

Table 3 - Constitutional status of European regions

Federations	Constitutional Regions	Non-Constitutional Regions
Germany	Italy	Denmark
Belgium	Netherlands	France
	Portugal	
	Spain	

Federal, constitutional and non-constitutional regions comprise the three broad categories into which all regional governments can be divided (see fig 5.1). At first glance these distinctions appear to have a major influence on the overall autonomy of the region. Despite this, is the constitutional status of a region as important as is often assumed? In France or Denmark, where the constitutional status of the regions is not guaranteed one would expect the regional authorities to be weak. However, though in theory the national authorities could remove the regional level, in practice this is not feasible. Once the regional level has been established, it gains a degree of legitimacy that makes its abolition unlikely. One must also remember that regional authorities have generally been constructed in response to electoral pressure. It is therefore unlikely to be in the interests of a ruling party to overtly attack regional governments.

The implications of federal status are, in my opinion, sometimes misunderstood. The ability of a federal system to survive a concerted attack, by an anti-regionalist central government is open to question. If political sentiment was overwhelmingly anti-regional, it seems unlikely the *Länder* or the Belgian regions themselves would be able to resist. However, such a situation is highly unlikely. In such extreme circumstances the best security for regional democracy, or indeed any democratic government is the widespread support of the population. If large enough groups of people wish to destroy the regional system, it will not survive, though

neither would a democratic nation-state under similar pressure. Equally, if electoral pressure supports the regional tier, its role is secure and likely to expand. The regions' most effective ally is therefore success.

The real advantage of the federal regions is much more subtle than making them immune from abolition. It is rather, in the everyday activities of the federal state that it allows regions a degree of protection from an over-centralist state. In addition, it gives the regions a greater degree of self-confidence in their dealings with the nation-state. Furthermore, a degree of de facto invulnerability can grow from the protection afforded in the constitution as it becomes “normal” to see the regions as the education providers, for example. To alter this situation would be politically damaging for the federal level.

Some federal and constitutionally protected regions thus enjoy major advantages over their non-constitutional cousins. The existence of entrenched protection for the regional authorities allows regional governments a constitutional defence of their independence. This may not stop a wholesale assault on their autonomy, but it can be protection against more mundane, but in the long run equally serious, encroachments into regional autonomy. In these cases the constitutional protection afforded to some regions gives them the ability to challenge the centre's actions through a judicial process. In most cases this is through a constitutional court, though in Belgium a system of negotiation is favoured (see page 115 & Appendix I.2).

Reliance on a higher judicial authority is still not in itself a protection of regional independence, however. The extent of protection afforded will depend on the attitude of the court itself. In Italy, for example, the constitutional court consistently supported the national government's claims in the name of the national interest. This occurred to such an extent, that the regions stopped using the judicial route (the “flight from the court”) (Zariski, 1987, p114). In contrast the early years

of the modern German federation were marked by clear efforts by the courts to protect *Länder* autonomy. Through the Television* and Concordat cases† (see p.82-3), the court in Karlsruhe clearly indicated that federal authorities would not be able to steamroller the *Länder* into following national policies. The Spanish court too, has protected regional autonomy, though its opinions are less consistent (Cuchillo, 1993, pp.224-225 see also Appendix I.8).

The legal status of the region in question is important, but not as vital as is sometimes assumed. Legal protection forms only one aspect of the overall picture of regional autonomy. In many cases, subtle manoeuvring or a compliant court may allow a regional system to be weakened, despite its constitutional protection (e.g. Italy). In others constitutional protection can be used effectively to defend regional independence (e.g. Germany). What matters at least as much as the legal situation are the political realities. In Germany for example, although the *Länder* were successful in the cases outlined above (and in Appendix I.4) the political imperative of social equality was allowed to erode regional policy areas over a long period of time. Equally in France, the regions have been seen to gain authority, despite their constitutional weakness. This resulted from a perception that regional devolution, at least of certain policy areas, would lead to economic advantages.

The real difference between regions with constitutional protection and those without, is one of degree. Having meaningful protection may allow a defence of regional authority through judicial channels, but this will eventually depend on the extent regionalism is accepted as part of the national legal culture. In the final analysis, the constitutional status of a region, although important, can only be exercised when a “culture of decentralisation” allows it to be so. However, such a culture will strengthen regional structures against the national tier whatever their legal status.

* First Television Case, 1961, 12 BVerfGE 205

† Concordat Case, 1957, 6 BVerfGE 309

5.1(b) Organisational Autonomy

Discussions concerning organisational autonomy can be divided into three broad areas:

1. Regional Structures: The organisation of regional institutions.
2. Territorial Structure: The region's territorial coverage.
3. Intra-Regional Structures: Regional links within the nation-state.

A region's ability to alter its own structure and organisation is a further example of constitutional autonomy. If the institutions and territory of the region are imposed by the nation-state, it may limit the effectiveness of the regional tier. Perhaps more importantly, freedom of action in this area allows regions to tailor structures to the needs of their population.

In five out of the eight democratic regional systems, the regional tier has the authority to organise its institutions with variable reference to the nation-state. In only three (France, Denmark and the Netherlands) is the structure of the regional tier decided by the national level.

In Spain, Germany, Portugal and Italy (as explained in Appendix D), regions possess individual "constitutions" governing the internal workings of each territory. The constitutions of each region define the institutional organisation of the region (as well as functional and financial powers) and can differ markedly within the nation-states. With the exception of the Italian ordinary regions, these documents are organic laws requiring special amendment procedures. All these procedures, excluding those of Germany, involve the national parliament. However, all regional constitutions give substantial institutional autonomy to the regions themselves.

Under Art 148.1 of the Spanish constitution, the ability to organise the internal structures is retained by the *autonomías*. The only exceptions are in the "special" regions of Spain (Euskadi, Catalonia and Galicia) which must have a directly elected assembly, an executive supported by it and a President elected from it. This is not much of a restriction and was only imposed because of the speed by which autonomy was granted. Spain was still smarting from the wounds of authoritarianism and wanted to ensure a traditional democratic structure was in place in the first regions. Similar restrictions to those imposed on the Spanish "special" regions, apply to the Portuguese islands and the Italian special regions, probably for the same reasons.

In Italy, the existence of a separate legislative base gave each ordinary region the scope to organise its structures in accordance with local needs. It was also hoped that the new regions would experiment with multi-party executives and encourage involvement from interest groups to create more consociational forms of democracy. The hope was that a more open executive, representative of the parties at legislature level, would lead to greater accountability. The regional tier was seen as a perfect test-tube for such schemes.

The consequences of this institutional autonomy, were not fruitful, however. In Germany, Italy and Spain, there was little experimentation or development of alternative structures. This was despite national encouragement in the Italian case.* In general the independence to organise regional institutions has led to carbon copies of national structures although one rather than two legislative chambers is the regional norm.† In all but one of the institutionally independent regions of Europe have a legislative structure comprising a single deliberative assembly, an executive responsible to it and a chief minister as the regional "leader". Ironically,

* Zariski, R., 1987, op.cit., p108-9

† Though in Germany it is the exception (Bavaria) which has copied the nation-state completely with a dual assembly legislative structure. The Bavarian Senate is an advisory body comprising interest groups representatives from the regional industry, trade unions, etc.

the most innovative examples of regional government are probably found in France, where an advisory "Economic and Social Council" sits in tandem with the Regional Council. France, of course, established uniform regional structures nationally.* Why regions have been loath to develop new institutional structures is a mystery. In Italy, there were attempts to have multi-party executives and the socialists at least encouraged this in France, but party politics seems to have overridden good intentions. Perhaps the few examples of innovation are more significant than the mass of uniformity.

Where many regions would wish greater autonomy is in the area of territorial coverage. Many regions lay claim to areas within the nation state that are allocated to others. In addition, some press for complete amalgamation with other regions, though such suicidal tendencies tend to diminish in the long run. Matters of regional territory are firmly controlled by national institutions. In France, two or more regions may ask to be amalgamated into a single one if the councils approve such a change but this hardly amounts to a major concession. It ignores the claim in areas such as Brittany and Languedoc-Roussillon that the boundaries need to be adjusted. These problems cannot be solved by regional amalgamation.

The nation-states' reasoning is quite rational. Giving regions the ability to alter their own boundaries could damage stability within the nation-state. Specifically, such freedom would lead to conflict between certain regions, undermining the state's "unity". Secondly there is a fear of regional governments combining into areas that could challenge the nation-state.

France and Italy both purposefully designed regional structures to minimise the identification with "traditional" regions. This, it was hoped, would reduce the threat of these units becoming a focus for regional identities, and thus perhaps movements for more autonomy. This succeeded to a degree, but in some areas of

* Corsica is even more unusual with two advisory councils, and several agencies operating parallel to the Assembly. Most are still established by the region's statute, however.

France, the population seem to have accepted the new boundaries and moulded their regional identities to fit them.

The fear that an alliance of regions could challenge the national authority is graphically evidenced in article 145 of the Spanish constitution. This prohibits the "federation" of *autonomias*. This article was included specifically to prevent a Catalan speaking federation of regions in eastern Spain threatening the "unity of Spain". However, aside from limiting this extreme form of inter-regional contact, regions are relatively free to form associations with other regions.

In Germany, Italy and Denmark, the regions have increasingly used a collective approach to advance their position in relation to central government. Through the Danish *Amtsrådsforeningen i Danmark* (Andersen, A, 1993, p20), the Italian President's Conference (Cassese, S. & Torchia, L., 1993, p107) and the German Conference of Minister Presidents, (Leonardy, U., 1991, p50) the regional governments of each nation-state co-ordinate policy.* In some cases these bodies have become part of the formal decision making process. In Germany and Italy these bodies participate in international and European policy making while the Danish *Amter* are consulted collectively over their taxation policy and issues of regional organisation (see Appendix I.2). The Belgian constitution also ensures European policy in the fledgling federation is addressed by a collective regional body.

Voluntary associations between regions ensure the co-ordination of policy in fields as diverse as University education (Germany), Environment (Italy) and Health (Denmark). The effect of these institutional contacts on the autonomy of regional authorities is questionable. By acting together, the regions certainly increase their authority, but whether this aids autonomy is a difficult question to answer. Although, they do give the regional tier greater strength through numbers

* In the German case, this is the highest official conference. There are a series of less public organisations bringing together other *Länder* officials and ministers.

they must, by their very nature, restrict the operation of the individual region. In addition, such organisations increase the power of regional executives, rather than those of regional parliaments. Is this actually increasing regional autonomy or merely increasing the role of the regional executives?

Decisions taken by these organisations cease to be regional, but rather they construct national policy by another means. The policy preferences of one region may become swamped by those of a majority opposed to it. These, often secret meetings, suffer from the same democratic deficit associated with the EU Council of Ministers. The deals struck will involve a degree of political bargaining which the electorate may be unaware of. Furthermore, there is no parliamentary body to oversee such actions. Regional parliaments may be asked, at most, to rubber stamp such agreements or but many can be avoided entirely under the principle that such contacts are within an executive prerogative. However, perhaps national decisions should be taken by national bodies, designed specifically for the purpose? This is discussed further in Chapter 8.

5.1(c) Tutelles

The “*tutelle*” is a French concept, developed soon after the French revolution. In essence it is a method by which national authorities control sub-national tiers of government. Usually it is exercised by a deconcentrated official (the Prefect, in France). The role of this functionary is dealt with in the next section. The *tutelle* itself, can be of two types, “active” and “passive”.

Under an active *tutelle*, the sub-national authorities must submit their proposed actions to the national authorities for prior approval (by the Prefect). In these cases a regional authority's actions must be ratified by the national representative, before they become law. The reasons why the national official refuses to ratify regional proposals need not be legally defined and may be a matter of policy.

In contrast, the passive *tutelle* is a more formalised system involving less discretion on the part of the Prefect. Under this, the national official scrutinises the regional legislation for illegality and not incompatibility with national policy. This generally takes place after the regional policy has become law, though the Prefect may hold some delaying power. Importantly, the final decision on the legality of any measure in question will be taken by a court. The final arbiter of regional policy is therefore the judiciary and not the national government (or its representatives).

Within the European Union, five member states operate *tutelles*, although this method of regional control has lessened in recent years. By 1994 the Netherlands was the only state to operate an active regional *tutelle*, in the traditional sense, though Italy operates one in theory. Traditionally this reflects a fear that the regional level could threaten the unity of the state. In the Netherlands this dates back to the destruction of the federal United Provinces and the imposition of unitary rule by the French during the early eighteenth century. The original rationale for the *tutelle's* creation may be lost in history but the institution itself, remains. Arguments of self-determination mean that three nation-states now operate no *tutelle*, whatsoever.

Table 4 - Regional tutelles

No Tutelle	Passive Tutelle	Active Tutelle
Belgium	Denmark	Netherlands
Germany	France	Italy
Spain	Portugal	

In an actively controlled region, the potential for national curtailment of regional freedom is great. In France, where the active *tutelle* was only abolished in 1982, Thoenig noted that it was practice rarely used in practice, thus concluding it was of little consequence (Keating & Hainsworth, 1986). Others such as Laignel rejected this claim, arguing that although the *tutelle* was rarely used this did not mean it was not effective (Schmidt, 1990). Instead, the threat of its use meant that

regions and *départements* did not pass policies without consulting the Prefect first. Thus, enforcement of the *tutelle* did not necessarily require its active use.

Whatever the true effect of the *tutelle*, there can be little doubt that its existence gave the national government a potentially high degree of leverage over a regional authority. In the final analysis, if the national government can overrule a regional policy according to its own discretion, the region is in a weak position. Its only defence would be strong support for the regional standpoint amongst the electorate. This could rarely be guaranteed as most conflicts between region and nation involve small issues unlikely to arouse the passions of the populace. Even then such cries could go unheeded.

In contrast, a passive *tutelle* does not exert policy control over the subject regions. In practice the *tutelle* in these cases acts more as a constitutional safeguard. In this regard the national level is acting not unlike the Commission at the European level. As with a regional passive *tutelle*, the Commission checks the legality of national legislation with regard to European Union law. The final decision as to illegality is then taken by the judicial branch, not the Commission itself. This mirrors the situation in Denmark, France and the Portuguese islands. The major difference between the national method of control over the regional tier, as opposed to the Commission/member-state example is the ability to delay the implementation of regional policy while its legality is established. In Portugal, the *tutelle* also allows the national authority to impose a stricter method of approving the regional legislation (an absolute majority in the regional parliament concerned).

Although the Netherlands is unique in its continued use of an active *tutelle* in the traditional sense, the Italian regions can be severely restricted in their policy choices. On a reference from the Regional Commissioner the Italian parliament can annul regional legislation if it conflicts with the interests of the nation-state or another region. In practice, this has never been used. Instead, the court has developed its own de facto role as protector of national interests

(Vanwelkenhuyzen, 1986). The attitude of the court to the regions did not aid regional autonomy.

With the above exceptions, control over regional policy is now restricted to illegality. The final arbiter of this is the judicial system. This would seem to place the regions in a relatively independent position, as policy making bodies, within their respective constitutional arrangements. In countries where there are no constitutional guarantees and a passive *tutelle*, (France and Denmark), the government could obviously amend the regional legislation to force compliance. However, as mentioned above this may create more political problems than it solves.

If regions are to develop as independent sources of policy the *tutelle* must be limited to issues of legality only. Otherwise, the regional unit will constantly be at the mercy of national opinion. With the exception of the Dutch provinces and the Italian *regioni*, regions are relatively free from such problems.

5.1(d) State Representation

The role of state representatives in the region has changed dramatically in the last twenty years. Although originally a French concept, the “Prefect” was an idea which was copied by regimes throughout Europe. Through this nationally appointed figure the central government could control local and regional affairs as well as being the national representative in the territory. Gradually, however, his role of the prefect has altered. This has been most marked at the regional level.

In all but three EU member states (Greece, the UK and mainland Portugal), the nationally appointed representatives now operate in tandem with the democratic regional tier. There are no equivalent representatives in the federal states.

The role of the state representative can be divided into three areas:

- 1) Administering the *tutelle*
- 2) Control of national field services
- 3) Liaison with regional authorities

The emergence of regional authorities as independent units has led to a reduction of prefectorial power in the first two areas and increased emphasis being placed on the third.

As explored above, the *tutelle*, where it still exists, has generally evolved become an *ex-poste* constitutional check. The prefect has thus changed from being the regional power broker to more of a constitutional ombudsman. In this role, he or she, monitors the administration of the region and the decisions taken by its legislative bodies. If there are found to be any administrative irregularities or the region passes acts beyond its powers, it is the prefect's job to take this up with the region or the relevant judicial authorities.

Such a role has no effect on the autonomy of a region, to act within its stated remit, although it does restrict attempts to operate beyond it. If no watchdog existed, control of regional legality would be limited by individuals or authorities undertaking legal action themselves. If an official undertakes this specific task, the regional government is unlikely to get away with many breaches. In contrast, the European Union system of using a centralised Commission to police government actions leads to many transgressions going unpunished, or at least legal action being delayed.

So called national "field services", are the functions performed by central government, but administered at a local level. As democratic regional governments have developed, the functions exercised by prefects have been increasingly undertaken by elected authorities. Nevertheless, in all but the federal member-states some regional functions are still administered by a state official. In each of these,

the state representative operates independently of the regional authority. For this reason, the prefect should not interfere with the regional authority during the exercise of their respective competences. However, the powers deconcentrated to a regional prefect can be substantial, and as such they can remain a powerful tier of authority in tandem with the democratic regional bodies.

It is the third facet of the state representative's role that has grown most significantly in recent years. As democratic regions with autonomous powers have grown, so has the need for a system of liaison between the central and regional authorities. Into this role has stepped the prefect. With a reduced role in the policing of regional decisions this new role has become a large part of the prefect's position.

The growth of democratic regional government, has therefore not removed the need for a regional prefect-type position, but rather changed its purpose. Instead of wielding political authority and controlling regionally elected bodies, the prefect's principle role is now to act as the official liaison between the regional and national levels and to monitor the legality of regional actions. The state representative is now part administrator, part ambassador and part ombudsman. In this capacity, the role of Prefect continues to be relevant, and need not restrict the autonomy of the regional government. In addition, the French process of deconcentration intends to transfer further field services from the national ministries to the prefect. The success of this has been variable, however, as few ministries have obliged.

5.1(e) Representation at National Levels

Regional representation at the national level is a further component in the structural autonomy of regional authorities. Although, regions may wish to be seen as new and independent forms of government, at present they still exist within a national framework. For this reason, regional representation at a national level is needed to influence policy in areas relevant to the region but not devolved to it. This can act as a safety mechanism to stop the erosion of regional powers and forces

closer co-operation between different levels of authority. Whether such powers actually enhance regional independence or merely ensure national decisions are taken by regions collectively (perhaps not the best method), is debatable.

Regions can influence national authority through membership of the national executive; representation in a second legislative chamber or through official recognition of supra-regional organisations. The occurrence of these three methods is outlined below.

Table 5 - Regional involvement at the national level

Member-State	D	DK	E	F	I	NL	B	P
Executive Membership	o	o	o	o	x(s)	o	o	x(s)
Second Chamber	x	o	x	o	x	x	x	o
Recognised Regional Forum	x	x	o	o	x	o	o	o

(s) - denotes "special" or autonomous regions only

o - No

x - Yes

In two exceptional cases, regional representation is allowed in the national cabinet when regional concerns are discussed. Some regional representatives are even given the status of a minister in such discussions.

In Portugal, the situation is slightly misleading as the regional representative is not responsible to the regional executive. Instead, he or she, is the Regional Minister, appointed by the national government. In this regard the system is not dissimilar to the Secretary of State system which operates in the UK. These ministers also have a seat in cabinet and as in Portugal, the Scottish, Welsh and

Northern Irish secretaries are not responsible to the regional electorate, but rather to the national government.

In Italy, it is the right of the President of each special region to address the Council of Ministers. In the case of Sicily, they may also vote and are given the rank of minister. All have the right to state the regional case before cabinet. In practice, this power is seldom used. The national government seems to discourage such regional meddling in its affairs while the regional Presidents regard this power as window dressing. Even if such a system could be organised more effectively it is simply not feasible as a method of representing all regions at the national level. In practice it only operates where certain regions are deemed to have special status in the national structures.

The more common method of giving regional input at the national level lies in a regionally based second legislative chamber. Although five of the regionalised states do possess such an institution, even this is not quite what it seems. Although the federal second chambers are appointed by the regional authorities themselves (Belgium and Germany); in Italy and Spain, the second chamber is directly elected from regional constituencies, rather like the U.S. Senate. Spanish regions do appoint a small number of members (number), but these are very much in the minority. As such, the Italian and Spanish regional chambers are really national bodies and their use as a forum for regional involvement in national affairs is practically nil.

Surprisingly, the provinces play a substantial role in elections for the upper house of the States General. This body comprises representatives of the provinces, elected every four years. Its role is to amend legislation and it has the power to veto any act proposed by the lower house. Considering the weakness of the provinces generally, appointing this relatively powerful body, is perhaps their most significant role.

In Belgium and Germany, however, this is certainly not the case. The German *Bundesrat*, especially, plays a major role in national policy making. Its operation has probably been the single most decisive factor in the protection of regional autonomy in the Federal Republic. Throughout the rest of this work, the role of the *Bundesrat* will be evident again and again, not only to the independence of the German regions, but increasingly outwith the borders of the *Bund*. The extraordinary influence the *Länder* are able to acquire, collectively, stems from the extensive role this chamber plays in the national policy process. The *Bundesrat*, as explained in Appendix I.4, comprises of representatives (often Civil Servants) of the regional governments, which change depending on the issue in question. The chamber itself has extensive powers of veto over national legislation, particularly when *Länder* interests are involved. No changes in any legislation affecting the *Länder* can be approved unless a majority of regions agree to such a change collectively. The bargaining power this gives to the regions is immense. It is further enhanced by the need for *Bundesrat* approval of treaties affecting the regions as well as the granting of powers to supra-national bodies. This in effect means all amendments to the treaty of Rome, must be approved by the *Länder*.

The Belgian Senate's role in defending regional autonomy is not quite as significant as that of the *Bundesrat*. There is less need for a powerful regional veto in the affairs of Belgium as there is no principle of federal law superiority. If federal and regional law clash (which in theory should be rare) the issue will not lead to an automatic loss of regional autonomy, as in Germany, assuming both laws were procedurally valid. In fact in the Belgian system it is the Belgian Senate which assumes responsibility for resolving such disputes of interest. In contrast with the *Bundesrat*, its legislative role is relatively minor, restricted mainly to constitutional amendments and areas of regional controversy such as language. It thus operates as a regional voice in the national system (it may propose and delay legislation) rather than an active method of protecting regional status.

Regional participation in national politics, varies considerably throughout the states of the European Union. Nevertheless a degree of official regional input

into the national policy making system is evident in all but three. Of these exceptions, the Danish *Amt*, through their collective body have an involvement in many relevant decisions taken by the national authorities (e.g. negotiations for regional tax rates).

The relative importance of regional input into the national level is difficult to gauge. Although the German *Länder* rely heavily on the *Bundesrat* to defend their position, other such as the Spanish *autonomías* do not seem to suffer for the lack of such power. This may be at least partly the result of regionalist parties' pivotal role in the current Spanish Cortes (especially the CiU, which has played the role in king-maker in the last two Spanish governments). The official involvement of the regional tier in national policy can, as the *Länder* have demonstrated, be an important regional asset, but equally the Belgian and Spanish examples suggest it is not necessarily a vital ingredient of autonomy. Indeed, in the conclusions of this work, it is proposed that regional collective input by regions in the national arena can actually harm autonomy.

5.2 International Relations

The international persona of regions within the European Union, may seem an unusual topic of discussion. Surely international relations lie squarely within the competence of the sovereign nation state? This has seemed so self evident that some writers have, without hesitation, assumed no regional participation in this sphere (Bulmer, 1990). This is a misunderstanding of regional involvement outwith their nation-state.

Even in the formal sense of international relations, a few regions do have international personality and participate, albeit in a limited capacity, in international affairs. The issue of regional participation in international relations is therefore a far more complex issue than a brief inspection would suggest.

An argument could be advanced that, although in theory, regions may have a limited international presence, it is so minimal as to be irrelevant. Even if this were the case, and I shall argue it is not, there are two reasons why international relations are of importance to a region's autonomy, even within the domestic sphere. Firstly, competence in the field of international relations can be used by the organs of the central state to encroach upon regional autonomy, in the name of treaty obligations. Secondly, despite the EU's development into a *sui generis* tier of law making government, many member states still define it as international relations.

The issue of international law and regional autonomy has been a recurring problem in most devolved systems. The conflict arises through the classic federal distribution of powers. This places international affairs within the domain of the nation-state level, while regional bodies are concerned only with domestic affairs. This crude attempt at "layer cake federalism" has an inbuilt flaw. Although the national tier may be given the ability to undertake "international relations", and thus enter into treaty agreements, does it have the right to impose treaty provisions on the regional level? If the answer is yes, then regional independence could be seriously threatened. Firstly, during negotiations, the Central State may be quite willing to agree restrictions on regional spheres of autonomy, as it has no effect on national authority, anyway. Secondly, it may actually, be in the states' interests to have restrictions placed on regional competencies, which under national law would be unconstitutional.

The resolution of the treaty implementation problem has had substantial repercussions for the autonomy of many regions covered by this study. Each system has handled the conundrum differently but in all cases it has finally been addressed by the judicial system. The legal question has been whether treaty making power includes the power to implement a treaty's provisions. If it does, then the central state authorities may make treaties eroding the autonomy of their regional bodies. If, on the other hand, the opposite view is taken, although the central government can make treaties it may not be able to guarantee their enforcement. This then leaves the

central state in a difficult position as the failure to implement a treaty due to constitutional difficulties is not a recognised justification under international law.*

The importance of the issue has been intensified by the continuing development of the EU. If the former interpretation is recognised, then the regions may find themselves subject to laws negotiated by the European nation-states which they themselves have no influence over. Thus, their sphere of political autonomy could be reduced almost at will by the decisions of the Council of Ministers or the Commission. European law is superior to the laws of member states, including their constitutions, at least in the opinion of the E.C.J..[†] The only significant dissenting voice has been that of the German constitutional court which, for a period, reserved the right to overrule European legislation on the grounds of human rights (immutably listed in the Basic Law).[‡] However, in the Solange II case, the German court recognised that the E.C.J. protected human rights as much as the Basic Law and thus would no longer entertain such actions.[§] This does not preclude it from changing its mind and recently the Commission has been warned that the German court will overrule one of its directives unless it ceases to infringe a fundamental principle in the Basic Law. Finally, in the Television case although the Bavarian attempt to force the German government to vote against a Directive in the Council failed, the Court did say European law would be reviewed to ensure it did not infringe the Basic Law (Foster, 1993, pp.61-62).

During Council of Ministers negotiations the member state delegation can also use regional powers as bargaining counters. The loss of these to European institutions could be bearable to central government, given that their influence over them is minimal anyway. Even worse, for the regions, a Machiavellian government could urge for directives in areas of regional competence with the specific reason

* Art.49 Vienna Convention on the Law of Treaties (See also Wallace, 1986, p198)

† Costa v. ENEL case 6/64 1964 E.C.R. p585

‡ Internationale Handelsgesellschaft case 1974, 2, C.M.L.R., p540

§ Wünsche Handelsgesellschaft 1987, 3, C.M.L.R. p225

that implementation would be left to them, thus eating into the devolved government's independence. With national constitutional restrictions offering no practical defence against European legislation, it is imperative for regional autonomy that regions are significantly involved in the European decision making process.

Equally, should international competence not include implementation, the member-state could be left in an extremely awkward position. Although failure to fulfil an international treaty obligation can be troublesome and cause complications in the field of international relations in the long term, the obligations of an EU member state increase these problems considerably. The E.C.J. has made it abundantly clear that the member state will be responsible for failure to implement EU law by a regional government (Hopkins, 1996c).^{*} Therefore, if the member state cannot guarantee compliance it will be open to constant challenge by the Commission, rebuke by the E.C.J. and even financial punishment failure to implement E.C. law. This is made increasingly likely by the *Francovich* decision.[†] Indeed if compliance could not be assured, one must question whether a nation-state could join the EU without agreement within its domestic constitutional structure.

Generally these problems can only apply to those nations with constitutionally protected autonomy (i.e. Germany, Spain, Italy, Belgium and Portugal)[‡]. In all the other regionalised states, autonomy has been granted through a standard law making procedure, therefore avoiding such difficulties. In these cases there are no relevant constitutional limitations on the law making powers of central government.

^{*} Commission v. Italy (8/70) & Commission v. Italy (272/83) see also Aurrecoechea; p.90

[†] Cases C-6/90 & C-9/90, I.R.L.R. (84), 1992

[‡] The Dutch Provinces also fall into this category but their non-legislative role means that in practice, they are unaffected.

The first member state to encounter the problem was Germany. This issue was addressed in the now famous *Concordat* case of 1957.* In this case the German Constitutional Court followed the “Canadian” solution, as reasoned by the Privy Council in the Labour Conventions Case of 1937.† In its turn the German decision seems to have been followed by much later decisions elsewhere in the EU. In the case itself, the government of Lower Saxony introduced a bill ending separate schooling for Catholic pupils. Instead, they would become part of the mainstream non-denominational system. The Federal government challenged the constitutionality of this act, as it was contrary to the Concordat of 1933 (signed by the Third Reich and the Vatican). This guaranteed the right of catholic children to separate education, but significantly encroached upon one of the fundamental areas of post-war *Länder* sovereignty. The court, in rejecting the Federal government's argument asserted that the Federal authorities did not have the power to impose a treaty obligation upon the *Länder* in areas where the latter possess legislative autonomy. Thus, the German courts rejected the view that treaty making competence and implementation are one in the same, (as argued by courts in the U.S.A. and Australia).

Resolving the issue along these lines still left a major constitutional problem in the F.R.G., just as the Privy Council's decision had in Canada. How can the central government conduct international relations if it cannot guarantee the implementation of any agreement reached? The situation was weakly addressed in the judgement through the principle of federal comity or *Bundestreue* which the court recognised as an obligation on the part of the *Länder* to take the duty of comity “particularly seriously” in this case. Obviously, this was far short of an obligation to implement and had no real practical effect. This could hardly be regarded as a satisfactory conclusion. The *Bund* could not impose treaty provisions

* BVerfGE 6,309

† Attorney General for Canada v. Attorney-General for Ontario [1937] A.C. 326

on the *Länder*, within their areas of autonomy, while the *Länder* themselves could not enter into international agreements in these areas without Bund approval.

Other EU jurisdictions faced with the treaty implementation problem were Spain, Belgium and Italy. As yet it does not seem to have posed a problem in Portugal. Of these, Spain has been seen to follow the German example, Italy seems initially to have followed the U.S./Australian solution while the situation in Belgium is *sui generis*.

The participants in the autonomy negotiations of the late 1970s and early 1980s learned from earlier German experiences (at least partially). With thirteen of the seventeen Communities addressing the issue in their autonomy statutes the role of the courts has been reduced. However, the variations between regional statutes' articles on treaty competence and their omission in four cases has caused constitutional confusion. In the statutes of the Euskadi (Article 27.3), Catalunya (27.3), Andalusia (23.2), Aragon (40.2), Castilla-La Manche (34), Canary Islands (37.2) and Madrid (33.2) the position is relatively clear. Their statutes stipulate regional implementation of all international treaties concluded by the central government but concerning areas included in their sphere of autonomy. This means that the central state cannot use international treaties to increase its legislative powers, although the regions are still subject to decisions made on their behalf, by the national level. The other 6 regions with treaty implementation competences mentioned in their statutes, (Asturias (Article 12), X (12.1), Extremadura (9.1), Balaeric Islands (12.1), Castilla-Leon (28.7) and Navarre (58.2)) have their implementation competence limited to executive functions only (i.e. the legislation is handled at the national level) (Aurrecoechea, 1989). As a consequence of these variations it has been argued that implementation functions not assigned to the regions (in their statutes) are retained by the Spanish central government as per Article 149(1.3) This allocates competence for international relations to the national tier. This argument is further strengthened by the existence of article 93, which grants the national authorities the ability to "guarantee compliance" with legislation from an international organisation (drawn up, specifically with the EU in mind).

The Basque statute of autonomy seems to complicate the situation still further by barring treaties or agreements altering the region's powers and competences without the statute itself being altered (Article 20(3)). This does not apply to agreements made under the provisions of Article 93 of the Spanish constitution.

While responding along the lines of the Canadian and German models, the constitutional court attempted to address the loose ends left by this approach. The court drew the distinction between treaty making power and implementation in a landmark judgement of 1982.* It asserted that clauses in autonomy statutes giving implementation powers to the regions were “a logical consequence of the territorial organisation of the state” rather than exceptions to the rule of central implementation. This argument is strengthened by Spain's Monist approach to international law whereby a treaty, once ratified, becomes part of the domestic law and therefore liable to internal rules of implementation. The effect of article 93, it is argued, is only to allow the central state to implement international (and specifically EU obligations), if a region has failed to do so.†

Both the German and Spanish courts defended the autonomy of the region against encroachment by the state. Similarly both failed to completely answer the problems this approach entails. In the Spanish case, although no specific mention was made of the “guarantee clause”, (Article 93) the existence of this article has enabled a weight of academic opinion to interpret the court's decision as having the effect mentioned above, thus at least partially squaring the circle. In Germany, however, no such clause existed and instead, as mentioned, the principle of *Bundestreue* was urged upon the parties, to resolve the stalemate.

* Judgement 44/1982, 8th July

† This view is widely held in Spanish academic circles. For a full list see Aurrecoechea, 1989, p97, nt.61

This was finally resolved by the Lindau Agreement, signed between the *Länder* and the *Bund* after the Concordat decision. This made Federal acceptance of obligations in fields of *Länder* exclusive competence conditional on their approval. In addition, the *Länder* are to be kept informed of international negotiations affecting their interests to allow their views to be expressed. A permanent *Länder* commission was established for this reason (Blair, 1981, p171).^{*} This agreement was mirrored almost twenty years later in Spain by a pact agreed in December 1985, between the regions and the central state regarding (Aurrechoechea, 1989, p99 nt.64). The Spanish have followed a broadly German, federalist, approach in both the judicial resolution and political compromise. Unlike their German partners, however, the Spanish have only settled the issue with regard to the EU (the most pressing manifestation of the problem). In the general area of treaty implementation confusion still remains. Does the court's decision that implementation must be left to the regions mean the regions are also free to refuse implementation altogether?

The opposite approach to this Canadian model could, until recently be seen in Italy. In its decision of 24th July 1972, the Italian court accepted the legality of a Decree giving jurisdiction for implementation of European legislation to the central government despite the inroads this would make on the regional autonomy guaranteed by the constitution. The Italian regions were convinced that the extensive E.C. involvement in agriculture (one of their main competences) was being used by the state to reduce their independence. The Court's decision, which relied heavily on U.S. and Australian arguments, claimed that since the Italian government took responsibility for international affairs, it followed that it required the ability to guarantee compliance.[†] The judgement thus stated that no powers could be conferred to the regions to implement international obligations unless the national level had a system to ensure compliance should the

^{*} This has been recommended by the Constitutional Commission to be incorporated into the Basic Law.

[†] No.142, 24th July 1972

regions fail to act. Although originally seen as the Constitutional Court continuing its centrist leanings*, the judgement did give the possibility of compromise. This was realised in 1977, when during the regional rapprochement of the period, Decree No.616, Art. 6 transferred the implementation of E.C. obligations, within their competences, to the regions concerned (Condorelli, 1986, p147). The Court's decision was adhered to by instituting an internal supervisory mechanism to ensure regions complied with EU legislation.† The system applied to EU law is now accepted in Italy as also applying to International Obligations in general.

The system as now enforced gives regions the right to implement international treaties in the areas which they hold competence. This makes it similar to the situation in Spain. In the case of EU Regulations, the regions implement them directly and set up any administrative structures, etc. as required. Where Directives are concerned, the regions work within a framework law established by the national parliament. However, unlike other framework legislation, it will contain detailed clauses, which are in effect a default, if the region fails to pass its own laws on the subject. If the region takes the latter course, the national legislation is set aside. If regional action is necessary and not forthcoming, or the regional legislation is found to contradict EU law (or an international treaty), the Italian government can, after a time limit and consultation, enforce compliance on the region.

The recent collapse of the post-war Italian political system has also had repercussions for the regions. In the anti-corruption fervour which swept Italy during the early 1990's the ministries of tourism and agriculture were abolished, their tasks being regionalised. In these areas the state has little choice but to leave implementation of EU law and treaty obligations to the regions. Perhaps more

* See Appendix I.5

† The alleged worries the central-state had over regional non-compliance with EU Directives does not actually hold much credence. Italy is one of the worst offenders in non-implementation of EU legislation.

importantly some means of involving regional ministers will have to be found when international agreements on these subjects are discussed, otherwise the Italians will have no expert negotiators. This has profound effects on Italian links with the EU. The problem for the Italian state is that the constitutional court in 1977 specifically prohibited regions from involvement in international relations (Agostini & Mattioni, 1992, pp.141-142).

This problem also affected the new federal Belgium. As in Italy certain areas, such as Education, are now totally devolved to the regional (or Community level). The solution in Belgium has been for treaties to be negotiated by the individual Regions and Communities removing the implementation problem completely. When treaties involving the competences of Regions and Communities are negotiated by the federal state, they must be approved by the relevant regional legislatures. This avoids all the problems of both the Canadian and U.S. solutions. By devolving international relations along with other competences the Belgians seem to have constructed a simple but effective solution.

Although the approach taken by the different EU member states has varied, the bias has been towards the Canadian rather than the U.S. or Australian model. Even in Italy, where the later course was followed, subsequent events have emasculated the decision somewhat. In both Spain and Germany, the courts' support of a narrow interpretation of "international relations" and its protection of regional autonomy has led to a blocked process which forced politicians to negotiate a viable working relationship. Whether this was the courts' intention is highly debatable but the result has been the Spanish *Autonomías* and the German *Länder* having the authority to implement international obligations and, at least in the case of the *Länder*, a say in their negotiation. Despite all these intricate systems and political compromises the issue remains a constant area of conflict between the regional and national tiers. Only Belgium has actually grasped the nettle and devolved international relations along with domestic competences. Political considerations make this approach unlikely in other states. In the long term, however, it may be the only satisfactory solution.

5.2(a) International agreements

The traditional measure of international persona is treaty making competence. Under this narrow definition the German *Länder* and the Belgian Regions and Communities are the only European regions to possess official international capacity. In Germany this authority is enshrined in Article 32(3) of the Basic law but its operation is somewhat restricted. All treaties must have the approval of the federal government in Bonn*, (the only exceptions to this are Concordats† which do not require the Bund's approval). This limited authority has been exercised by several *Länder*, especially those of Bavaria and Baden-Wurtemberg, mostly in areas of environmental protection (Harris, 1983, p566 fnt.12). The Federal government seems to have been quite happy for *Länder* to enter into agreements in this area but it is very much at the *Bund's* discretion. Regional autonomy in this area therefore operates only as long as the Bund acquiesces.

In Belgium, the situation is markedly different from any other regional system in the EU. Regions and Communities have the authority to conduct international relations with full powers in any area under their competence. The only restrictions on such regional operations are legally enforceable constraints regarding the international policy of the Belgian state (i.e. if Belgium has imposed sanctions on another state). This is a logical extension of the no hierarchy of laws principle and the division of competences between regions and federation (see Appendix I.1). If regions did not have this power, Belgium's status in international affairs could suffer as the federal authority would have no expertise in many of the policy areas discussed in the international arena.

* Art. 32(3) G.G.

† Treaties with the Holy See

Some Spanish autonomous communities also have an official role in international affairs, but it is minimal and varies considerably depending on the region concerned. As in the F.R.G. the sphere of international relations lies completely within the central states' list of competences (Article 97 of the Spanish Constitution). Unlike the German example, however, no exceptions to this rule apply. Instead, the Spanish regions' influence in international affairs is limited to a right to lobby the central government on specific issues depending on the individual statute of autonomy. Only Catalonia (cultural issues)*, Andalusia (assistance to emigrants)†, and Aragon (border issues)‡ enjoy even this limited right. The only other interest the Spanish regions officially have in international affairs is the right to be informed if treaties affect matters of specific relevance to them. Even this is restricted to some regions (Euskadi, Catalonia, Canary Islands, Andalusia, Madrid, Murcia, Asturias and Navarre). It would seem that officially even the most devolved authorities have only the slightest involvement in international relations.

The only other European regions officially enjoying any international persona are Madeira and the Azores. The situation in the Portuguese autonomous regions is more settled but no less confusing than that in Spain. According to the English translation of the 1976 Portuguese constitution the island governments are granted the right to “participate in the negotiation of and enjoy the benefits derived from international treaties and agreements which may concern them” (Portuguese Constitution) Obviously this grants a right to involvement in treaty formulation, similar to that held by the *Länder*, but without the final veto held by the German regions in the *Bundesrat*. However, whether this includes any ability to initiate or sign agreements independently (with the consent of the Portuguese government) is unclear.

* Article 27(4), Catalonian Statute of Autonomy, Organic law 4/79 of 18th Dec., BOE, 22nd Dec. 79

† Art. 23(3) Andalusian Statute of Autonomy

‡ Art. 40(1) Aragon Statute of Autonomy

In the remaining EU member states (France, Italy, Denmark and the Netherlands) official responsibility for all international representation and treaty making lies totally in the realm of the central state apparatus. Despite the minimum official international presence of European regions (with the exception of Belgium) regions are not restricted to domestic issues alone. Although official international links are rarely sanctioned by their parent nation-state regions participate in unofficial ones on a grand scale. These can be described as international “Dominium” power, using the terminology introduced by Daintith (Daintith, 1989). They range from vague co-operation agreements to specific arrangements to deal with a variety of issues. I hesitate to use the word treaty as this would imply a pact subject to international law and arbitration. This is not the case. Even the greatest federalist will not accord the Swiss Cantons with international legal status, yet they are involved in hundreds of such links. Instead these are contractual arrangements, not unlike those undertaken by large corporations involved in international trade. Although not always subject to any enforcement it is in the interests of both parties to abide by the terms imposed. If a party violates an agreement, its ability to conduct such affairs in the future will be damaged. Again, as in international agreements between private enterprises, the contract can stipulate where legal proceeding involving it should take place.

In fact, this is also how international law operates. Few treaties are ever broken, at least blatantly, and the use of international modes of arbitration is minimal. Thus, there exists a network of sub-nation state agreements beneath international law proper but operating by its rules. As the examples below demonstrate the issues covered by these links are by no means trivial to the citizen, nor are they always undertaken with the approval of the central state.

The problem for the nation-state in controlling such actions is when does a region's contacts outside the state constitute “international relations”? Work done by Wildhaber in 1974 concerning Swiss Cantons, uncovered at least one hundred and twenty five agreements still in force between Cantons and external bodies. Agreements range from Nineteenth Century border agreements with France to an

agreement of 1970 with German *Länder* concerning environmental protection (Wildhaber, 1974, p217). In addition the Cantons participate in conferences and have permanent contacts with counterparts in Germany and France. These vary from a regional co-ordination conference founded in 1971; to direct negotiations over waste disposal problems; to agreements concerning education, border disasters, frontier workers, etc. The final example is significant as it took the E.C. until 1968* to come up with agreements covering this complex problem.

It seems that far from the multitude of agreements arranged between the countries in this part of Europe being the exception, they are actually the norm. In Italy, for instance, the regions have been specifically authorised to enter into inter-regional contacts. Most interestingly this led to a regional development group being formed by the Veneto region and including (at the time) three other Italian regions, four Austrian *Länder*, two Yugoslavian republics and one German *Land*. (Elazar, 1991, p131)

The impotence of national governments in stopping these links is emphasised by the Spanish example. Despite Spanish annoyance, both Catalonia and Euskadi have established cross-border links and agreements with the French government. Links between the Spanish regions and their European counterparts have also been extensive. However, the Spanish state has been powerless to intervene, as these are not “international relations” per se. Further examples of the existence of a regional network of co-operation is not hard to find. The Council of Municipalities and Regions of Europe and the Association of European Regions are only two of a growing number of inter-regional bodies. Some such as these are concerned with general co-operation while others address more specific issues.

The role of regions in international relations is therefore far from irrelevant but their freedom in exercising it is still limited, especially in Italy where the court’s

* Council Directive 68/360 Art.2(2) & Commission Regulation 1251/70 Art.2(1(c)) among others

decision of 1977 so strictly limited their activities (see p128). Their involvement in this area is nevertheless increasing. This has been helped by the courts in some states refusing to take the U.S./Australian model of treaty obligations, thus forcing compromise on the part of the state. If the courts in Spain and Germany maintain this stance the trend is likely to continue. Even in Italy, despite the court's pro-central approach, necessity seems certain to induce change.

Official recognition and even a minimal role in international affairs is still restricted to the constitutional regions. Even within this group, the involvement varies widely from seats on the EU Council of Ministers (Belgium) to the right to merely lobby the central government over certain issues (Spain). Other regions have been left behind. That is not to say they have failed to benefit from the increased international involvement of those regions with greater institutional influence. On the contrary, pressure from these regions has led to increased regional involvement in the EU, culminating in the formation of the Committee of the Regions (see p146). These benefits are enjoyed by regions, EU wide.

With official recognition limited, all regions have had to use "unofficial" methods of expanding contacts and influence in the international arena. This seems to me the most important type of international regional activity. The expansion has depended on the ingenuity and vision of the regional administrations themselves but importantly it has been free from national interference. The Bavarian President for instance has made what have amounted to state visits worldwide in his efforts to establish Bayern as an aerospace centre (*The Economist*, 12/7/86). Intra-regional co-operation has also been evident, especially in dealing with the EU. Strathclyde region, with the support of Asturias, Saarland and Piedmont initiated the Overture programme to aid Eastern European regions and local authorities in their new administrative tasks, (receiving EU Commission support). This co-operation has also directly led to the formation of the Committee of the Regions through pressure from the C.M.E.R. the A.E.R. and the existence of the Consultative Council, which the Commission had already accepted. It should not be overlooked that the regions'

natural allies against the nation state, the Commission and the European Parliament, have often aided these efforts considerably.

In the area of international contacts, regional constitutional autonomy has certainly increased in recent years. We have not reached the stage where the region is replacing the nation state in the field, indeed we are not even close to a situation of parity between the two rival structures, but there nevertheless have been advances by the regional authorities. In the late 1970's, for instance, there was only one regional tier with limited involvement in this sphere while now there are four (Belgium, Germany, Portuguese islands & Spain) and soon could be five (the fifth being Italy). In addition there are a plethora of regional networks and organisations within the EU and now a regional institution within the EU itself. The consequences of this are examined in the section below.

5.2(b) Regional Government and the European Union

The structure of the European Union does not lend itself to regional or indeed local involvement. Since their birth, the Communities have been primarily a nation-state club, created by individual nation-states seeing benefits in joining the European project. Nevertheless, in recent years, the European Commission has been seen to encourage the development of the region. This apparent contradiction is explored in the following section.

The first observation to make is that the EU remains predominantly a club of nation-states. The main legislative body (the Council of Ministers) is entirely organised on national lines, with delegations representing the fifteen member-states. Furthermore, the Commissioners are appointed according to nationality, as are the judiciary. The predominant territorial unit within the Union is unquestionably the member-state. However, this is not to say that the region is totally unrepresented or without influence in the European policy process.

5.2(b)i Formal Representation

Official recognition of regional governments within the European Union was, until the 1990's, practically non-existent. Direct Regional involvement in the policy process was nil while consultation procedures were limited to exceptional cases and informal contacts. However, the Treaty on European Union, 1994 introduced significant changes. In this document, for the first time, non-national representatives were recognised as having a role to play in the Union.

The relevant changes are found in articles 146 & 198 of the amended Rome Treaty (E.C. Treaty, 1992). Article 146 introduced a small but potentially significant alteration in the Council of Ministers' definition. The previous incarnation of this article stated:

“The Council shall consist of representatives of the Member States. Each government shall delegate to it one of its members.” (Merger Treaty, Article 2) [emphasis added]

This article ensured that only members of a national government could participate in the Council. While this article remained in force, non-member state participation in the legislative work of the Community was forbidden. The regions were thus frozen out, even if their “parent” nation-state wished them to participate (on their behalf) within the Council.

Under Maastricht, however, this wording was radically altered. Primarily at the insistence of Belgium, the strict emphasis on government membership was relaxed. Instead, the national representatives must now be of ministerial rank and authorised to act for the member state. This does not exclude regional or ministers from acting on behalf of the state, (though neither does it specifically include them). The full article now reads:

“The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State.” (Treaty of Rome, Article 146 as amended by T.EU)

In Belgium, the concerns of the regions must be taken seriously. The Regions and Communities are responsible for international relations in their respective fields of competence (Le jeune, 1992). The Belgian Regions (and Communities) simply would not accept their representation at the European being handled by a federal minister. No treaty can be passed, which concerns the Regions or Communities, without their consent (see 128 & Appendix I.1). For this reason, the member-states had no option but to accept the Belgian proposal if the Maastricht treaty was to be accepted. Under, EU law, it is only possible to amend the treaties if all the member-states agree. In practice this includes the Belgian Regions and Communities.

As yet, Belgium remains the only state to make use of the newly amended article. Where issues of exclusively Regional or Community competence are discussed the Belgian delegation consists entirely of regional ministers. The respective ministers alternately head the delegation. In areas where competence is mixed, the Belgian delegation consists of both federal and regional representatives. The tier perceived as playing the dominant role heads the delegation. The other members act in an advisory capacity. When a vote is taken, the head of delegation administers all the Belgian votes as a single block. In keeping with the Belgian “co-operative” system, the precise details of these arrangements are laid down in a co-operation agreement between the regional and federal units (Van Ginderachter, 1993, p87).

The operation of Belgian regional ministers within the Council of Ministers is a major shift in the EU's, perceived status as a nation-state club, but does it have any practical effect? The problem with the present situation, in terms of regional autonomy, is that the regional representatives still sit as part of larger national delegation. Thus, when it comes to voting, the delegation votes on behalf of

Belgium as a whole. This defeats the whole purpose of the region. The regional minister is not representing the views of his electorate, but rather those of Belgium, (which incidentally, he has no democratic mandate from). Why then, is a Regional Minister present in the Council?

The reason seems to be one of expertise rather than accountability. As an example, if a question of agriculture policy, is discussed in Council, it is necessary for each delegation to have the facts at its disposal. Naiveté at the negotiating table is a disadvantage. As Belgium has no Agriculture Minister, it is necessary to use the regional ministries or risk being outmanoeuvred during the discussions, thus not representing the interests of Belgium to the full. It is also worth noting that regional membership adds to the stature of the regional ministers!

The Belgian Regional (or Community) ministers therefore do not represent their regions in Council. The position they agree on is, by definition, a compromise between the individual interests of the Regions or Communities. In some cases, the federal level will also have a say. This is not to say that their involvement does not enhance regional power. As outlined below, it does mean that a regional voice exists on the Council to put forward the opinions of the “third level”. In addition, it aids the Belgian regions in terms of information, as the notorious secrecy surrounding the Council is removed. Nevertheless, the ability of Belgian Regions/Communities to exercise their “autonomy” through the Council, must be seriously questioned. The Flemish or Walloon/French ministers put forward a Belgian position. In some cases they also speaking on behalf of the German Community and the Brussels region, from which they obviously have no electoral mandate. This can hardly be described as regional autonomy in action!

Further regional involvement in the Council of Ministers may soon come from the Italian delegation. The recent abolition of the Ministries of Agriculture, Tourism & Public Works and the transfer of their responsibilities to the regions presents the Italian government with a dilemma. When these topics are discussed at the European level, there is no longer an obvious national representative to sit on

the Council of Ministers. The stopgap seems to be giving such responsibilities to the Foreign Minister but this is likely to leave the Italians in a weak negotiating position. The Foreign Minister cannot be expected to have a detailed understanding of the minutiae associated with agricultural policy, in particular. The alternative for the Italian is to follow the Belgian model, though such a solution is not without difficulties.

The decision of the Italian Constitutional Court to bar Italian Regions from all international contacts seriously undermines any attempts to involve the regions in EU affairs.* Although a constitutional change could be implemented to bypass this problem, one suspects the Italian government will be reluctant to introduce one. After all, it was their action which originally limited regional involvement in the international sphere. The national level may still be reluctant to involve regions in the sacred area of international relations. The solution of this conundrum in Italy may have interesting repercussions in other regionalised states facing similar difficulties (e.g. Spain).

Official links also exist between the Scottish Office and the EU. On issues of Scottish interest a minister from the office will be part of the UK team. In limited areas such as fishing, he or she can even be the principle member though this rarely occurs (Secretary of State for Scotland, 1993, p21). This should not be regarded as an example of institutional autonomy in the UK. The minister will still be influenced heavily by his or her UK party ties. This is especially so of the present situation when the incumbent relies on such a small Scottish electoral base, which political scientists feel is at bedrock level (System Three Poll, *The Herald*, 6/7/93). Thus, any UK party ties are likely to outweigh any regional loyalty, their continued stay in office depending far more on their UK power base rather than their minimal electoral support.

* Judgement No.152, 24th July 1972

The Belgian regional ministers who participate in the Council of Ministers, are not alone, however. An older (and less active) regional presence has been kept by the German *Länder*. Since the 1950's, *Länder* representation has been an intermittent feature of the German delegation to the Council and several associated committees. In addition a civil servant (*Länderbeobachter*) is employed by the *Länder* to attend all Council sessions (in a non-speaking capacity) and the preparatory meetings of the German delegation. He or she also received the orders sent to all German EU delegations. These regional "rights" were obtained through use of the *Bundesrat's* veto powers. When passing European Treaty amendments, etc. or constitutional changes connected to them the *Länder* have a right of veto through their representatives in the *Bundesrat*. Because of this, the federal authorities have been forced to take account of *Länder* demands. However, this is not to suggest that the concessions given to the *Länder* have always had the intended results.

German regional involvement in E.C. affairs began during the late 1950s. During this period, concessions guaranteeing the regional level access to information and the right to comment upon impending European legislation were granted. However, it was the introduction of the Single European Act that gave the German regions their first real opportunity to put pressure on the federal tier and demand more formal involvement. The constitutional requirement to pass the act through the *Bundesrat* allowed the *Länder* to squeeze several important concessions from the federal government. Most notable, were an increased right of information, a new *Bundesrat* committee to examine E.C. legislation and give non-binding *Länder* opinions on issues of concern to them. Crucially they also won the right for their representative to be a non-speaking member of the German delegation to the Council of Ministers (when issues within their competencies were being discussed).

However, many of these concessions already existed on an informal basis. The agreement of 1987, merely put them on a legal footing.* Other involvement, formalised during the S.E.A. negotiations, included *Länder* civil servants being part of the German delegation to certain Council of Ministers working groups. These mostly concerned agriculture and regional policy. In the case of environmental protection, the *Länder* representatives won the right to sit as part of the Council delegation itself. Various other, informal, *Länder* representation on E.C. committees also became formalised, but only in exceptional circumstances were the regional members permitted to vote (obviously never on the Council itself) (Gerstenlauer, 1985, p180). Even if they were, they could only express a common (or majority) *Länder* opinion, rather than any regional differences that might exist.

In practice, however, the concessions obtained did not have the intended effect. Although the *Länder* now had a plethora of formal opportunities to express opinions, these remained non-binding. Furthermore, the method by which these opinions were obtained made the operation of the system unworkable. The *Länder* opinions were agreed within the various inter-governmental conferences that already existed. However, the rules of procedure used by these bodies specified unanimity on matters of policy. The chances of detailed responses to EU policy proposals being agreed by all the *Länder*, were slim (Engel, 1992, p76). In any event, such opinions, decided at a national level between the *Länder* do not allow individual regions to express their views at the European level. Regional autonomy was again the loser even if the regions now had some influence on European policy.

One reason for the problems associated with the regional involvement procedures was that *Länder* influence upon the treaty itself had been limited. The German regional tier was only able to gain concessions from the *Bund*, not the E.C. itself due to the nature of E.C. treaty amendment procedure. As the Single European Act had been negotiated under the auspices of the E.C. Treaty (which it was to

* For example, the *Länderbeobachter* or observer, was actually established through an agreement in 1958.

amend) these rules applied. In essence, they insist all the countries of the E.C. pass any changes to the treaty. This meant that if the *Bundesrat* refused to accept the S.E.A., the whole project would have collapsed, leaving the member-states to re-negotiate from square one. The *Länder* did not want to be seen as wreckers of proposals they actually supported so any resistance had to be qualified and directed solely at gaining concessions from the federal government.

Despite these problems, the S.E.A. episode had an important impact on regional involvement in the E.C. even beyond Germany itself. Some very important principles were established, notably regarding the *Bund's* negotiating position in areas of *Länder* competence. Despite all the difficulties of establishing a *Länder* position, the *Bund* agreed not to deviate from this position unless in the interests of "integration" or "foreign" policy. In these cases, the *Länder* were to be informed as to the reasons for the change in negotiating stance. Although such a safeguard is obviously flawed, as many shifts in position could be covered by referring to "integration" policy, it did establish the principle that the *Länder* were entitled to be heard when the issues under discussion concerned their interests. This was the first recognition of a "third level" in E.C. affairs. Prior to this, only European Institutions and the Member States had any involvement in European policy making. Now for the first time, a group of regions were recognised as having a right of participation (no matter how ineffective).

The "Maastricht Treaty" on European Union (1992), gave the *Länder* another opportunity to flex their constitutional muscles. Once again, it was plain that any agreement would need the support of the German regions in the *Bundesrat* to be accepted under the Basic Law. this time, the *Länder* were far more organised and orchestrated a remarkably successful campaign to influence the Treaty during its negotiation. This process was aided by the growth of the regional tier during the late and 1980's and early 1990's. Its increasing self-confidence and power, meant that by 1992, the *Länder* had some powerful allies.

In 1987, the heads of government conference of the German *Länder* published the “Ten Munich Theses on European Policy”. During the next few years these became four fundamental and clear demands of the German regions if their support for the forthcoming EU treaty was to be gained. These were:

- 1) The entrenchment of the principle of subsidiarity in the treaty
- 2) The opening up of the Council of Ministers to Ministers from the “third level” (i.e. regions).
- 3) The establishment of a regional organisation with the E.C.
- 4) The introduction of access to the E.C.J. from “third level” governments, when EU institutions infringed regional rights.

These demands were maintained consistently by all the *Länder*, throughout the entire negotiation process. As Jeffrey notes, this was quite remarkable considering the bitter domestic differences, prevalent between the regions at this time (Jeffrey, 1994).

The introduction of the subsidiarity clause is discussed in more depth in chapter two above, but with the exception of point four, the regional demands were all met. Interestingly however, the *Länder* did not restrict their campaign to the domestic political arena. Instead, they carried the fight to Brussels, Strasbourg and notably to other regional governments. This I believe marked a defining moment in the development of the regional tier in the EU.

By creating a pan-European regional lobby, the region entered the political arena as a truly European phenomenon. Rather than being concerned only with “domestic” matters, or being the concern of national political systems, regions were now operating on a European level. National borders were not acting as a barrier to their European activities.

The most important allies of the *Länder* were the Belgian Regions and Communities, due to the similar situation concerning treaty amendments in Belgium (i.e. the federal level must obtain regional approval). Indeed, it was the Belgian delegation which actually introduced the amendment concerning regional participation on the Council of Ministers after the German federation refused to (Jeffrey, 1994, p10).

The influence of the T.EU on German regional competence did not end here, however. With the re-unification of Germany, the *Länder* were presented with yet another opportunity to take on the *Bund*. Two Commissions, (the *Bundesrat* Commission on Constitutional Reform & then the Joint Constitutional Commission of the *Bundestag* & *Bundesrat*) considered the implications of the new united Germany. However, the *Länder* hi-jacked these bodies and instead pressed for a change in the Basic Law, concerning the EU. Once again, a united front was maintained and the ultimately successful campaign led to the introduction of a new Article 23 G.G.. This replaced the previous one containing provisions concerned with the extension of the *Grundgesetz* (Basic law) when Germany was re-united. However, the new article had no relevance to the previous topic whatsoever, instead being concerned with *Länder* involvement with the EU. It did have symbolic importance as Jeffrey points out, of this new “Europe Article”, emphasised the German commitment to Europe, post unification.

The *Länder* actually set out to change article 24 (international relations) but instead settled for the new article 23. The change was achieved by a combination of subtle negotiation and blatant threats (the Maastricht treaty had yet to be ratified). In one single session of the Joint Commission, the Bavarian Minister-President threatened non-ratification three times (something of a record!) (Jeffrey, 1994, p15).

The new article states:

- 1) The Federal Republic of Germany is to contribute towards the realisation of a united Europe in the development of the European Union

which is committed to democratic, constitutional, social and federal principles and the principle of subsidiarity and guarantees a protection of Basic Rights which is substantially comparable to this Basic Law. The Federation can transfer sovereign rights to it by statute with the consent of the *Bundesrat*. Article 79 paragraphs 2 & 3 apply for the founding of the European Union as well as for alterations of its treaty principles and comparable rules in so far as the Basic Law is thereby altered or added to in respect of its content or such alterations or additions are made possible.

2) In affairs of the European Union the *Bundestag* and *Länder*, operating through the *Bundesrat*, are to collaborate. The Federal Government must keep the *Bundestag* and the *Bundesrat* comprehensively informed at the earliest possible point in time.

4) The *Bundesrat* is to participate in the formation of the will of the *Bund* insofar as it would have to participate in a corresponding internal measure or insofar as the *Länder* would be internally competent.

5) Insofar as in a particular area of exclusive competence of the *Bund* interests of the *Länder* are affected insofar as in other respects the *Bund* has the right to legislate, the Federal Government is to have regard to the expressed opinion of the *Bundesrat*. If the legislative powers of the *Länder*, the organisation of their authorities or their administrative procedures are affected in a crucial respect, the view of the *Bundesrat* is, to this extent, to be taken into account as the determining factor in the formation of the will of the *Bund*; at the same time the responsibility of the *Bund* for all the *Länder* is to be preserved. In matters which can lead to increases in expenditure or reduction in income for the *Bund*, the consent of the Federal Government is necessary.

6) Where essentially the exclusive legislative jurisdiction of the *Länder* is affected the exercise of the rights of the Federal Republic of Germany as a

member state of the European Union shall be transferred by the Federation to a representative of the *Länder* designated by the *Bundesrat*. Those rights shall be exercised with the participation of and in agreement with the Federal Government; in this connection the responsibility of the Federation for the country as a whole shall be maintained. (German Basic Law, Article 23)

There are several interesting elements in the new “Europe” article. Specifically, EU, affairs are now separated from “international” under the Basic Law and as such are removed from the restrictions of article 24. Instead, EU affairs are now seen as *sui generis* somewhere between the national and international level. This merely recognised a political fact, but Germany was still the first Member-State to do so. In this regard it has now been joined by Belgium.

Many of problems remain, however. *Länder* opinions are still decided collectively and as such represent a “national” position. The fact this decision is reached through negotiation between regions is irrelevant. One of the rationales for the democratic region is its ability to represent the interests of the regional population. If collective regional opinions are used, some individual regional policy preferences will not figure in the final position. This is likely to damage the individual autonomy of regions. The fact that regional ministers can head the delegation does not alter this fact (see the Belgian example, p137)

One must also question whether this is the most accountable method of arriving at the German position in the Council. At present when issues such as education are discussed in the Council, the German position is reached by negotiations between the executives of regional authorities. This is taking power away from the regional parliaments and using the regional tier to make national decisions. The national government is designed to make decisions for the entire country and is responsible to the *Bundestag* for such decisions. No structure to ensure accountability exists in relation to collective regional bargaining and the

process is invariably secret. These negotiations are likely to involve a degree of back room deals, hardly conducive to accountability and democracy.

Article 24, nevertheless, does break new ground in the EU. Primarily, it recognises the duty of the national level (in this case, the *Bund*) to accept the regional position as the national opinion in the Council of Ministers, when the issue is one of regional competence. Despite all the caveats surrounding this, it is evidence of regional input into the EU. In addition, any further EU treaty amendments will be subject to *Bundesrat* approval. In this way, the introduction of the new article now enshrines *Länder* involvement in Europe as a constitutional principle. In this latest piece of *Länder* bargaining over Europe, they have firmly stated their claim as part of the "third level". Their success in having their involvement guaranteed by the Basic Law, cannot be exaggerated.

The success of regional tiers in Belgian and Germany has had major repercussions on the general status of the regions in EU affairs. Most obviously they have forced the introduction of the Committee of the Regions. This Committee, (established under the T.EU) is the first official recognition of a regional role in the formulation of EU policy.* Although the EU treaty strengthens the role of intra-regional bodies this is still a long way from real influence on policy within the EU. Even if the regions acquire increased autonomy in the domestic sphere, their ability to turn this into European influence, using this committee may be severely limited.

The greatest problem that the Committee faces is its composition. Although styled as a regional body, this is a misnomer. In fact, membership varies considerably from state to state. Regional involvement in the member-states' delegation generally reflects the relative powers of the regions in each state. For instance, the relatively powerful German *Länder* have taken twenty one of the

* Consultative regional bodies have been in existence since 1988, when the Commission established the Consultative Council of Regional and Local Authorities, under pressure from the European Parliament and the Council of Municipalities and Regions of Europe

twenty four seats allocated to the F.R.G., the remaining three being granted to the municipalities collectively. However, in the UK the lack of a regional tier ensures the membership is composed entirely of local councillors.

The accompanying table confirms the misleading nature of the title, "Committee of the Regions". Belgium is the only Member-State to appoint its entire delegation from the regional tier. This reflects the political power of the Belgian regions in the ratification process of the treaty, rather than anything else. All other member-states give a number of seats to local government. This leads to the creation of a committee of sub-national government, which is very different from a Committee of Regions.

To suggest that the German president of Bavaria with eleven million people in his charge, and the power to legislate independently in significant areas, will have the same priorities as the councillor from County Wexford whose biggest responsibility is paying dustbin men, is verging on the ridiculous. The splits between the two tiers soon became evident with the involvement of sub-national "groups" during the establishment of the Committee. Although the two European sub-national government "groupings" were officially excluded from the Committee, they remain active outside it as a reminder of the separation between regional and local issues.* The exclusion was agreed because it was felt the C.E.M.R., especially, would use its influence to antagonise the regions, something some local government representatives felt would be counter-productive.

* The Committee for European Municipalities and Regions (C.E.M.R. - dominated by local government) and the Association of European Regions (A.E.R. - dominated by regions).

Table 6 - Composition of the Committee of the Regions

Member-State	Appointment Method	Number
Austria	9 Länder representatives Head of local authority association (1) Mayor of Vienna (1) 1 Representatives of "city states"	12
Belgium	Appointed by Regions and Communities (all regions represented)	12
Denmark	4 Amter representatives 4 Kommuner representatives 1 City Amt representative Appointees agreed between govt. & local/regional bodies	9
Finland	1 Åland island region representative 8 local government representatives (local & regional)	
France	16 Regional representatives 4 Départemental representatives 4 Communal representatives	24
Germany	21 Länder representatives	24

	3 Local Govt. representatives	
Greece	12 Municipalities	12
Ireland	7 County + 2 City representatives	9
Italy	13 Regional (including all special regions & autonomous provinces - 6 reps. in total) 4 Provincial representatives 7 Municipal representatives	24
Luxembourg	All local authority representatives	6
Netherlands	5 councillors (4 provinces & 1 municipalities) 7 executive representatives (2 provinces & 5 municipalities)	12
Portugal	2 Island Region representatives 10 local representatives	12
Spain	17 regional representatives * 4 municipal representatives	21
Sweden	12 local representatives	12
UK	Elected Councillors appointed by Central Government on Semi-Regional basis	24
TOTAL LOCAL REPRESENTATIVES[#]		101
TOTAL REGIONAL REPRESENTATIVES[#]		121

* All Spanish regions represented, except Aragon, for some unexplained reason

The status of Dutch provinces (classed as regional) and the Finnish regions (classed as local) is questionable

The differences in opinion between local and regional representation within the Committee are also evident from the contrasting views held on its future. The Regions (especially those with greater autonomy), wish to see it develop into a truly regional institution, with legislative competences. In practice, a *Bundesrat* to the European Parliament's *Bundestag*. The local authorities, on the other hand, are content for the consultative role of the Committee to continue. The Minister-President of Baden-Württemberg outlines the regional position clearly:

“The major long-term goal remains the further development of the Committee of the Regions into a “third chamber”, alongside the European Parliament and Council of Ministers and with co-decision powers in certain areas.” (CoR, 1995a)

The President of Wallonia goes further. Although the Committee currently gives opinions;

“... the opinions thus far are advisory. In order to enable the Committee of the Regions to play its rightful role, in the near future I would like to see it given the power of assent in the areas of the environment, energy and land-use planning.” (CoR, 1995a)

The opinions of these prominent regional leaders are in marked contrast to the Scottish “regional” Councillor, Charles Gray. Indeed he asserts that the current proposals of the Committee, (concerning institutional reform);

“should reassure the EU bodies that the Committee of the Regions wishes to make constructive proposals and has no desire to seek a legislative role for itself or to compromise the prerogatives of the institutions”.

I would suggest such re-assurance is unlikely to be found amongst those who have read the comments of the regional leaders quoted above! Mr. Gray's should be taken in context, however. He has consistently argued that a more conciliatory approach will gain more for the Committee rather than the robust one taken by some regional representatives. He may be right, but the statements quoted above certainly underline the self-confidence of the regional tier in parts of Europe. Something sadly lacking in UK local authorities.

Further problems exist through the appointment of representatives according to national boundaries, rather than regional ones. This has a profound influence on the operation of the Committee. It turns it into a discussion group for national delegations of local/regional representative, rather than truly regional debating chamber. This is because many delegates are appointed to “represent” local/regional government in their nation-state as a whole. They do not sit as representatives of their own region. In this sense it makes the Committee rather weak, even in its advisory role. It is not a regional equivalent of the Council of Ministers due to the national delegation principle. Instead it reproduces the Council but with local representatives. Secondly, it is not a European “senate” to act in parallel with the European parliament. Indeed, relations between the two bodies have been less than cordial after a brief honeymoon period.

The attitude of “national delegations” obviously varies markedly in each member-state. In the case of Belgium and Germany, the delegates certainly do come to represent their individual regions. In countries such as Italy, however, there is much talk of the “position of the Italian delegation” in many of their comments. The simplest explanation for this is that in Belgium, Germany, Spain & Austria, each region is individually represented. This is not the case elsewhere.

Even if these problems can be overcome, and I am frankly doubtful if this can be achieved, the fact that a significant proportion of delegates are government appointees (whether democratically elected or not) will further diminish its importance (A.M.A.). In fact one wonders why the UK government was so worried about its establishment!

It is almost certain that the Committee will change substantially after the I.G.C. conference scheduled for 1996. Originally, this was predicted to go badly for local authorities as the regions were expected to press hard for the re-structuring of the Committee into a truly regional body. Such a move would obviously damage the authority of local authorities within the EU. Even if they granted a separate forum, they would lose the political power held by the Committee. As noted above, although the Committee may be weak in EU terms, the power of some of its constituent regions means it cannot be ignored completely. However, many local authorities soon realised that not only did the regions have a majority on the Committee* (and thus could pass such a proposal as a Committee opinion), but more importantly the domestic powers of some regions meant such a change would be impossible for Member-States to resist. In any case, sacrificing local interests would not be a major concession for the Member-States to give to the regions. Because of this the local authority associations of some countries (notably the UK) lobbied regional representatives in a successful effort to avert such a move.

* Since the accession for Austria, Finland and Sweden, the balance has shifted to local representatives

Attempts by the Greek delegation to propose a new name of the “Committee of the Regions and Local Authorities” were defeated, but the regional proposal to remove local representation was dropped.* Nevertheless, the policy of the regions remains clear; to establish a regional institution at the heart of the EU. Dr. Stoiber, Minister-President of Bavaria described his view of the Committee in the following terms:

“Legislative functions should be exercised by the Council and the European Parliament, supported by the Committee of the Regions. The Committee of the Regions, as the representatives of levels of government close to the individual citizen, should become a fully-fledged institution, and in the longer term develop into a purely regional chamber.”

This does not auger well for the local level and is further evidence, if any were needed, that regional power does not necessarily translate to local power. This is not to say that local authorities should not be involved in EU affairs, but to have the need for local & regional involvement addressed in a single committee is not practical. The diverse nature of the authorities involved at present means the majority of opinions given by the Committee merely say, “yes we agree with proposal x, but there should be more local and regional involvement” (with the exception of some comments which are generally unconnected with regional aspects of the legislation[†]). This is perhaps not the best use for Union funds.

What amounts to a “negotiating position” for the I.G.C. was announced by the Committee in May 1995. This compromise achieved all but unanimous support

* The proposal had been for a separate committee of local authorities to represent them.

† In the cases of the more autonomous regions, the opinion may reflect their experience, but surely they should have been consulted before the process began?

in the Committee (only one against and four abstentions) (CoR, 1995b). By concentrating on three areas, the Committee aims to get the majority of its proposals approved in the European Council of 1996, though their proposals are open to negotiation prior to this.* The three areas the regions have concentrated on are:

- 1) Defining Subsidiarity
- 2) Access to the E.C.J.
- 3) The structure of the Committee itself

The first proposal concerns defining the Subsidiarity principle in Article 3b of the Treaty to explicitly include regions and local authorities. To police this, the Committee also wishes the right of audience before the E.C.J. (point two). This will apply to cases concerning the Committee's own powers (rather like the Parliament and E.C.B. at present), issues of subsidiarity and finally for failure to act by a European institution. This could be achieved by granting the Committee institutional status (the preferred option) or by amending specific articles to allow the Committee to instigate legal proceedings. Finally the Committee has also called for individual regions to be given the right to appeal to the E.C.J. directly.

The Committee further proposes the extension of its mandatory powers of consultation into several fields which at present it does not have to be consulted upon. These include, transport, agriculture, environment and research. These powers, which are regional in many member-states (see chapter seven) are logical candidates for regional involvement. The most radical proposal, (and probably the least likely to succeed) concerns the Committee's role and force the Council or

* Full text of the proposed treaty amendments, etc. is carried in Appendix II

Commission to explain any rejection of Committee proposals although the opinions would remain advisory.

The reason behind some of these amendments seems to be an explicit wish to challenge the principle of subsidiarity before the E.C.J.. The Committee could then argue for decentralisation (and a regional tier) in all the large member-states of the EU (Ritchie, 1995). This is further evidence of the growing alliance of the “third-level” initiated by the *Länder*. As a Plaid Cymru member of the Committee commented, the Committee, “should appeal to the Court of Justice on behalf of the unrepresented people of Scotland and Wales”.^{*} The UK would not be the only target of such an action, with Greece and Portugal being equally guilty in the eyes of the Committee.

One must assume that such magnanimity on the part of European Regional governments towards their non-represented compatriots has benefits for themselves. For the region to emerge as a meaningful “third level” in the pan-European Union, it needs to be a truly European phenomenon. In simple terms, the more regional governments and the greater their autonomy, the better for individual regions. As more democratic regions emerge, the voice of the “third level” will increase, giving it a greater chance of being heard.

5.2(b)ii Informal Contacts

In addition to the increase in official role for regional authorities in the EU, there has evolved a parallel structure of informal contacts. The most obvious manifestation of this has been the development of “regional offices”, established to communicate with the institutions of the Union, especially the Commission.

All fifteen German *Länder*, ten Spanish Communities, all but one French Region[†] (plus some departments) as well as several UK authorities (including

^{*} Mr. Eurig Wyn (The Herald 2/2/95)

[†] Auvergne

Strathclyde) have established permanent representation in Brussels.* In total there were twenty-two regional offices open by 1992, representing thirty-two regions, though the number today is much higher. Many operate joint “information bureaux” such as the *Associations du grand sud*[†] and the *Hanse Office*[‡] to save resources but the interest shown by regions in establishing these office has been immense (Serignan, 1989, p7). One of the most interesting collaborations is between Picardie and Essex, where for the first time, a regional office has been established between the territorial units of different member-states (Engels, 1992a, p42).[§]

The role of these offices is somewhat ambiguous, however. Unlike the permanent representatives of the Member-States, regional offices enjoy official legal status within the Community. In legal terms they are nothing more than “interest groups”. Negotiations and official contacts can occur only between the Commission and the Member-State representatives. The one exception to this being Belgium, where the Flemish, Walloon and Brussels regional representatives (and those of the French and German Community) are empowered to conduct such negotiations. In practice, the majority of these offices act as little more than lobbying organisations, although they do allow regions to keep informed of European developments. This is increasingly important, if lobbying is to be undertaken before legislation is passed. Perhaps the single largest job undertaken by these offices is to spot opportunities for E.C. funding. This is especially true of those regions, less prosperous in EU terms.

Overall, the importance of these offices is rather exaggerated. As a *Länder* civil-servant working in one of these bodies commented, “they [the Commission]

* The Scottish Office also has permanent representation through the “Scotland Europa” office.

† Aquitaine, Corsica, Languedoc-Rousillon, Midi-Pyrénées and Provence-Côtes d'Azur

‡ Hamburg, Lower Saxony and Schleswig-Holstein

§ Centre-Atlantique is now also a cross-border regional organisation, comprising Poitou-Charente, Centre (both French) and Castille-Leon (Spain)

are very polite to us but can't really do anything". Nevertheless, even the creation of this minimalist presence has not been without controversy.

Both the Basque and the Catalan regions have established offices in contravention of the Spanish Government's wishes. Indeed the Member State took legal action to try and prevent their establishment (Cuchillo, 1993). The jealously guarded right of the nation state to deal with "international affairs", seems to have inspired the Spanish action. In Germany too the *Bund* has, until recently, refused to recognise the *Länder* offices in Brussels, pushing many of the *Länder* to establish them under private law, out of reach of any constitutional challenge. Even now, the *Bund* will only have the *Länder* observer housed in the offices of the German permanent representation, under conditions which the *Länder* will not accept (he/she would have to be under the jurisdiction of the head of the German delegation).

The reason for member-state unease at regional European offices is puzzling especially when one considers the practical limitations on these institutions. As Keating points out, money cannot be granted by the Commission to regions directly, instead all regional aid must pass through the nation-state (Keating, 1986, p299). With this in mind, Spain's reaction seems to be verging on paranoia. Nevertheless, the number of these offices has continued to grow (with some encouragement from the Commission). One assumes this is a mark of their success.

The importance of the EU to regional governments is obvious. With a steady flow of legislation emanating from Brussels, this area of "international relations" has a constant and continuing influence on their autonomy. Indeed as far as EU law is concerned the authority of an autonomous region and that of a "sovereign" state are equally inferior. Yet this is where the similarities end. The EU club continues very much as an alliance of member states and not of their constituent parts. The regions, unlike member states, have been forced to implement EU legislation over which they have no influence whatsoever. This is beginning to change, though not through the choice of the member states

themselves. Pressure, especially from the German *Länder* has begun to have an effect outside the borders of the F.R.G. This again has been complemented by events in the weakening centrist states of Belgium and Italy.

Interest in European affairs has grown not only amongst those regions with higher degrees of autonomy but throughout the EU. Much of this expanding interest must be seen as entirely mercenary. The EU now dishes out a fair amount of development aid and general financial assistance. It is therefore prudent for any regional government to have contact with the EU institutions in Brussels, especially the Commission.

This process could be seen as the final development of the "Europe of the Regions" thesis. With direct links established between Europe and the regional governments the nation-state becomes redundant. Whether this is the case is highly debatable and many have argued the development of EU links is at least partially a myth (Keating, 1993). Does the evidence outlined above back either argument?

Although the involvement of regional governments in EU affairs has evidently increased in recent years how significant or desirable is this? Keating argues that such increases mean little, as the EU purse strings are still almost exclusively controlled by central governments. In addition, the dominance of regional executives in such contacts leads to an increase in the democratic deficit at the heart of the Community. The second of these arguments is undoubtedly correct. Any representation from any territorial unit is likely to be an executive delegation. However, this has a minimal effect on the democratic deficit. Indeed, I would argue it causes a slight diminution, as at least the regional representatives are closer to their electorate, than their national counterparts. With the present EU structure awarding almost total legislative powers to national executives in the shape of a secretive Council, the involvement of regional representatives cannot increase an executive dominance which is already complete.

As for the first argument, this is somewhat more complex. Although the financial deals are struck between the Community and the Member states alone, changes in internal structures are altering the meaning of the "member state". With two and perhaps a third member states' regions having direct involvement in EU decisions, even to the extent of voting rights, the concept of member-state in this regard does not necessarily translate into "central authorities". Indeed, a total of 38 regions, in one quarter of the E.C. member states now have direct influence over EU decisions. With Spain, now in a period of coalition government between the Popular Party and Catalan regionalists it is expected the two rebellious Spanish regions of Catalonia & Euskadi will gain further success in their demands for greater involvement in EU decision-making. Furthermore, any structural funding awarded to the *Länder*, Portuguese islands, Belgian Regions/Communities and Spanish *autonomías* is now controlled by them.

As for the other regions the picture is not so rosy. Although informal links have been established by the French regions as well as authorities in the UK their influence must be regarded as minimal and Keating's arguments valid. National authorities still control all EU funding often to their own advantage.* However, that such links exist at all is certainly an improvement. The example of Spain's attempts to stop such offices being established is the most obvious example of the perceived threat this could become to the nation state's most prized area of exclusive competence.

Though the Europe of Regions theory, now fifteen years old was undoubtedly over optimistic, EU-region links do give credence to its development. The influence of regional government's on the EU is certainly increasing and it should be noted that should the Scottish parliament on Calton Hill ever be opened, the Constitutional Convention's plan (supported by the Scottish Liberal Democrats. & the Scottish Labour Party) would give it direct access to the Council of Ministers.

* For a good discussion of UK abuse of E.R.D.F. see Keating, 1993, p299

This may “tip the balance” of regional involvement and begin to make it seem as the norm rather than the exception. A Regional Europe will not occur overnight but on this evidence it is certainly a long-term possibility.

5.3 Constitutional Autonomy = Regional Autonomy?

The above chapter outlines the framework in which regional autonomy operates. The most basic observation is that some form of democratic regional structure operates in eight of the twelve (pre-1995) member states of the EU. To these must be added Austria and Sweden and Finland. Austria is a federal state, Sweden has an regional structure not dissimilar to Denmark and Finland includes the autonomous region of the Åland islands. Mainland Finland has recently developed a regional tier (see Appendix II.2). In each of these states, with the exception of the Netherlands, the regional structures would seem to offer the opportunity of significant regional independence.

It is clear from the descriptions above that the federal regions enjoy a significant degree of legal protection but apart from this constitutional differences are minimal. The legal status of regions is certainly not the whole story. The Dutch provinces for example though enjoying legal protection under their national constitution are subject to national review of their policy options. Equally, as will become clear below, the Danish and French regional levels, although enjoying no constitutional protection operate more independently than some of their constitutional cousins.

Regional governments in the 1990's operate free from the legal restraints of the tutelle and even some of the legal restrictions placed upon them can be circumvented. Regions may be officially barred from international relations but there is very little that parent nation-states can do to stop them. The only successful attempt seems to be that of Italy and even here the regions have been allowed links

beyond their borders. Ironically, the successful exclusion of Italian regions from international involvement has actually backfired in recent years (see p137). The constitutional framework of the regional tier thus gives them powers over their own organisation, potential policy freedom and even international relations. The European Union is perhaps the regions' greatest challenge at present but even here, the domestic strength of regions has been translated into a degree of involvement. The 1996 I.G.C. may see this increase.

This nevertheless remains only the constitutional framework within which regions operate. It does not guarantee regional autonomy. The ability of regions to alter their institutions would be somewhat irrelevant if the regions did not actually do anything. The ability of the regions to successfully operate within their constitutional framework depends on two further factors. Firstly their financial independence and secondly the functional authority granted to them. The former is especially important as regards non-official actions such as international relations. Most international agreements between regions will involve some financial activity (regional development plans, etc.), this will be impossible unless the region possesses financial autonomy. This again could be severely hampered if the functional remit of the region was limited so as to be irrelevant. The following chapters add these interrelated concepts to the picture of regional autonomy.

6 - Regional Finance

6.1 Introduction

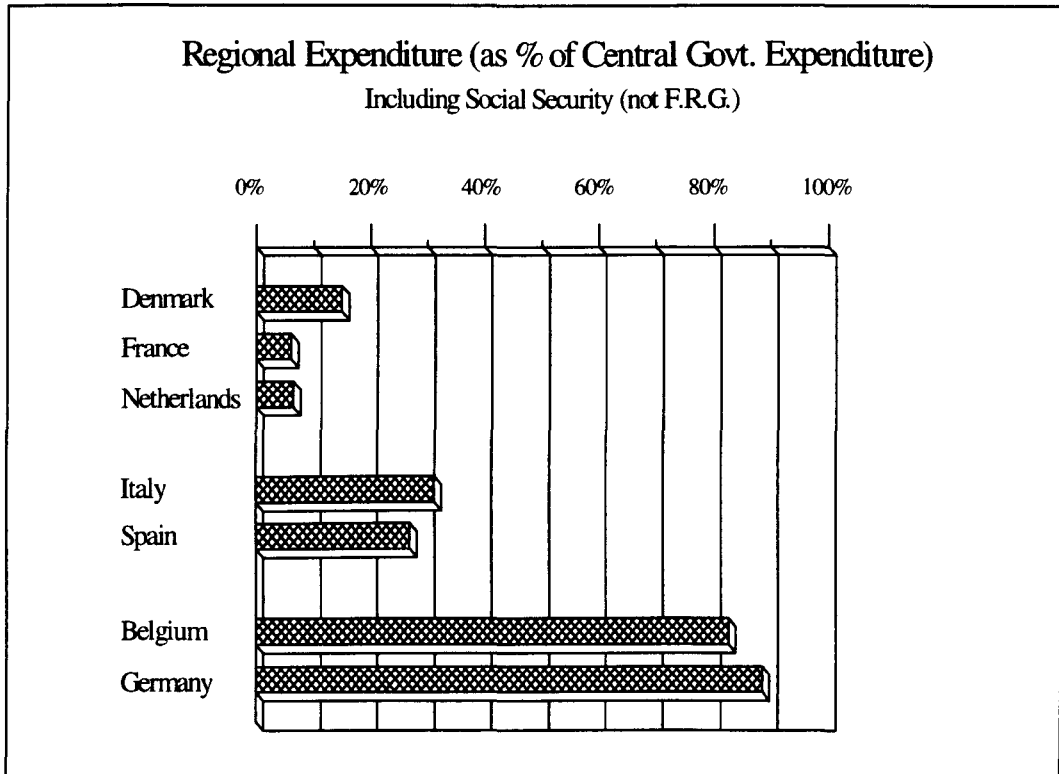


Figure 6.1-1: Regional Expenditure as a percentage of central government expenditure (1992)

Sources: National and Regional Accounts (see Appendix III)

The following chapter attempts to analyse the autonomy of regional units in the field of public finance. Although the constitutional framework of a region may indicate it has the right to exercise authority, this does not necessarily indicate an ability to develop independent policy. In almost all areas of modern government monetary expense is required to implement policy preferences. For this reason financial autonomy is a vital component of a region's power. Although a region may

be independent in constitutional terms this means very little if the national authority controls the purse strings.

The first indicator examined is the least subtle. Figure 6.1-1 gives a representation of regional expenditure, in comparison with state expenditure. A figure of 100% indicates that, collectively, the regions within a nation-state spend resources equal to that of the national tier. What is immediately obvious is that no regional system achieves this parity. This is slightly misleading in at least one case, as a brief glance at the situation in Germany over the last ten years shows (Figure 6.1-2). Here we see that for a short period, in the late 1980s, the *Länder* raised more revenue than the *Bund* (although their expenditure remained slightly less). The sharp decline in *Länder* expenditure between 1990 and 1991 (in comparison with the *Bund*) was primarily the result of re-unification. The bulk of this was paid for by the *Bund*. The decline is therefore not necessarily a reflection on the power of the Western *Länder*.

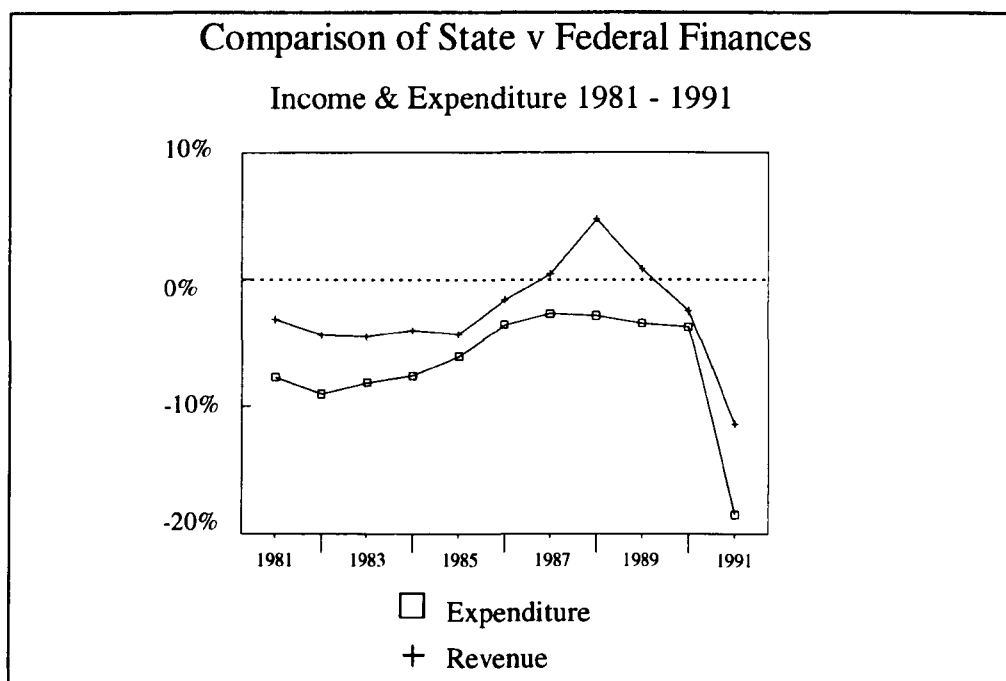


Figure 6.1-2: German regional expenditure/revenue in comparison with national finances
Source - Bund Ministry of Finance figures

Figure 6.1-1 nevertheless gives a relatively accurate picture of the role regional expenditure plays in the member-states of the EU. Most noticeable,

perhaps, is the clear distinction between the federal, constitutional and non-constitutional regions. The latter spend by far the smallest amounts in comparison with the national level (Denmark's slightly higher proportion is accounted for by *Amter* control of the health service). In contrast, federal regions account for between 80% and 90% of the national budget. Between these two extremes fall the constitutional regions of Italy and Spain, registering around 25%-30% of the national level's spending. Portugal cannot be included in these figures as only the island regions can be regarded as autonomous.*

Preliminary analysis would therefore suggest that the distinction explored in Chapter 5 also holds true as regards financial muscle. Those regions with stronger constitutional status are financially more important to the functioning of the state than are their weaker compatriots. Overall it is also clear that regional governments spend a significant amount of resources in comparison with the national tier.

This does not say anything about financial autonomy, however. Until the sources of regional revenue and any limitations placed upon them are analysed, no comment can be made on financial independence. To allow meaningful discussion of this issue, this chapter examines four areas of finance and to some degree, expenditure. These are;

- a: Independent Financial Resources
- b: Borrowing
- c: Block Funding
- d: Specific Grants and Mandated expenditure

Each financial resource is allocated one section in the following discussion. The merits of each are examined in the context of the individual regional system before being compared on a European basis. The concluding section in this chapter

* Although comparing regional and national expenditure is not the most common measure used in comparative works of public accounts, it has proven the most consistent. National accounts often fail to specify regional expenditure but regional accounts and national accounts can be obtained separately.

presents an overall assessment of regional financial autonomy in the European Union.

The four varieties of financial resource are discussed in order of autonomy (from greatest to least). Independent resources naturally give regions the most freedom in financial matters. This category comprises all taxation and charges which regions may levy without interference from the national level. In practice, this means taxes and charges which are set by the region and not the national tier. Borrowing is also self explanatory, but regional autonomy in this area will depend on any restrictions placed on the region by the national tier. Block funding is a broad term I use to cover all general grants from government and any other funds which regions are free to spend but do not raise independently. This includes ceded taxes. The final category of specific grants describes those funds allocated by the centre for specific projects. Do they actually turn the region merely into a conduit for national policy or can the region exercise any discretion? The issue of mandated expenditure or unfunded mandates (as they are described in the U.S.) is also examined in this section. Put simply, do unfunded compulsory regional functions nullify the independent and block funding received elsewhere? The operation of some of these functions is explored in chapter 7.

The aim of this methodology is to present an estimation of regional financial autonomy in conjunction with total regional expenditure. The proportion of regional funding raised through more independent means gives a picture of the spending autonomy open to the region. When this is combined with the figures for regional expenditure in comparison with other policy making levels of government (principally, the national tier), the importance of regional decisions in the distribution of financial resources within the EU can be established.

6.2 Independent Finance

The state and its institutions are unique. They, alone amongst economic enterprises, have the capacity to elicit compulsory contributions from their citizens.

This remains the primary source of income for all national governments and gives them a high degree of financial autonomy, restricted only by political and economic limitations. Regional use of independent resources are far more varied, however. In fact, all regions are restricted in their use of taxation (to a greater or lesser degree) by national considerations.

The concept of the sovereign nation raising any taxes it sees fit no longer applies within the European Union. National governments are now limited in their ability to raise import taxes and tariffs. Most importantly, member state governments are also restricted in their application of V.A.T.. Outside the EU, free trade agreements (and most importantly the recent G.A.T.T. negotiations) have begun to impose limitations on the signatory parties. Notwithstanding these qualifications, however, this study will assume national governments have sovereignty in the field, unless stated otherwise. The reason for this is simple. Although national governments are restricted in their imposition of certain taxes, in general these limitations will also apply to the regional tier. Furthermore, the member states of the EU can collectively alter the restrictions placed upon them by the Union or at least influence them. In the case of non EU restrictions, the limitations agreed are voluntary and only engaged in by nation-states for the achievement of mutual benefits. No such liberty applies to the regional tier. With few exceptions, their tax raising powers are granted and limited by higher institutions. In no cases may the region concerned unilaterally derogate from the tax limitations placed upon it. The taxation controls placed upon the regional level are thus well outside the influence of the regional actors. Some regions, nevertheless, do have a limited ability to raise independent finance. The following section analyses these taxes and charges and assesses their importance to the regions concerned.

Regional independent finance can come in some bizarre forms. From taxes on environmental damage, in Flanders and Wallonia, to Bingo Tax in Catalonia, the variety of sources used is extremely diverse. In fact there are few cases where regions are given access to mainstream tax bases, such as income, sales or business

profits. Instead, a plethora of charges and tariffs on peripheral activities and products dominate regional finance of this type.

The non-mainstream taxes that are granted to the regions also suffer from their non-elasticity, in many cases. Unlike a levy such as income tax, which increases its yield in relation to inflation (generally), purchase taxes and other levies on economic activity generally need to be increased to raise the income in line with inflation. This is not popular amongst the electorate.

The type of taxation autonomy the regions exhibit can be broadly divided into two categories. First, full autonomy, where regions control the rates of the tax concerned without legal restraint. Second, what I term "semi-independent" finance where the regional government, though free to set a rate (or apply a surcharge), must do so within limits imposed by the national level. Although qualitative discussions of the types of independent finance are mentioned in the text, all taxes under the control of the regions (even with restrictions) are regarded as independent sources of finance, for comparative purposes.

An additional source of independent regional finance comes from the marketing of regional services. These "service charges" are obtained from a wide range of activities, from photocopying to waste disposal. Although very hard to quantify, where this source is free for exploitation by the region it has been included in the survey.

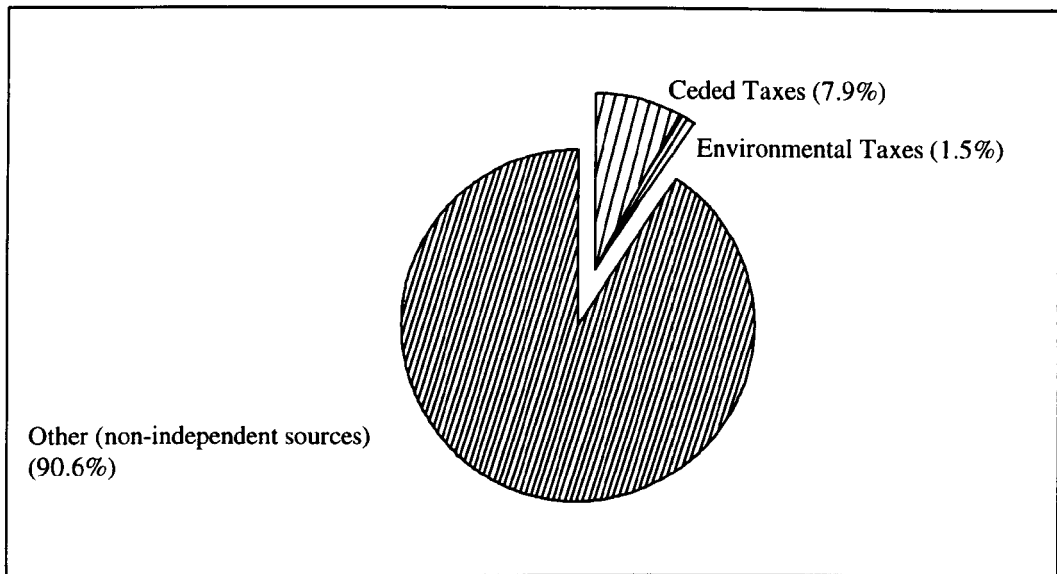
6.2(a) Belgium

Figure 6.2-1: Independent funding in Belgian Regions 1992 (Wallonia)
 Source - Conseil Régional Wallon, 1993

Belgian Regions and Communities are endowed with a constitutional right to raise taxes under Articles 110 and 113 of the Belgian Constitution (1980 Revision). This should give federal units the opportunity to raise a high proportion of their expenditure through independent means yet, in practice, under 10% of regional expenditure is financed in this way (Figure 6.2-1) (Communities raise under 3% from this source (German Community, 1992)). The reason for this apparent contradiction is that under the Belgian constitution, taxation is the only area in which regional and national competences are concurrent. This means that the authority to act is only available to regions until, or to the extent that, the national authorities "occupy the field". In this example, Regions and Communities may not levy taxes in areas already taxed by the national level. In addition, any regional or community taxes may be repealed by an ordinary national law if the Belgian parliament wishes to raise taxes on the same source (Alen, 1990, p12).

A further restriction on regional competence in this area has been Court of Arbitration's interpretation of the Belgian State as an economic and monetary union. For this union to work, no internal duties or charges can be levied which might

discriminate against other members of the Union. A broad interpretation of this led to the Walloon water tax being declared partially inadmissible.* At present the only tax which has been introduced by the federal units themselves, is that on environmental damage (Van Ginderachter, 1993b). In fact, research undertaken by the Walloon region found the rental of video tapes to be the only source of taxation not covered by national levies (purchase of them is covered by V.A.T.) (Covell, 1987, p71).

For the reasons outlined above, practical discussion of independent financial resources is limited to the (mostly Regional) ceded taxes. The revenues of these "own taxes" are allocated and collected by the Regions and Communities, although the legislation concerning them is handled by the national level. These taxes are (receipts accrue to Regions unless otherwise stated):

1. Gambling and Betting Tax
2. Tax on Gambling Machines
3. Tax on Licensed Premises
4. Inheritance Tax
5. Real Estate Tax
6. Property Sales Tax
7. Road Tax
8. Radio & T.V. licences (Communities)

The basic rates of these taxes are set at a national level as are the tax bases. However, the regions do have an ability to give rebates as well as adding surcharges to the national rate. The extent of these powers are such that the Flemish Ministry of Economic Affairs described their control over these revenues as "complete" (Flemish Government, undated). 100% rebates can be granted on an otherwise taxable item, thus effectively removing it from the tax base. A general rebate

* Court of Arbitration, Case No.45 - Judgement No.47, 25th February 1988, M.B. 17th March 1988

therefore amounts to a rate cut. The surcharge power is obviously equivalent to a rate rise. Limits are set at the national level with the intention of limiting the discrepancies within the economic area.

The power to apply surcharges also applies to personal income tax levied in the Region* and was recently extended to include Radio and T.V. licenses (the receipts of which accrue to the Communities). In practice, this power was proscribed until recently as the regional authorities were forbidden from increasing the overall tax burden. Even now regional surcharges have been introduced sparingly (and only by Wallonia). Indeed, the Flemish government has made clear its intention of not using this power (Government of Flanders, undated). As far as I am aware, the rebate power has never been used.

With the exception of income tax these taxes are rather peripheral in nature and as such cannot be heavily relied upon. Fear of tax competition has so far ensured that income tax has also remained constant throughout the federation. The regions thus receive around 10% of their funding from independent sources (between 2% and 4% for the Communities) but only control their small environment taxes completely (German Community Budget, 1992; Moniteur Belge, 31/12/93; Walloon Budget, 1992; Belgian National Statistics, 1994). Even in this example, the Flemish regional government has said that it does not wish to increase this as;

"Additional heavy increases could actually impair the competitive position of our companies" (Government of Flanders, undated, p12)

Other points of interest concerning the environment tax are that it was introduced almost simultaneously in both regions. This does not suggest much independence of action, although the method of implementation has varied slightly.

* This power was effectively granted on 1st January 1994. Before this, any surcharge could not increase the overall tax burden in Belgium. Such a restriction made any ability to increase income tax totally meaningless.

This seems to be an example of the Regions using their independence to conform (see 4.1 above). Finally, in both cases, the receipts of the tax are "ring-fenced", being used only to fund environmental projects and protection schemes. Although, this is an interesting innovation, it does not leave the regional government free to spend the receipts independently. On the other hand it cannot be seen as national interference since the Regions have introduced these restrictions themselves.

The power to raise funding independently is limited in the Belgian regional system, though by political restrictions, rather than legal ones. Although constitutional provisions exist to enable the regions to raise new taxes and impose surcharges there seems little likelihood of them using this source extensively due to worries about tax competition. Some other areas of independence do exist, for example the T.V. license is presently collected by the national telephone company, Belgacom, which charges a 3% levy for its services. The Communities (and the amalgamated Flemish authority) are presently looking at ways of collecting the tax themselves to avoid paying what they regard as an expensive rate. This nevertheless does not amount to control over independent finance. Despite the innovations surrounding regional independent finance in Belgium, political realities make the use of this method of funding, rather limited.

6.2(b) Denmark

The *Amter* of Denmark stand out amongst regional governments for the amount of financial autonomy they enjoy. As can be seen from figure 6.4, almost 70% of regional revenues come from sources totally under their control. Although the *Amter* also receive funding from ceded taxation (property Tax), they do not control its rate. For this reason it not considered in this section.*

* The municipalities do enjoy a degree of independence in the setting of property tax, but in 1992 the County portion was set nationally at 1%.

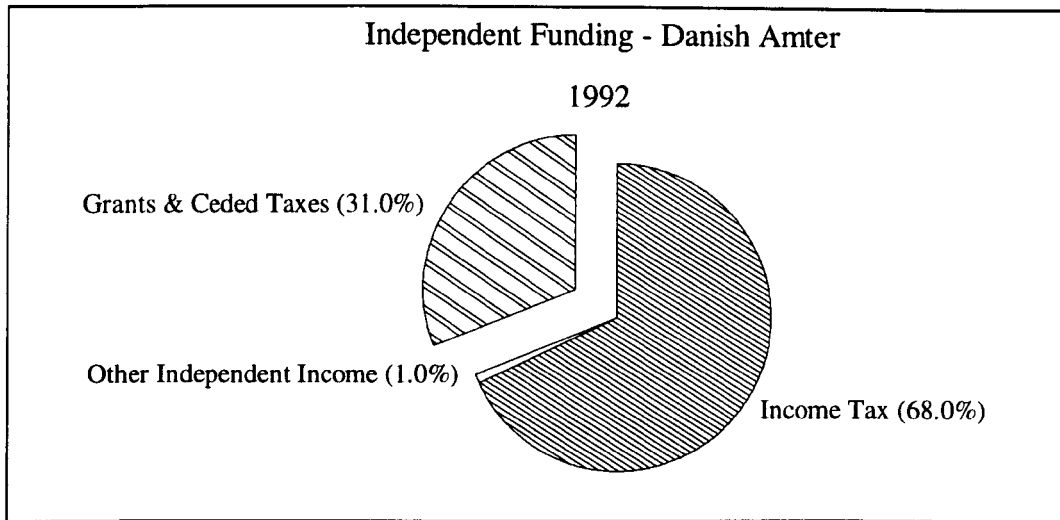


Figure 6.2-2 - Danish Amter Revenue - 1992

Source - Danish Counties, Andersen, 1992, p19

By far the greater part of this independent funding comes from income tax levied by each *Amt*. This is undertaken without any legal constraints from the national government. In 1992 the *Amt* income tax rates ranged from 8.9% (Ringkjøbing) to 10.4% (Viborg), the average being 9.6% (Andersen, 1993, p18). This ability to raise and lower such a fundamental tax gives the *Amt* a high degree of financial independence, though in practice they do not use it to its full potential.

When the recession of the 1980s bit, the government wished to restrict inflationary rises in taxation and public expenditure. To do this, restrictions were agreed with the *Amt* to limit their tax rates (Council of Europe, 1993b, p21). Only for the year 1987 were these restrictions formalised into law. Nevertheless, within these negotiations, the central government were in a very strong position. If the *Amt* did not agree, legislation could be introduced forcing them to reduce or maintain their rates. This continues to be the case due to the lack of constitutional protection afforded to the *Amt*. Despite this, the emphasis remains on negotiation rather than confrontation (Harden, 1993). The only other method of independent funding open to the *Amt* is from charges placed on services they supply (they may not raise new taxes). As figure four shows, this accounts for only 1% of total resources.

Overall, despite the constitutional inferiority of the Danish *Amt*, they enjoy a high degree of financial independence. This makes them unusual amongst European regions as they are both financially accountable to their electorate and have a real ability to increase revenue when policy demands. In practice the setting of *Amt* rates is likely to be limited by national concerns but the culture of decentralisation in Denmark has ensured central state interference has been relatively limited. Nevertheless, their weakness lies in the ability of the central state to enforce financial limitations upon them through statute. This allows the centre a strong hand in discussions over *Amt* tax rates.

6.2(c) France

In the purest sense of the word, the French regions enjoy only one type of independent finance, a car registration fee. Apart from this the taxes and charges levied and received by the regional authorities are subject to limits set by national legislation. In addition, regions (or indeed *départements* and communes) may not create their own taxes. Nevertheless, the regional authorities do have a degree of independence as regards their semi-independent taxes. The rates of the taxes in this group can be altered within limits. Regions can either change the rate directly or add a surcharge to the national rate, depending on the tax in question. These forms of finance allow the regions to alter the rates of certain taxes and add surcharges to others.

As already mentioned, the *carte grise* (car registration) is the only revenue solely under the control of the French regional authorities. It is a rather arbitrary form of "tax" comprising a registration fee paid by the owner of a new car. It is a fixed rate, not dependent on the car's value (but some regions have related it to engine size) and as such is an extremely blunt form of indirect taxation. It is easily identifiable as a regional tax and as such it may not be politically expedient to rely too heavily on such an instrument of finance. Furthermore, the nature of this charge is rather regressive. Despite this, it accounted for over 12% of French regional finance in 1993 (see Figure 6.2-3).

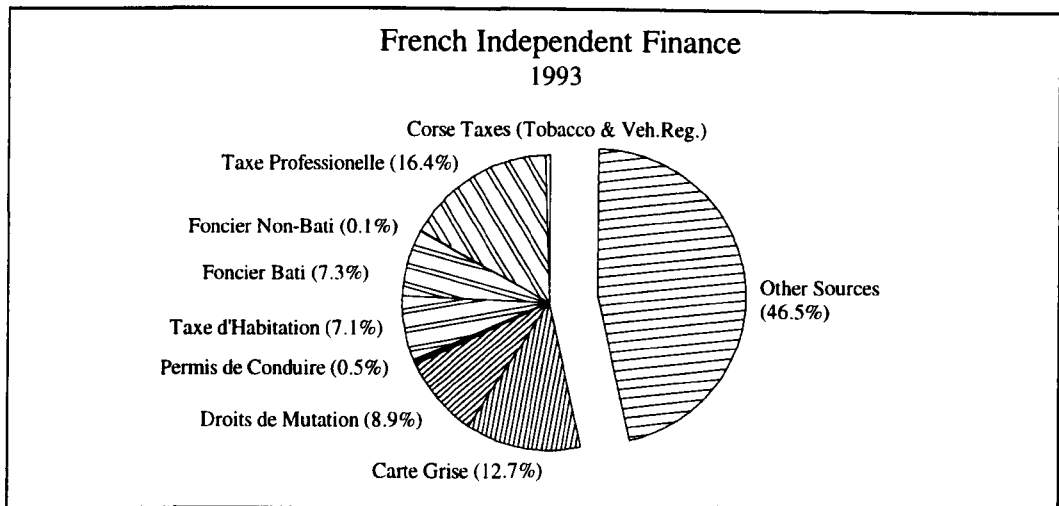


Figure 6.2-3 - French Independent Revenue

Source - Les Budgets Primitifs des Regions en 1993

Apart from this vehicle registration charge, the mainland regions rely on six other taxes, over which they exert a degree of control. Four are defined as direct taxes, and it is to these I will now turn. The "*fiscalité directe*", as they are collectively known comprise the *foncier bati* (property tax), *foncier non-bati* (land tax), *taxe professionnelle* (business tax) and finally the *taxe d'habitation* (residence tax). These taxes are collected by the state, but their total product is handed over to the relevant local authorities. This includes the communes and départements as well as the regions. As Gilbert points out, the *fiscalité directe*, by being divided between different government tiers, may not be very transparent (Gilbert, 1994). It is not clear to the electorate who is responsible for the increases or cuts in taxation.

Each authority may set a rate within a band set by the central government, although there is some confusion over this. Some commentators assert they are now entirely free to set the rates, since restrictions were abolished in 1986 (with the first democratic elections) (Gilbert, 1994, p41). Although the strictest limits have been abolished (curtailing regional tax revenue to a maximum per capita value), the national government appears to have retained the right to limit regional tax rises in the name of limiting the overall tax burden (Council of Europe, 1993e, p26). In addition, the taxes are linked so that a severely disproportionate burden cannot be placed upon one tax rather than another. The region does thus possess the ability to raise and lower the rates of these taxes though within defined limits.

These limits seem to be relatively weak, as variations between tax rates have been considerable. For example in 1993 the land tax varied from 2.61% of rateable value in Rhône-Alpes to 9.98% in Limousin (Guide Statistique de la fiscalité directe locale, 1991). Variations in the other three direct taxes are less dramatic but are nonetheless significant. Regions also enjoy the right to grant rebates and deductions over these taxes. Collectively the *fiscalité directe* account for around 30% of the total regional budget. Their overall importance is thus substantial.

The final group of taxes are the "*impôts indirects*", comprising two forms of surcharges which the region may levy in addition to the basic national rates (this group also includes the *carte grise*). The extra regional portion is collected by the regional authority. The region may add a uniform charge onto the cost of driving licenses (*permis de conduire*) and house sale registrations (*droits de mutations*) limited to a maximum 1.6% of house value (Ile de France held their maximum at 1.5% until 1992) (Les finances régionales 1992, 1994, p35).

Ile de France is also allowed to surcharge a further 1% on municipal amenities charges. In each case, as with the *carte grise*, these "taxes" are really charges and as such are not a very fair method of taxation. Reliance on them cannot be too heavy and tax variation is likely to be minimal (Gilbert, 1994, p41). It is noticeable that the regional charge on house sale registrations is now the same throughout France, being based on the maximum, 1.6% of property value (Les budgets primitifs des régions en 1993, p29).

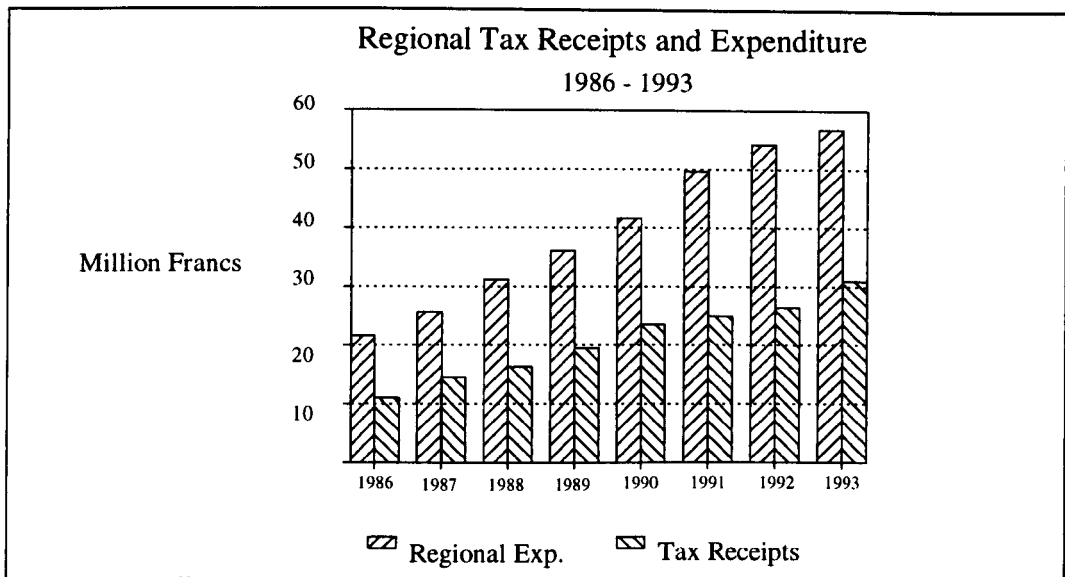


Figure 6.2-4 - Comparison of regional tax receipts and total expenditure

Source - Les Budgets Regionales 1986-92; Les Budgets Primitifs des Régions en 1993

Despite the varied and often peripheral nature of the taxes granted to regional authorities, it is clear that the French regions enjoy a relatively high degree of control over their finances. In 1993, tax revenue accounted for over 50% of regional resources. Importantly, all of these taxes were, to a varying degree, regionally controlled. This proportion of independent (or semi-independent) financing has remained at around the same level over the period since the regions achieved democratic councils in 1986 (Figure 6.2-4).

The nature of the French regional taxes means they lack "elasticity" (see p84 above) (Gilbert, 1994). The revenue from them does not increase in line with inflation. For this reason, rates have increased steadily and in some cases, quite dramatically since the region was created. However, the autonomy afforded to them has allowed the development of regional tax policies. This is evident between regions, where there is a marked difference between some tax rates, giving at least some indication of regional policy variations. Equally, the regional tier as a whole has, since 1986, followed a taxation policy, in direct contrast to the state imposed system evident before this date. The regions have shifted taxation emphasis away from property taxes, towards car and license charges, throughout all the regions.

(From a 61% emphasis on property tax in 1981 to a 65% reliance on vehicle taxes in 1993) (Gilbert, 1994, p43).

Despite the limitations placed on their independent finance, French regions nevertheless have the ability to raise extra finance, without reference to the national level. This has given them important protection against national cuts in grant based funding and specifically underfunding in the education sector (see chapter 7). In addition, the nature of the taxes devolved has allowed regions to develop a tax policy (moving away from property and towards vehicle taxation). In France, at least, despite their peripheral nature, regional taxes have proved valuable in the development of regional autonomy.

6.2(d) Germany*

Despite the high degree of constitutional autonomy enjoyed by the German Länder, their ability to raise their own finance is virtually non-existent. At first glance, suggests that the Länder, through their own taxes, raise around 9% of their expenditure independently. This view is enhanced by reference to article 105(2)a which states:

"The Länder shall have power to legislate on local excise taxes as long and insofar as they are not identical with taxes imposed by federal legislation."
(German Basic Law, Article 105.2a)

Article 106(2) then goes on to list the taxes which accrue entirely to the Länder (property tax, inheritance tax, motor-vehicle tax, beer tax and gambling tax), as well as;

"such taxes on transactions as do not accrue to the Federation or jointly to the Federation and the Länder" (German Basic Law, Article 106.2)

* In this section I am indebted to Harold Engelmann of the Bundesministerium der Finanzen for clarifying several issues.

It would seem clear that these taxes are truly independent finance, under the individual authority of each Land. Furthermore article 106(2) should give the *Länder* an ability to introduce new taxes, in areas not covered by the federation.

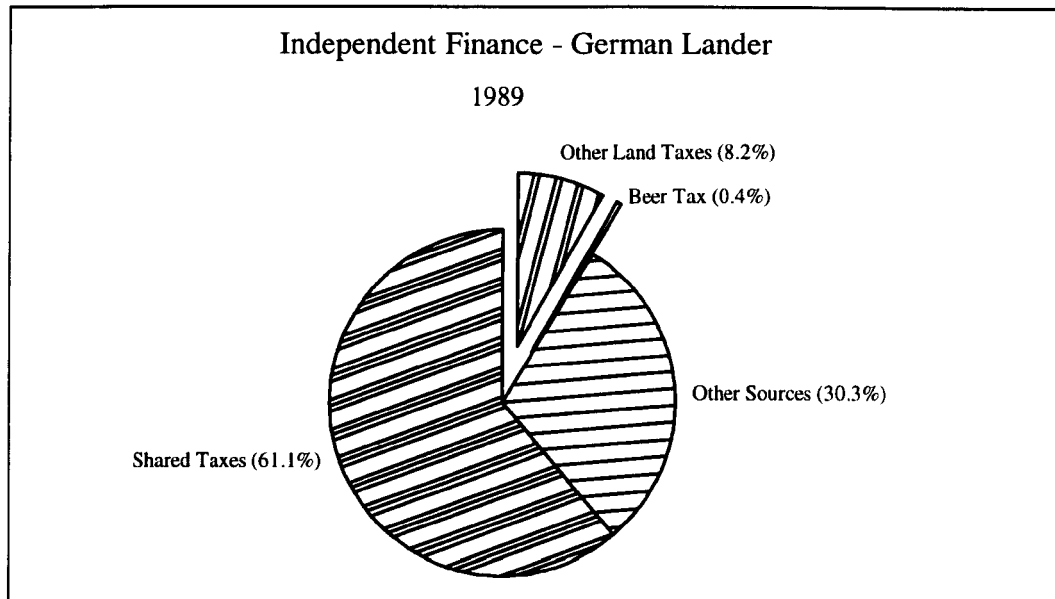


Figure 6.2-5 - Perceived regional taxation in Germany
Source - Statistisches Jahrbuch 1990

As in Belgium, this competence is of little practical use as few suitable activities remain free from federal taxation. In fact, individual *Länder* now exercise no powers in the field of regional taxation. Their only individual legislative competence applies to truly "local taxes", accruing to local government. With these exceptions all taxes are governed by federal law, although in the cases listed above the receipts are still kept by the *Länder* (Engel & Ginderachter, 1993, p63). The political rationale for this has been the need for equality of living standards throughout Germany and the *Länder* have acquiesced in this process to a degree. Constitutionally, the *Bund* used its concurrent power granted to it under article 105(2)G.G. to cast its legislative net over the entire catalogue of *Länder* taxes. This was done at the birth of the republic, perhaps unintentionally, under Article 123(1) of the Basic Law. This adopted the tax structure of the former Reich as a temporary measure. This gave the power to alter all tax rates to the central level (there were no

Länder under the Reich), thus allowing them to "occupy the field", almost from day one (Biehl, 1989, p377). Despite many distinguished academics stating the contrary (Engel, 1993) even the beer tax is uniform throughout the Federal Republic (Federal Ministry of Finance, 1993).

The only tax differences that exist in Germany today are those between local government taxes. Even here, the *Länder* generally give the local authorities the competence to vary the tax themselves (though Rheinland-Pfalz does not levy a property tax at all). The *Länder* have not relinquished all control over their taxes, however.

<i>Länder</i> legislative Competence	Collective <i>Länder</i> involvement
Beverage Tax (m)	Beer Tax (l)
Church Tax (c)	Betting Tax (l)
Dog Tax (m)	Capital Yields Tax (f/l)
Entertainment Tax (m)	Corporation Tax (f/l)
Hunting/Fishing Tax (m)	Fire Protection Tax (l)
Licensing Tax (m)	Casino Levy (l)
	Income tax (f/l/m)
	Inheritance Tax (l)
	Motor Vehicle Tax (l)
	Net Worth Tax (l)
	Property Transfer Tax (l)
	Trade Tax (m/f/l)
	Turnover Tax (f/l)
	Wages Tax (f/l/m)

Table 6.2-1: Regional Tax control in Germany

(x) - denotes recipient of receipts

m - municipalities

l - länder

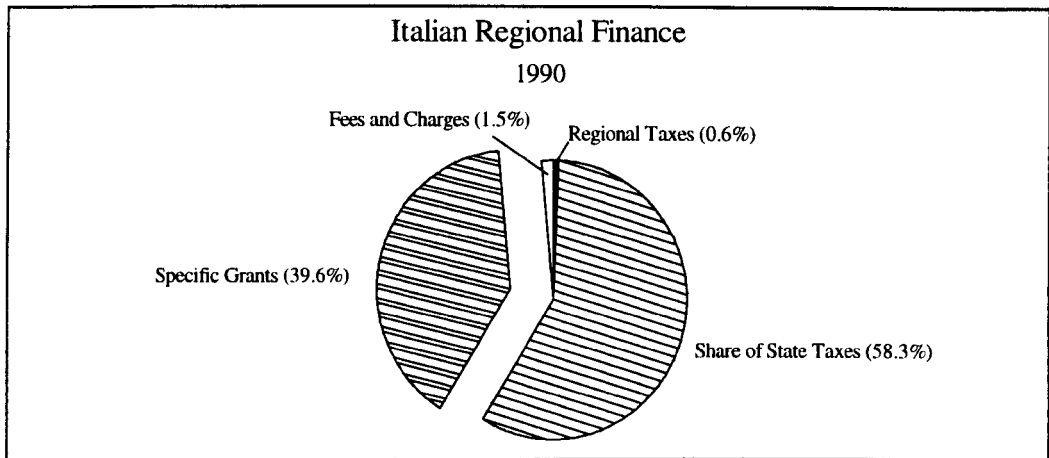
f - federation

Collective regional control over regional taxes is retained through the Bundesrat. Under Article 105(2)G.G. the Bund must pass all legislation concerning

joint or *Länder* taxes through this body (Schwietzer et al, 1990, p174). This was originally envisaged to refer primarily to income and corporation taxes, as well as V.A.T.. Since the *Länder* lost their power to set the rates for their own taxes, this article now also applies to these. The need for regional collective approval covers all aspects of these taxes including their rates and the division of receipts between different government levels.

The requirement that the *Bund* must achieve a majority in the second house, for legislation concerning taxes accruing to the *Länder* (even in part), ensures continued regional involvement. Nevertheless, the influence exerted by the *Länder* jointly, through the *Bundesrat*, does not enhance the financial autonomy of individual regions. The remaining regional influence over taxation only applies when *Länder* act as a collective entity, thus diluting the importance of individual *Land* opinions.

The German *Länder* thus have no independent financial autonomy in the strict sense. Instead, they rely on allocations of taxes, the rates of which are set by the *Bund*. The collective involvement of the regions in setting these rates ensures the regions are not entirely dependent on the *Bund's* decisions in the field of finance. Although the *Länder* have lost their independent taxation role, this has not necessarily harmed their autonomy. It is notable that the area of independent finance has not been one where the *Länder* have campaigned for more authority. This suggests that perhaps they do not view this power as fundamental to their successful operation.

6.2(e) Italy**Figure 6.2-6 - Italian Regional Revenue**

Source - T.E.P.S.A. report, Engel & Van Ginderachter (eds), 1992

First impressions of regional finance in Italy are slightly misleading. According to some commentators, the ordinary regions receive around 10% of their income from "own resources". Special regions (collectively) rely on such sources for 55% of their revenue (Cassese & Torchia, 1993, p105). This figure includes all the so-called regional, ceded and shared taxes. In practice, the only tax under regional control is that on "circulation" (gas and electricity consumption) (Engel & Ginderachter, 1993, p86). With this exception, all tax rates are set at the national level and although the regions receive the entire proceeds from some of them, they are not a source of independent finance.

The result of this is that around 0.5% of regional revenue comes from their own taxes (see figure eight). This is complemented by service charges (1.5%). The role of independent finance in the funding of the Italian regions is thus almost non-existent. Even in the special regions, independent finance is not a significant source of revenue.

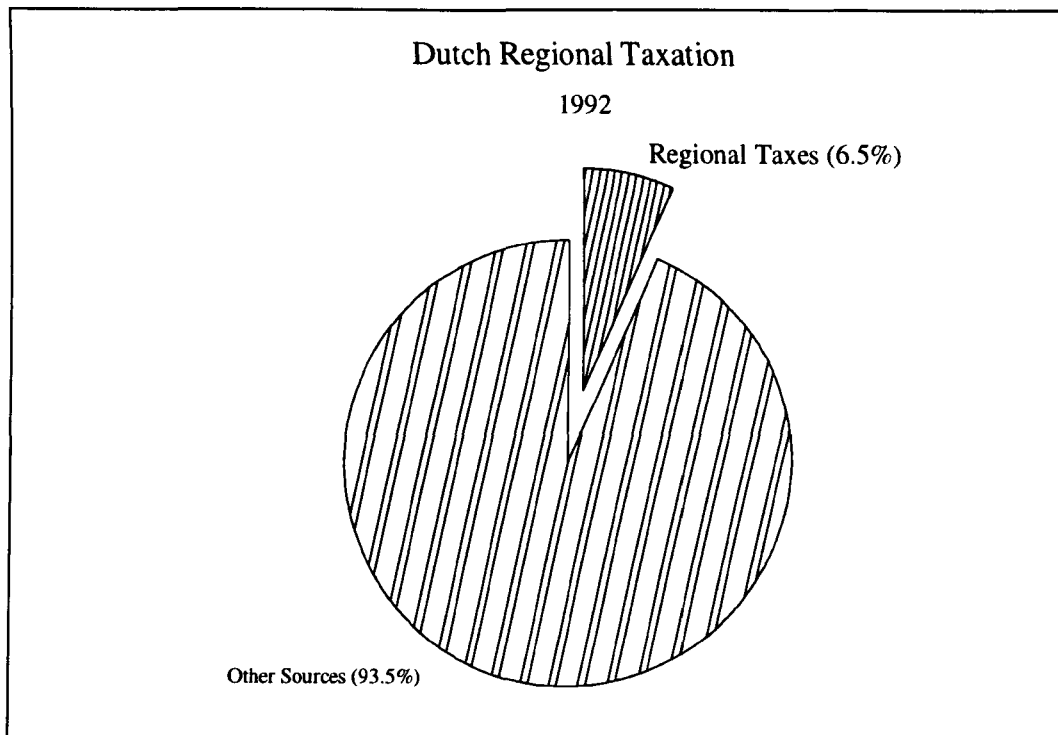
6.2(f) Netherlands

Figure 6.2-7 - Reliance on Regional Taxes in the Dutch Provinces
Source - Dutch Statistics Service

It is very hard to speak, in any meaningful sense, of regional independent finance in the Netherlands. Regional taxes are restricted to a motor vehicle tax, a tax on ground water and a pollution levy (figure nine). Although all these tax rates are set at the regional level, in practice only the first can be regarded as independent finance. This is due to the stipulation that water and pollution taxes may only be used to cover the expenses incurred when dealing with these problems. They cannot be utilised as a general method of raising revenue. Regional taxes are also levied by the water control boards in their own right (water control and pollution taxes), but these are governed by the same rules as provincial water taxes. In all these cases the taxes are physically collected by the regional authorities.

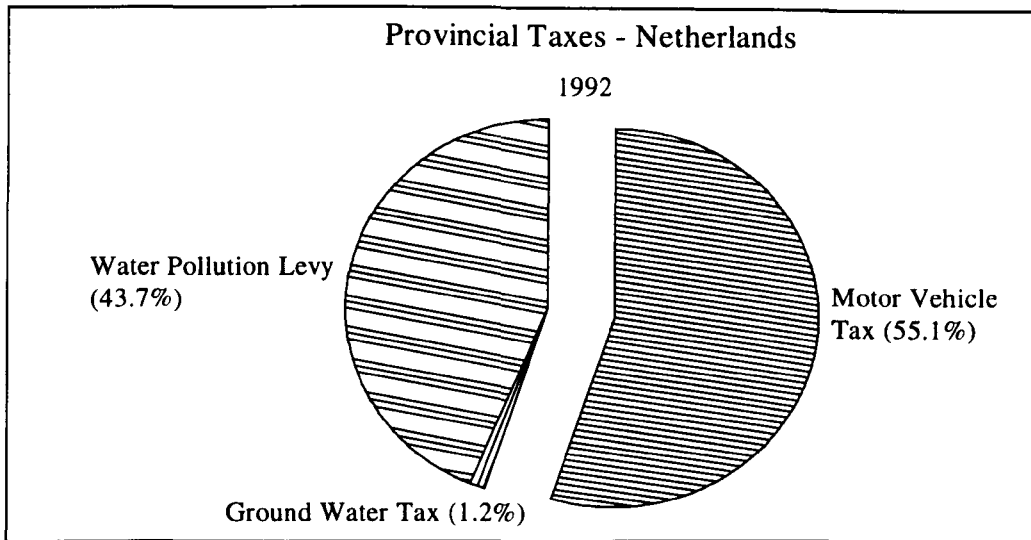


Figure 6.2-8 - Breakdown of Independent Taxation
Source - Dutch Statistics Service

In financial terms, the vehicle tax accounts for around half of all regional taxation (Figure 6.2-8) and thus gives provinces little power in the field of autonomous finance (just over 3% of total resources). The regional portion of the tax is set by placing a surcharge on the nationally applicable rate. The rate of surcharge is limited by the national government which further undermines provincial control over this very limited resource. Although the maximum rate in 1992 was fixed at 34.2% there seems little danger of the provinces using this tax to increase their revenues even were there no national limit. The tax is extremely blunt and easily identified with the province. Any attempt to rely heavily on such a blunt tax would have political repercussions on the provincial government in question, unless for some reason the population felt use of this arbitrary tax was justified.

An increasingly large proportion of provincial revenue is now raised through fees and charges levied by the region for services rendered. Indeed this resource now outstrips tax receipts as a source of revenue. However, the fees raised cannot be used to fund general expenditure. The revenue pattern of the province places it closer to a business or service provider than a regional government.

6.2(g) Portugal (Açores and Madeira)

Much confusion surrounds the financial autonomy of the Portuguese island regions. It is stated (wrongly) by Elazar that these constitutionally protected regions enjoy what he describes as "fiscal autonomy" (Elazar, 1991, p200). This is not actually the case. Although certain tax rates differ in the archipelagoes, the decisions are taken by the Portuguese parliament in Lisbon. The island governments will obviously lobby for any variations in the tax they require (their opinions can be carried by the Regional Minister to the Cabinet) but the final decision lies with the national legislature. In practice, therefore, although the Portuguese regions receive all the receipts from taxes collected on their territory, their control over them is nil.

The only independent sources of finance open to the regions is from fees, charges and unusually, rental of military bases by N.A.T.O. (in the Açores). These accounted for 2.5% of total Açorian receipts in 1992 (see section 6.3(h) for a full breakdown), but in practice offer only limited flexibility to the regional governments. Despite their strong constitutional position the Portuguese regions in common with those in Germany, suffer from a distinct lack of financial independence.

6.2(h) Spain

The independent financing of the Spanish *autonomías* is a complex issue. As with the constitutional regions already examined, the theoretical ability of the Spanish regions to raise independent finance has been severely curtailed by practical difficulties. The most obvious sources of independent funding are the regional taxes. These are the sources over which the region has complete control after implementation. They may be levied in any area which another tier of government does not already tax. In addition, the power to introduce these taxes, must be granted by the national parliament to the community in question. This is a significant difference from the situation in Belgium and Germany, where the region may instigate such taxes independently of the national tier. In practice this makes little difference as the difficulty lies in finding an area which the national level has

not already taxed. Not surprisingly, there are few areas in which the national or local levels do not already "occupy the field". In fact only five regional taxes have been introduced:

REGIONAL TAX	AUTONOMÍAS
Bingo	Catalunya, Galicia, Murcia, Cantabria, Valencia, Castilla-la Mancha, Baleares
Water Civil Engineering Projects	Catalunya
Petrol	Canaries
Hunting	Extremadura
Environment (Clean-up Levy)	Baleares

Table 6.2-2 - Regional Taxes in Spain

One of these (the Canaries fuel tax) is obviously an exception to the rules outlined above, as there is already a national excise on petrol. The geographic isolation of these islands was deemed to make them a special case and their individual finance scheme allowed for the introduction of this tax. The rather novel nature of the other taxes is evidence of the main difficulty faced by the Spanish regions. Although theoretically given the freedom to institute new taxes, the national tax scheme gives only limited and very unusual areas in which regional taxes can be introduced. Even when a taxable commodity, suitable for regional finance can be identified, there are further obstacles. In 1987, Andalusia introduced a tax on unused land and was later joined by Asturias and Extremadura. However, due to legal challenges, by 1992 not one peseta of this tax had been raised (O.E.C.D., 1993, p71)

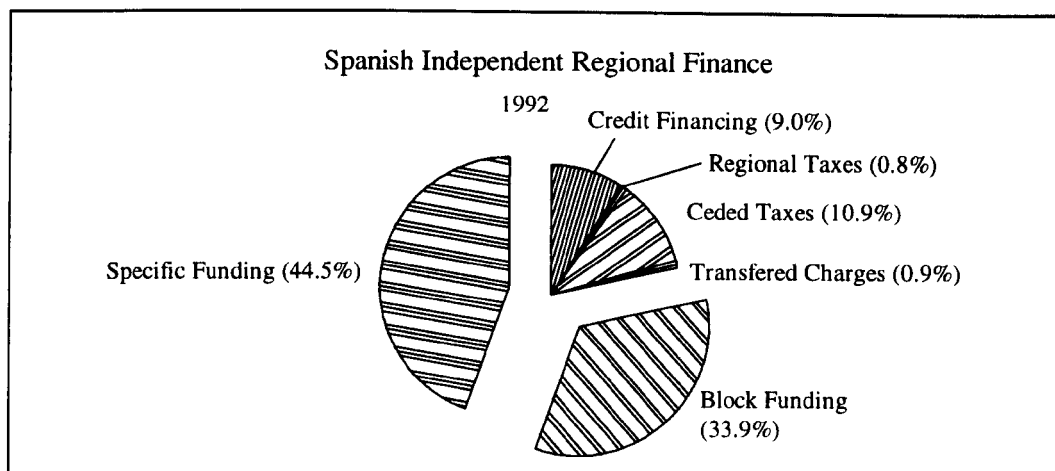


Figure 6.2-9 - Independent regional finance, Spain 1992

Source - Informe Sobre La Financiacion de Las Comunidades Autonomas em 1992

As Figure 6.2-9 shows, the overall regional reliance on "own taxes" is minimal. Less than one percent of total regional resources are raised by these means. Of much greater significance are those taxes "ceded" to the *autonomías*. These include, death duties, wealth tax, property transfer tax, stamp duties and gambling tax. These cannot truly be defined as independent finance because the rates of these taxes are set at the central level. The revenues from these taxes accrue directly to the *autonomías* and it is the regional administration which physically collects the tax. This does not constitute autonomy, however. Some have argued that this increases the efficiency of tax collection because the tax officers will have local knowledge, while the regional executive will attempt to reduce fraud to a minimum, since they receive the proceeds. The O.E.C.D. has unearthed evidence of this. The income from regional taxes increased by a fifth more than expected since they came under regional control (O.E.C.D., 1994). The independent aspect of these taxes arises from the right of the *autonomías* to impose a regional surcharge in addition to the national rates. Regions may not reduce the tax rates and in practice the power of surcharge has been used sparingly. By 1992 regional surcharges only existed in the two examples of gambling* and business tax†. By this time the

* Catalunya, Galicia, Asturias, Cantabria, Murcia, Valencia, Castilla-la Mancha & Baleares

† Asturias, Cantabria, La Rioja & Madrid

"independent portion" of ceded taxation amounted to a mere 0.2% of total revenue (Financiación de las Comunidades Autonomas, 1992).

The *autonomías* also have the power to place surcharges on some national taxes such as personal income tax, but this is only a theoretical option, at present. In 1985, Madrid attempted to introduce a regional surcharge on income tax but the proposal proved so unpopular that it was withdrawn before implementation (Solé-Vilanova, 1990, p339). This is an extreme example of the difficulties surcharged taxes present to regional authorities. Regions will think long and hard before attempting such a move, especially in the wake of Madrid's experiences. Political realities make use of such tax increases very difficult. In practice, therefore, the prevailing culture of tax unity throughout Spain proves more of an obstacle than any legislative constraints. The only successful introduction of a surcharge on income tax was achieved by the Euskadi government in 1985, but this was only a temporary measure, introduced for one year, in the aftermath of severe flooding which affected the region.

The final area of autonomous financing is that of charges and fees received by the regions for the provision of specific services. This is of minimal importance and accounts for a mere 0.9% of financial resources. It is a measure of the irrelevance of independent finance to *autonomías* that this accounts for a greater overall percentage of resources than their own taxation.

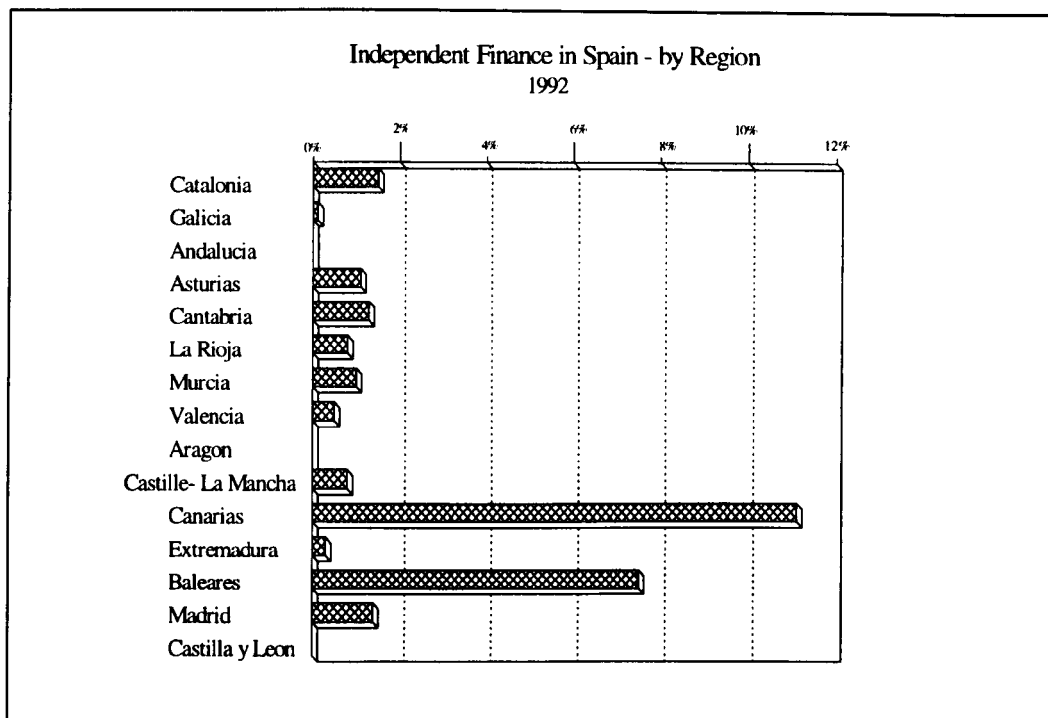


Figure 6.2-10 - Independent finance as a proportion of income by region

Source - Informe Sobre La Financiacion de las Comunidades Autonomas en 1992

Although independent finance accounts for only a small proportion of overall regional resources in Spain, this is slightly misleading. The regional structure of Spain allows variance between regions even in financial matters. Thus, despite the fact that independent finance accounts for less than 13% of regional resources nationally, (even if surcharged taxes are included in their entirety), some individual regions receive around this proportion of their income from regional taxes alone. In Figure 6.2-10 the percentage of total resources acquired by regional taxation is compared. In the Canaries, regional taxation accounts for 11% of regional resources while in the Baleares it raises 7%. This contrasts sharply with Andalusia and Aragon which have no regional taxation whatsoever. With the exception of the two island communities, total regional taxation lies at less than two percent of regional incomes. Even if surcharged taxes are taken into account it is fair to say that in mainland Spain independent finance has little impact on regional resources.

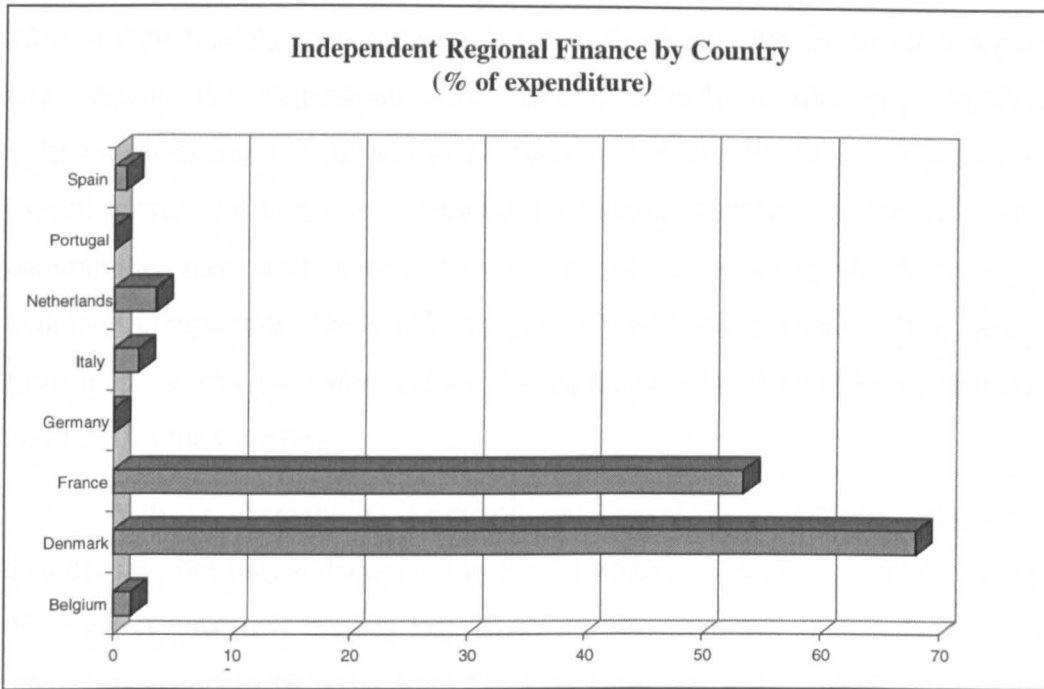
6.2(i) Conclusions

Figure 6.2-11 - Independent finance of regions, as a percentage of total regional budget

Two regional systems stand out for the high degree of control they exert over their financial resources. As shown in Figure 6.2-11, these are Denmark and France. In both these cases, the bulk of independent finance they enjoy is of a semi-independent nature. In France, most of the 53.5% of funding attributable to independent sources is legally restricted by the actions of the national tier. Although the regions may set their taxes, they must do so within the limits established in Paris. The Danish *Amter* are also restricted in their ability to lower and raise their income tax rate, though often through informal rather than legal methods. Although the national level will rarely interfere explicitly, in practice the Danish regional level is restricted in its choice of rate. At present, as noted above, a rate band has been agreed between the national and *Amter* tiers. A further point of interest surrounding these regional systems is that neither actually spends much in comparison with the central state (5-10% of central expenditure - see Figure 6.1-1). Thus, despite their high degree of independent financing overall they have limited financial influence.

France, however still does quite well when one only considers fully autonomous taxation. The French regions rely on this form of finance for almost 13% of their funding. This is far higher than the figures for all the other regions. Only Spain, the Netherlands and Belgium actually register any significant independent taxation at all and in all cases it is under 4% of total income. The overall picture in Spain is somewhat misleading, however as the two island communities have a far greater reliance on fully independent means, than their mainland compatriots. They, at least, gain a significant portion of their funding from such sources, but even then the figures are only around 8% for the Balearics and 11% for the Canaries.

With the exception of Denmark and France, it is clear that independent resources do not play a major role in the financing of regional government. Does this then suggest that regions lack financial autonomy per se? There are some interesting points to be noted from the actions of regions that would suggest that they themselves do not perceive this. Although all regions, without exception constantly claim that they are over burdened and under funded (as do all levels of government), very few actively campaign for an increase in powers of taxation. Rather regions are more often to be seen lobbying for a higher level of block funding, specifically through shares in national taxes. The most visible example of the relative unconcern regions have expressed over independent finance is in Germany. The *Länder* have to an extent acquiesced in the "nationalisation" of regional taxes, only retaining collective control over tax rates. This suggests regions have something to gain from non-reliance on independent finance.

Independent finance implies an accountability to the electorate that is, by definition, lacking in all other methods of funding. As a result of this it has been suggested that regions are less constrained in their spending claims than might otherwise be the case. In its crudest form this argument claims that regions can play fast and loose with their financial resources in the absence of a tax paying electorate to control them. The local population may in fact favour a high spending authority

so long as they do not foot the bill (Jones, 1978, pp.71-72).^{*} A primitive version of this argument underpinned the disastrous poll tax "experiment" in the UK.

Similar, though slightly more refined, reasons have been advanced in the fiscal federalism debate for giving regions taxation powers and thus increasing financial accountability and responsibility (Jones, 1978). If regions are allocated mainstream tax raising powers they will not only be able to pursue policies independently from the centre but will also be more accountable to the regional electorate. This brings us back to the problem of regional tax control. Will regions, by exercising their tax raising powers in different ways, distort the national internal market?

Certain taxes can never be regional, indeed taxes on importation are actually being removed from the national tier and placed in hands of European legislators. However, other mainstream taxes, notably income tax, would seem ripe for regionalisation. The elasticity of this tax would also aid regional independence. There are two broadly similar issues, that must be addressed for such a proposal to operate successfully. Firstly, there is the problem (or advantage) of tax competition. If there are different tax rates in different regions, individuals may then chose to move to the more advantageously taxed one or alternatively to the one where services are of a higher standard (Tiebout, 1972 and Oates, 1972). Concern has been expressed that such population movement will result in richer citizens moving to areas where taxes are lower due to their lack of need for services while the poor remain, leading to the creation of poor areas with high taxes and rich areas with low taxes. This complaint has been most vociferously voiced in Hamburg where evidence suggest that more affluent citizens have moved across the border into Schleswig-Holstein while retaining jobs in the city-state (The Economist, 20/2/86, p81). The reason for this is that local property taxes are lower in Schleswig-

* This is sometimes termed the "restaurant bill argument". If a group of friends buy a meal at a restaurant, the collective cost will always be higher when the bill is split equally than if individuals had paid for their meals separately. For more insights into "Bistro-matics" I recommend "The Hitchhiker's guide to the galaxy"!

Holstein. However, all these people still continue using the superior services offered by the Hamburg authorities.*

Secondly, there are political difficulties surrounding regional taxes. It is interesting that despite the ability of Belgian and Spanish regions to place a surcharge on income tax, only Euskadi (as a temporary measure) has done so. Madrid as noted above, was forced to drop plans for a surcharge due to public unrest, while hardly a press release is published by Flanders without them pointing out that they will not raise income tax above the national rate. At present it is perceived as political suicide for regional governments to raise income tax surcharges.

The counter to the above arguments is Denmark. Despite the problems listed above, income tax in Denmark varies not only from region to region but within regions, between communes. This has not led to an exodus of people from area to area, neither has it led to a serious imbalance between rural commuter areas and urban centres. One reason for this is certainly the uniform business rate which removes the prospect of businesses moving location to gain advantageous rates. This does not explain the personal lack of movement. Although, without detailed analysis any suggestions can only be hypothetical, I wonder if the reason lies in the settled nature of the system. In Denmark it is accepted that income taxes will vary within the nation-state, it is seen as the natural state of affairs. However, because in Spain and Belgium rates are at present uniform, there is a fear that changes will bring economic consequences the region could not cope with. There is a feeling that nation-states can manage these differences, due to the extra powers at their disposal (e.g. citizenship laws). Regions, in contrast, with their limited competences are unable to cope with such variations.

Within the EU, this is becoming a nonsense. If the introduction of different income tax rates leads to migration through tax competition why does it not occur

* This is, of course, a local tax issue, yet no-one suggests this is a reason for removing taxation from this level of government.

now between the member-states of the EU? With the introduction of the Schengen agreements, one would expect large numbers of Germans to move a few miles across the border to France. This obviously does not happen to any significant extent just as it would not occur if regional tax regimes differed. The mobility of populations over issues such as tax is, I believe, over emphasised. Although rates in some areas are much higher than in others, it seems unlikely that this will influence an individual's choice of abode.

I conclude this section by addressing the real reason behind the weakness of independent regional funding. As already noted, it has been argued that there is a conflict between regional financial accountability on the one hand and the stability of the internal market on the other. The example of Denmark and the collapse of national borders in the EU would suggest that the concerns over the internal market are unfounded. However, regions are still unlikely to be financed by an increase in independent means. The reason for this is a fear that the regions will become a threat to the cohesion of the nation-state. The evidence for this is not only contained in the rhetoric of national politicians but in an interesting negative correlation between constitutional and financial autonomy.

The regional systems with the most independent finance are those of France and Denmark, both of which are regulated by ordinary national law. In contrast, the regions of Germany, Spain and Belgium, all with strong constitutional positions, have little true financial independence. I would suggest that this comes from the parent nation-state's willingness to concede constitutional independence or financial autonomy but not both. To do the latter would give regions too great an independence from the national level. If constitutional independence is forthcoming, financial control may be used to limit autonomy or at least ensure solidarity. If constitutional protections are weak the regions can be granted independent funding mechanisms without fear of becoming too powerful as a national law could remove or restrict regional policies, should they threaten the unity of the nation state. To lose one method of control could be considered unlucky, to lose both smacks of carelessness.

Independent finance is withheld from regions for a number of reasons but primary amongst these is the need to restrict economic or political strains upon the national system. The drawback of this is that the present system does not encourage financial responsibility, something which national governments have complained about in relation to regional governance. The power to address this issue lies with the remit of the nation-state and if it wishes to see regional accountability in financial matters it must grant financial autonomy to the regional tier.

Nevertheless, regional governments at present do not rely on independent financial resources for a significant portion of their revenue. This must influence their ability to raise finance and thus pursue policy unless other methods can be used. The next section examines debt financing and borrowing as an alternative method for regions to raise revenue independently from the national tier.

6.3 Borrowing

6.3(a) Introduction

Public borrowing is a vital financial resource, especially for long term investment. Although is used extensively by government as a source of funding it is difficult to classify. Loans can be defined as autonomous finance, or otherwise, based on the legal freedom authorities have to spend them, but this is not a totally satisfactory method of categorisation. It would be patently absurd to suggest that a region which relied on deficit funding for 50% of its receipts was more independent than one which only accounted for 10% in this way. The future spending policies of a heavily indebted region are likely to be limited by the deficit it is carrying.

It is nevertheless appropriate to consider borrowing as an important source of potentially independent revenue. For this reason, the following section concentrates on two distinct facets of borrowing. First, the legal and practical restrictions for each regional system and second, the amount of borrowing undertaken by the regions as a proportion of total spending. Although, the consequences of heavy borrowing must be born in mind when examining these

figures, borrowing (in most cases) still gives regions a source of funding which they are free to spend independently.

6.3(b) Belgium

As mentioned above, the Belgian regions are not inferior to the national level (see Chapter 5.1(a) & Appendix I.1). Regions, Communities and the Federal authority enjoy equal status as law making bodies of the state. For this reason, the Belgian national government does not have any discretionary or legislative power to limit the borrowing of the regional authorities. However, limits do exist through the Belgian *Conseil Supérieur des Finances* (High Council of Finance).^{*} The "Financing Needs of Public Authorities" section of this body has the power to limit regional borrowing if the actions of the regional authority could cause harm to the economic and monetary union of Belgium.

Such a decision can be reached after a referral by the Minister of Finance or through the Council acting on its own initiative. In either case, the national Minister of Finance acting by Royal Decree may then restrict regional borrowing for a maximum of two years after consulting the cabinet. The members of the section itself are appointed under strict rules that ensure no federal level bias. Apart from the President of the Council, (who is the Minister of Finance himself), the body consists of:

Method of Appointment	No. of Places
Representative of Ministry of Finance	1
Appointees of the National Bank of Belgium	3
Appointees of the Communities and Regions	6

Table 6.3-1 - Composition of Conseil Supérieur des Finances (Public Authorities Section)

^{*} With thanks to Professor Ian Harden, Principal Legal Officer to the European Ombudsman, Strasbourg

A further member is appointed at the discretion of the crown. None of the appointees may be members of a legislative chamber (whether regional or national). Equally mayors and deputy mayors of large communes are excluded as are members of the *cabinets* of regional and national government ministers (civil servants). This thorough list of exclusions ensures a relatively impartial Council composed of financial and economic experts rather than politicians.

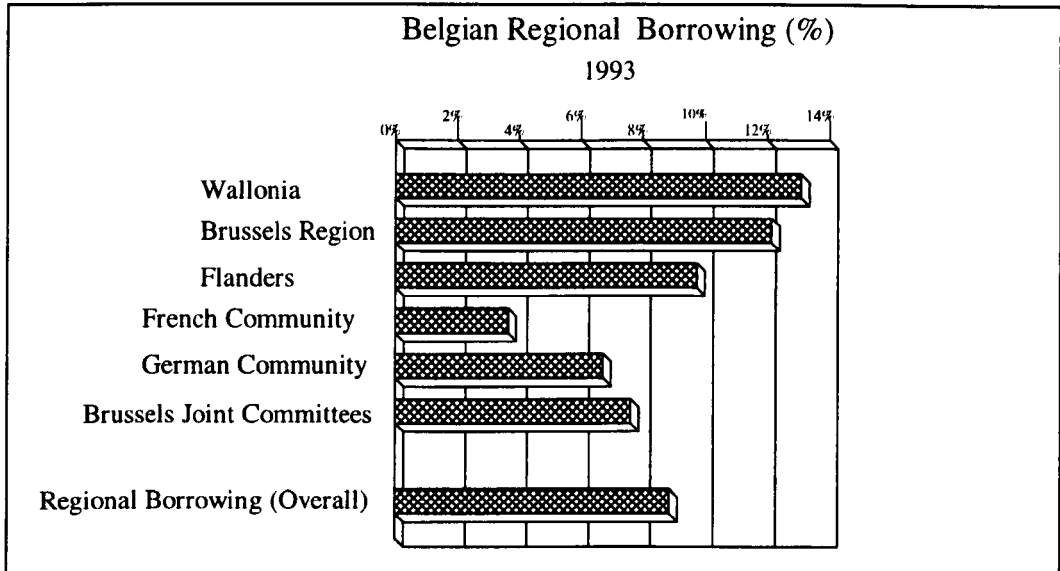


Figure 6.3-1: Proportion of regional revenue raised through borrowing

Source - Ministry of Finance, Note de Conjoncture, 1994, Table III B 15

Although the existence of this body means that the regions may have their borrowing restricted, in practice the effect is minimal. As can be seen from Figure 6.3-1, deficit spending is significant in all regional authorities and the Council has not intervened. However, this is not to say that the regional section of the Council has been inactive. On the contrary it has laid down the methods by which the convergence plan, adopted as a result of the Maastricht treaty, will be achieved (including the borrowing of national authorities). In all cases, the findings of the Council have been accepted by the authorities concerned (Demeester-De Meyer, 1993, p13). This would suggest that it has acted in an even handed manner.

Differences in debt management vary significantly between regions. For example Wallonia funds a far higher proportion of spending through borrowing than Flanders. Equally, there is variation between the French and German language

Communities. In the former case the differences can be put down to a radically different approach to government. In Flanders, the free market orientated government has placed great emphasis on debt restriction and cutting back of public spending. In contrast, the Walloons, who traditionally support more left-wing policies have continued to invest heavily using deficit finance. It should be noted, however, that the Walloon region has reduced its deficit in recent years, due to the convergence criteria of the Council and domestic policy changes (see Appendix I.1).

The Flemish government has claimed that their policy of restricting public spending and debt means the Maastricht criteria do not affect them. To an extent this assertion is vindicated. The Flemish government has used what it calls the S.E.R.V. standard to monitor its public debt. S.E.R.V. is a body established by the two Flemish employers organisation plus the two major trade unions. This advisory body establishes overall debt restrictions, and investment potential. Although the Flemish government is not forced to adhere to the S.E.R.V. in the years 1992 & 1993 it did so. Regional governments are free to organise their own deficit financing programme as long as this fits in with national policy as defined by the *Conseil Supérieur des Finances*. In practice, however, economic reality (reflected by the Flemish S.E.R.V. system) limits regional borrowing more than any constitutional restrictions.

Unusually amongst regional units, the Belgian Regions and Communities were not born without debt. In the transitional period (until 2000), regions must finance all investment expenditure and 14.3% of operating costs by loans (Government of Flanders, p10). This allows the regions to take on their portion of the national debt smoothly. Unlike their Spanish counterparts, (see below) the Belgian regions were unable to indulge in a spate of borrowing during the early years of their existence.

The ability of the Belgian regions to use borrowing, relatively freely, gives them the freedom to use financing as part of their overall economic/fiscal policy. Furthermore, there are no restrictions on what this money may be spent on,

although the *Conseil Supérieur des Finances* may order some restrictions, if a loan is spent on interest or operating costs. Belgian regional deficit spending is therefore independent. The constraints that exist are similar to those affecting national governments in the EU, namely independent financial watchdogs and the market.

6.3(c) Denmark

The *Amter* of Denmark, despite their high level of independent financial autonomy, are forbidden from borrowing. The only caveat to this is when the Ministry of the Interior recognises the existence of "exceptional" circumstances. In these cases permission may be granted by the ministry. The Danish *Amter* consider this an unreasonable restraint leaving them forced to go to the national authorities for any major capital expenditure (e.g. school building). Deficit finance thus plays virtually no role in the funding of the *Amter* (under 1%).

Until recently, the issue was irrelevant. The *Amter* actually had major financial assets built up from their financial surpluses. This excess liquidity became a political issue in the 1980's. The recession meant such funds were eyed with jealousy by the national authorities, which insisted they were spent to cover general regional expenditure (Bogason, 1987, p58). By selling the "family silver", however, the *Amter* are now forced to rely on borrowing (no matter how difficult) for major projects which in the past would have been funded from the accumulated reserves. This is a significant restriction on their independent operation.

6.3(d) France

French regions are generally free to borrow, without receiving consent from a higher authority. This does not mean they may borrow without restriction but rather that they must operate within limits imposed by law rather than executive discretion. The regions (and indeed communes and *départements*) operate within what amounts to an economic constitution, framed by the central legislature. The only time the regions must receive central government permission to borrow is when the loan exceeds a limit defined in the law governing regional finance

(Council of Europe, 1992, p10). Once such approval has been granted, the region may then enter into a loan agreement with the institution of its choice.

The limits that are imposed on French borrowing are relatively lax. The loan must be used to cover capital investment and not running costs. Under no circumstances may it be used to repay an earlier loan (Council of Europe, 1992, p32). Apart from this general restriction, the French regions may borrow from any institution as long as the interest rates are not abnormally high (a limit is set in the national legislation). There does exist a credit institution which caters specifically for the Public Sector (*Crédit local de France*) but this must compete with other banks, etc. It is not a public company and does not enjoy special privileges (Council of Europe, 1993e, p32).

The French regions therefore enjoy a high degree of freedom in their ability to borrow domestically but even on foreign markets they may borrow under broadly the same conditions that are imposed on foreign exchange dealings (Council of Europe, 1992, p19). Indeed, regions on the whole are under no more restraints than those which apply to all borrowers. These ensure fair contract terms and outlaw excessive interest or exchange rates. Regional borrowing is thus an independent source of finance. Apart from the rule that loans may only be used to finance capital expenditure, the French regions are free to borrow without restriction and may use the money thus obtained to fund any capital project within their functional remit.

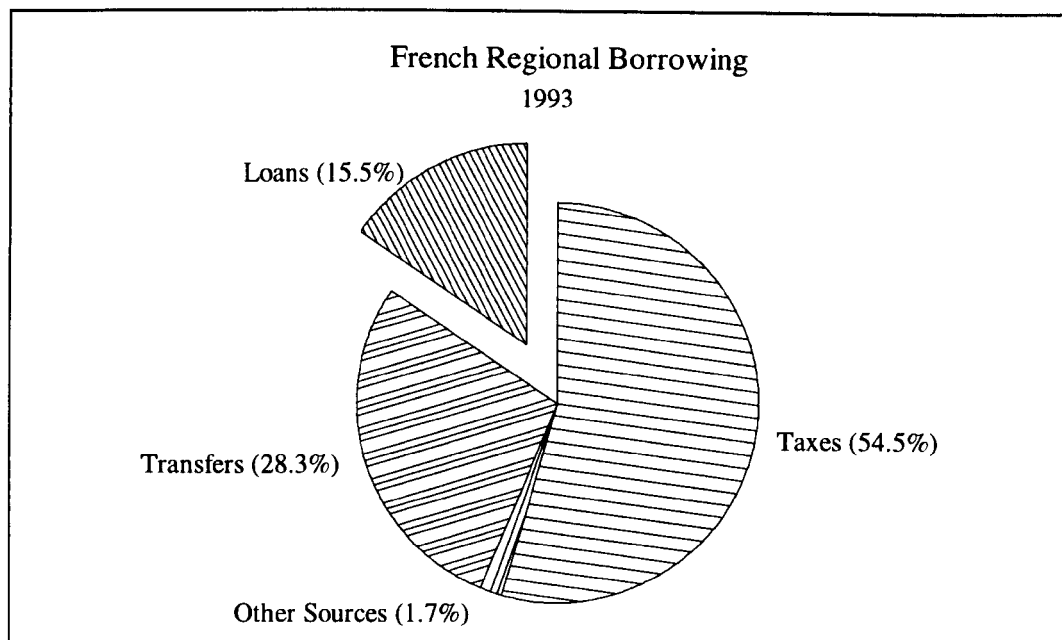


Figure 6.3-2: Proportion of regional revenue raised through borrowing
Source - Les Budgets Primitifs des Régionales en 1993

Figure 6.3-2 shows the importance of borrowing to the financing of the French regions. In 1993, over 15% of regional receipts (excluding the *Fonds de Roulement* - see below) came from credit operations. This is a very high proportion, but not surprising when one considers that the main remit for the region is to coordinate and undertake capital investments, something borrowing is likely to play a large part in. As befits a truly regional system, the amount of credit financing undertaken varies considerably between individual regions.

Figure 6.3-3 gives a break down of the loans taken out by regions in 1993, as a percentage of their total receipts. The wide variations are unsurprising if we accept the thesis that France is a truly regionalised state. Despite the homogeneity of politics at the regional level, (all but two regions are under right/centre-right control) the use of borrowing varies from a high of 25.1% in Haute-Normandie to only 6% in its neighbouring region, Basse-Normandie (only 4.8% in Corsica).^{*} Despite these differences it is obvious that in all regions a substantial portion of

^{*} Mazey noted that where regional political differences did exist, the policies of the governments varied significantly (socialist - higher borrowing, taxation and public spending; centre-right, lower borrowing, taxation and spending) (Mazey, 1992, p73).

their financial resources emanates from this source. A source which they are free to spend without restraint from Paris (or the regional prefect).

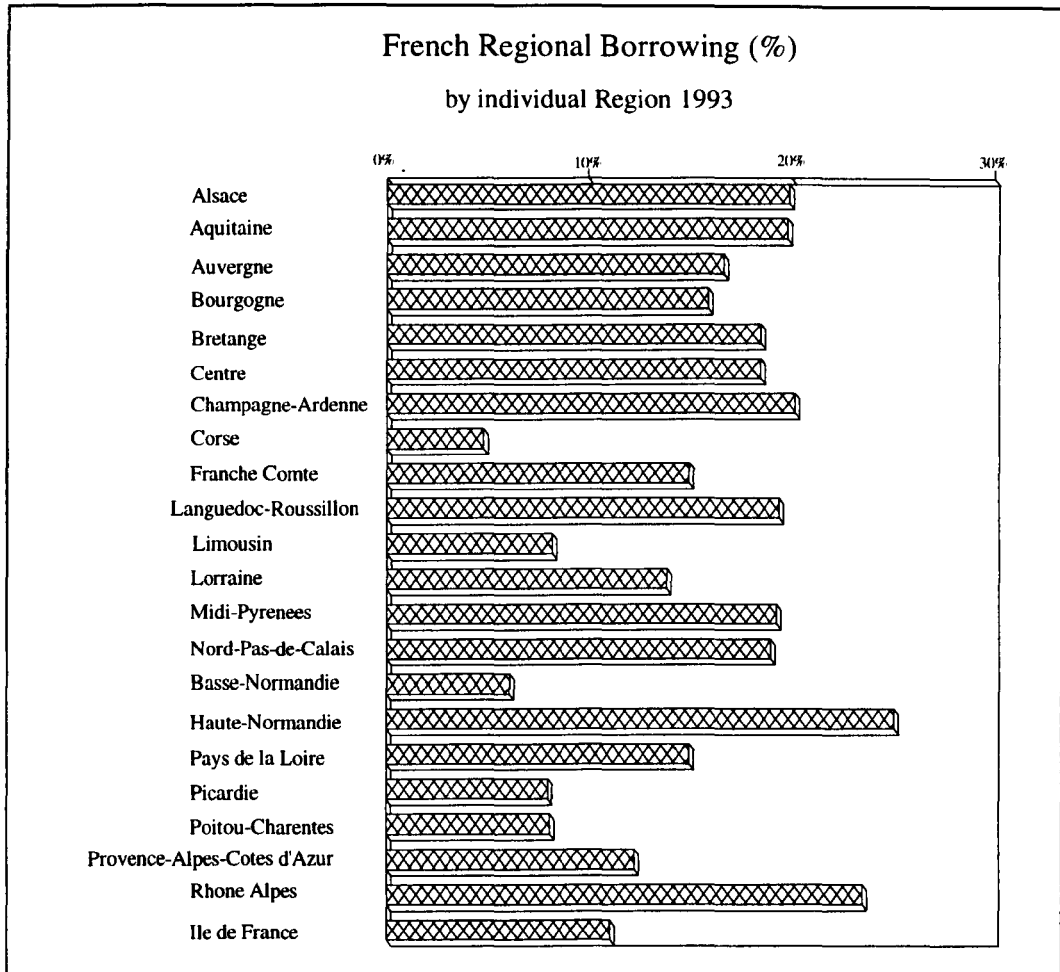


Figure 6.3-3: French regional borrowing as a proportion of expenditure (by region), 1993
Source - Les Budgets Primitifs des Régions en 1993

Regional use of borrowing has varied over the eight years that regional councils were directly elected (see Figure 6.3-4). From a 15% borrowing to total receipt ratio in 1985, the proportion gradually fell to less than 10% in 1990, before rising rapidly to 20 % in 1992 and settling back to 15% in 1993. The latter are somewhat misleading fluctuations. They result, at least in part, from the failure of the preliminary budget assessments to predict a fall in revenue from indirect taxation in 1991. The consequence was heavy reliance on the *fonds de roulement*. These "slush funds" are used by regions to finance services and functions before their tax receipts are received from the central state. In 1991 they

were severely depleted by regional spending which proved to be in excess of tax receipts (due to the inaccurate estimates). Increased borrowing in 1992 and 1993 was needed to replenish these funds. In practice they are thus a form of emergency deficit spending.

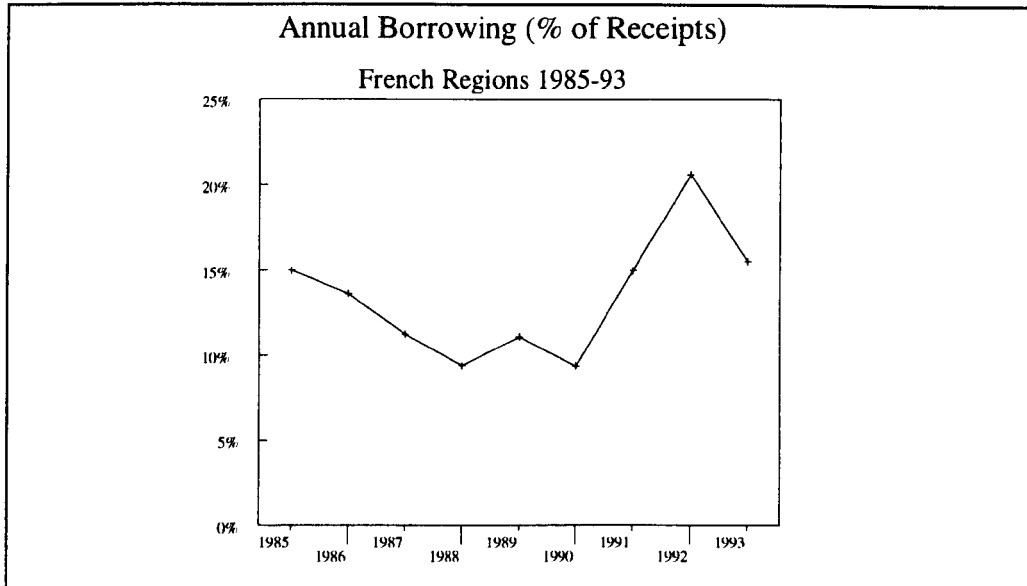


Figure 6.3-4: Annual regional borrowing (1985-93)

Source - Les Finances Régionales (1985-1992), Les Budgets Primitifs des Régions en 1993

Regions' use of borrowing was therefore a significant source of revenue, throughout the eighties and early nineties. As this source of finance is limited only by the market (except when very large sums are required) the French regions have the freedom to finance projects and policies without the need for national approval. Their financial autonomy can only be enhanced by such a capability. As much of their role concerns economic development, without this freedom to borrow, they would be severely hampered in this task.

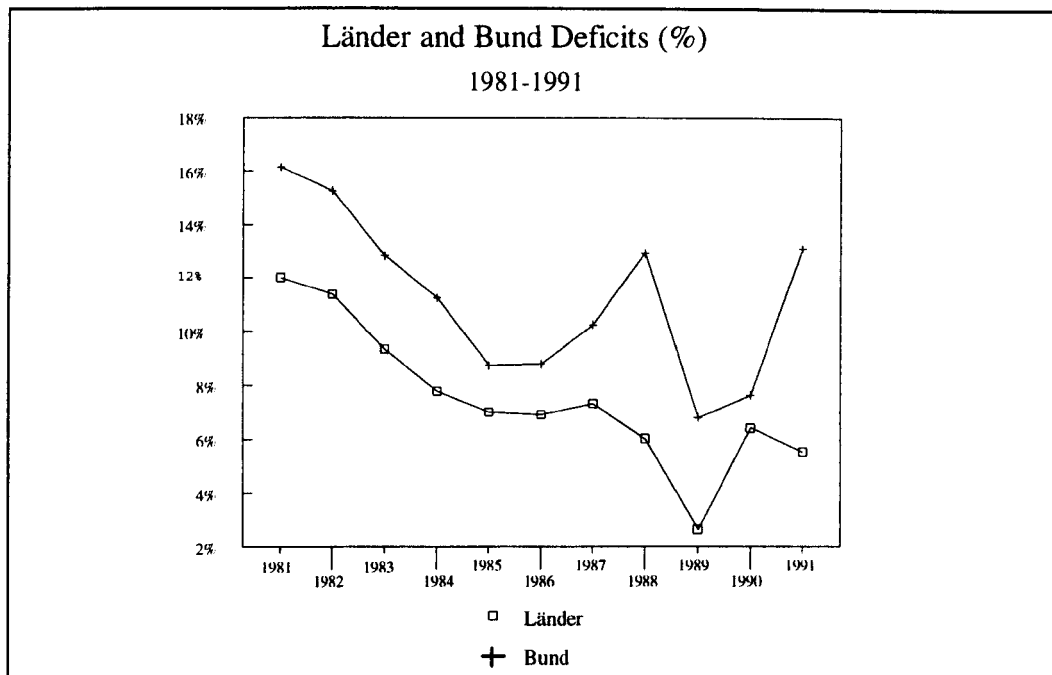
6.3(e) Germany

Figure 6.3-5: Regional and federal deficits as a proportion of expenditure
Source - German statistics service

The *Länder* are entirely free to borrow, restricted only by the “golden rule” as laid out in the Basic Law.* As emanations of the state, they are treated as the *Bund* would be. The use of deficit spending in the German federation has fallen gradually over the period 1981-91, as figure sixteen shows. The fact that this is the only income the *Länder* may raise independently, is likely to encourage its use but as long as it remains manageable (and it is in the regions' interests to ensure this) it will remain an important autonomous source of regional finance.

6.3(f) Italy

Italian regions are surprisingly free to raise funds through borrowing although any money raised must only be used for capital expenditure. The national Deposits and Loans fund, offers reduced rates to regional (and local) authorities but regions may use the commercial sector at normal market rates (Council of Europe,

* This restricts borrowing to no more than capital expenditure. This applies to all levels of government, including the *Bund* (Article 115(1) G.G.). In practice, creative accounting on the part of both *Bund* and *Länder* has limited even this restriction.

1993h). Regions have no restrictions as regards borrowing on the domestic markets, though the Deposits and Loans fund is restricted by the national government to a finite amount. When this expires the regions are forced to look to the commercial sector.

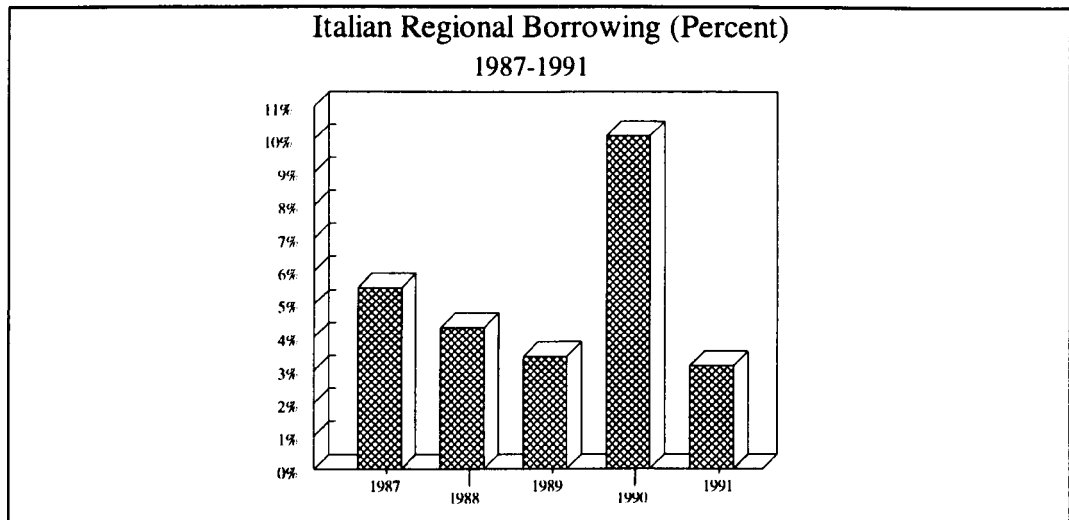


Figure 6.3-6: Regional deficits in Italy (1987-91)

Source - I.S.T.A.A.T.

In theory the Italian regions may also borrow on the foreign markets. Such loans require approval from the national government and in practice, regions do not use this form of finance (Council of Europe, 1992). Figure 6.3-6 shows regional deficits over the late 1980's and early 1990's. Borrowing has accounted for less than 5% of overall regional spending in Italy during much of this period. This small portion is nevertheless significant in the light of the Italian regions' lack of independent methods of finance. As in Germany it is the only method by which regions may raise funds without the consent or involvement of the national authorities.

6.3(g) Netherlands

Provincial and Municipal borrowing in the Netherlands is governed by the same restrictions. A number of these apply to domestic borrowing including a fixed interest rate (changeable only every 10 years), and the right of the authority to pay back the loan early after a maximum of ten years. These restrictions would seem to make Dutch Provinces a less than attractive client to do business with.

Nevertheless, the security these governments can offer may outweigh these restrictions (Council of Europe, 1992).

Extra restrictions apply to international loans. These include that the loan must be in Dutch Guilders and not be linked to another currency. Loans may be arranged through the Netherlands Municipalities Bank or the commercial markets. The only general restriction applied to the Provinces is that borrowing must not exceed their ability to pay interest though this seems little more than sensible budgeting. The sanction for such over-indebtedness is the halting of any other finance operations (Council of Europe, 1993j, p23).

6.3(h) Portugal

The Portuguese Autonomous regions enjoy the ability to take out loans on both the domestic and international markets. In the Açores this is enshrined in article 101 of the Statute of Autonomy. This states that:

"The Region can negotiate internal and external debts, of medium or long term, exclusively for the financing of investment projects" (Açores Constitution)

The only domestic borrowing restriction placed on the regional government is once again, that it may only be used to finance investment. Article 102 adds the caveat that regional governments must gain leave from the national parliament, after consideration by the national government, to borrow outside Portugal. The Portuguese island regions thus have the ability to raise funds independently within Portugal but any borrowing on the international markets is open to veto by the national authorities.

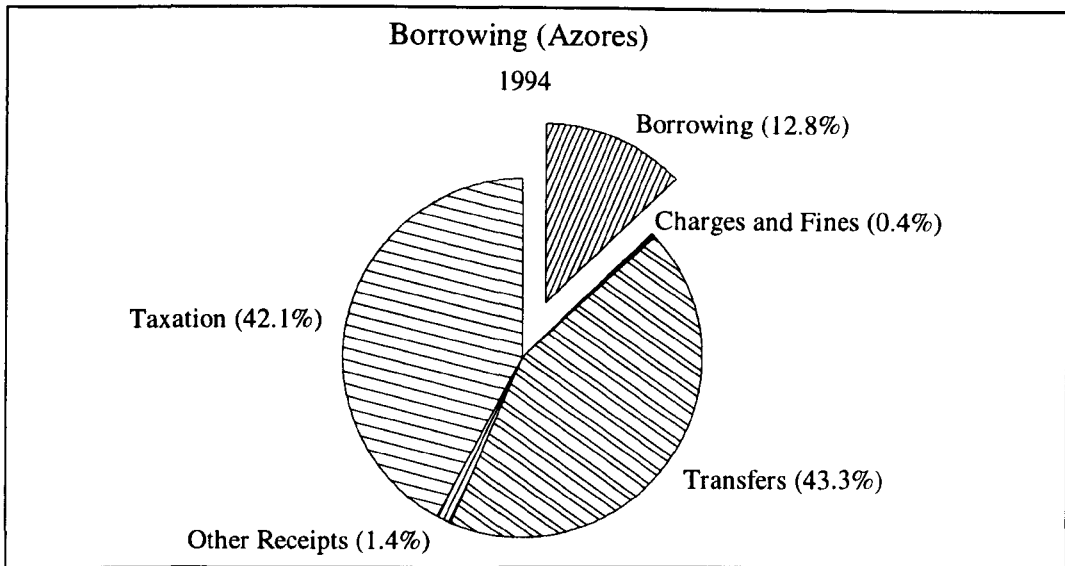


Figure 6.3-7: Açores borrowing as a proportion of expenditure, 1994

Source - Açores Regional Statistics Service

The Portuguese example is unusual in that the Regions may, if necessary, borrow from the Bank of Portugal, without interest. Up to the equivalent 10% of the previous two years receipts may be borrowed in this manner (Açores Constitution, Article 101.1).

In 1994 12% of total expenditure in the Açores came from loans, the 3rd greatest item (Figure 6.3-7). This reflects the under developed nature of the island group but it may also be evidence of the independent nature of this finance. As in other regions quoted above, borrowing is the only method by which regions can raise money without reference to the national level. It is therefore natural that they should use this resource extensively in pursuit of their policy objectives. In the national government wished to restrict such actions, a financial incentive, would be needed to tempt the regions to comply.

6.3(i) Spain

The Spanish regions are in a very strong position as regards their ability to borrow although this was not the intention of national government. Under the revised law, 39/1988, the Autonomous Communities (and local government unless specified otherwise in the regional statute) are restricted to borrowing for capital investment, while the total debt servicing costs cannot exceed 25% of the total

regional receipts for the previous year (O.E.C.D., 1993, p71). The second of these restrictions did not function in the way intended. Since the *autonomías* were totally new tiers of government, they inherited no debt. This meant that for several years they were able to borrow substantial sums before the 25% limit was reached. Furthermore, the total receipts used for the purpose of assessing this limit includes that portion which is passed on to the local authorities. Thus the region's spending power is artificially boosted, allowing higher borrowing than the central authorities may have wished (O.E.C.D., 1993, p74).

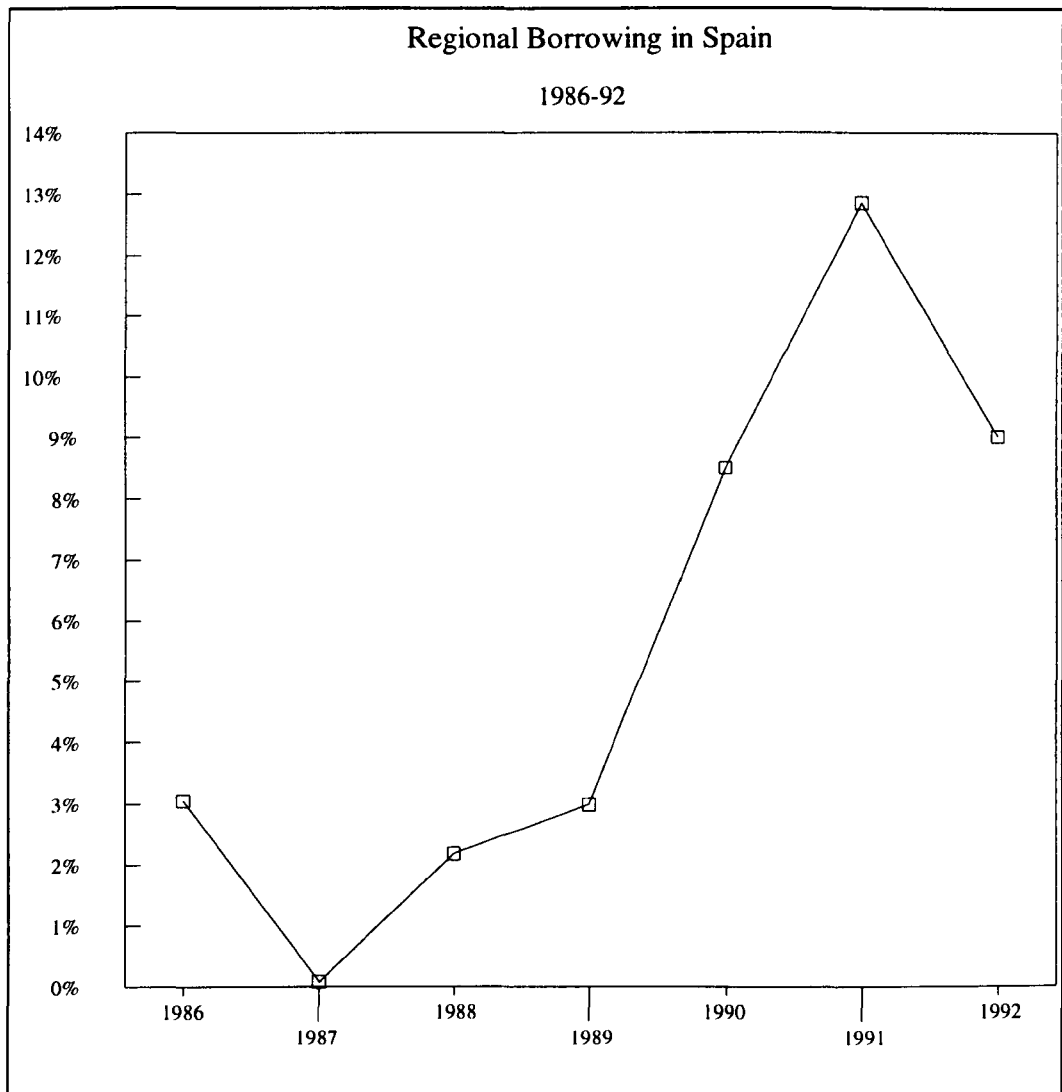


Figure 6.3-8: Regional borrowing in Spain as a proportion of revenue

Source - Informe Sobre la Financiación de las Comunidades Autonomas en 1986-92

Regions may spend their loans on capital projects of their own choosing. It is therefore a source of independent finance with less political difficulties than raising taxes. The results of this are evident from Figure 6.3-8. During the years immediately following the granting of autonomy, regional debt increased steadily until 1992, but there are significant regional variations (Figure 6.3-9). The most noticeable are the immense deficits run up by Cantabria (Cantabria had huge debts until 1992 when it was "persuaded" to start paying them back! This is why Cantabria has a negative debt for the 1992 budget). The policy of prestige investment undertaken by this region accounts for its unusually high deficit spending. Overall, deficit spending has nevertheless remained high until a drop in 1992.

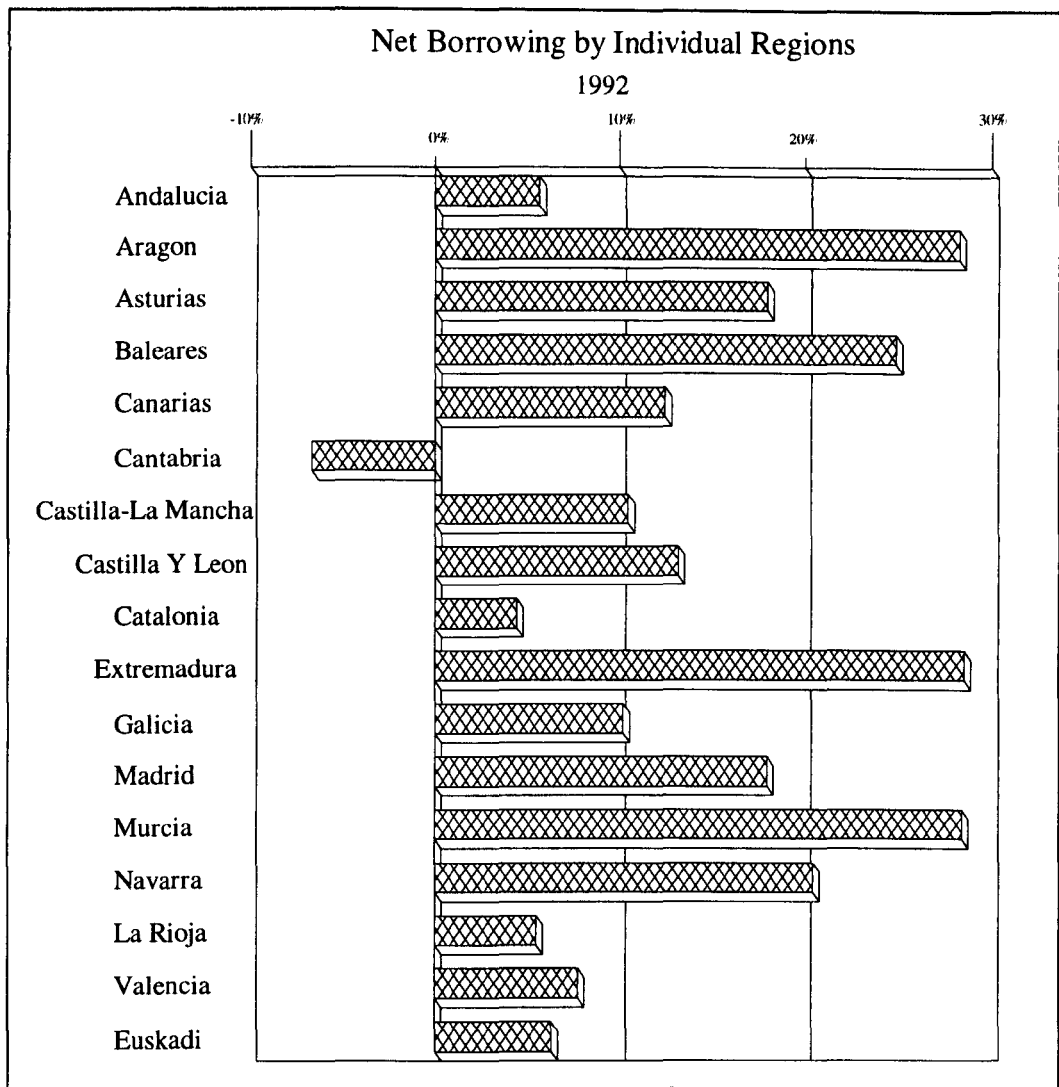


Figure 6.3-9: Net regional borrowing in Spain, by individual region (1992)

Source - Informe Sobre la Financiacion de Las Comunidades Autonomas en 1988

Changes have come, not least in response to the Maastricht treaty and the need to limit national deficits to allow Spain to participate in further integration. To facilitate this, settlements have been agreed between the individual *autonomías* and the central government. Under these, the *autonomías* have agreed to reduce their debts, (some by up to 80%)* while the national government will devolve further functions and financial resources to the regions.

* Cantabria

As yet the regions seem to be adhering to these agreements though this is not surprising. The reason for the debt restriction agreements has been the requirements of the EU convergence criteria. Regions are generally pro-European (especially Euskadi and Catalonia) and some such as Andalucia rely heavily upon EU investment funds. It is thus in all their interests to ensure compliance with the Maastricht criteria and continue the process of further integration. Finally, the Iberian population as a whole sees the EU project as an integral part its development. This is as true in Portugal as it is in Andalusia or Cantabria. Therefore, the debt restrictions are a necessary evil if the European dream is to be furthered.

Consensus is now the watchword in the debt restriction programme. This is facilitated by the regular convening of the Council of Fiscal and Financial Policy (which had previously met only once). This institution consists of the national minister of finance plus his or her regional counterparts. This body now meets to consider the debt issue and the regions must produce data for the Council's scrutiny. In return, the national government must present any proposals to alter the rules surrounding regional ceded-taxes, including estimates of their effects on regional finances (O.E.C.D., 1993, p75).

The reason for this consensus approach is rooted in article 157 of the Spanish constitution. Section 1(a) gives "the yield from credit operations" as a valid method of regional finance. Article 157.2 states any regulation of the above resources must be achieved through an organic law. This restriction means the Spanish government would experience difficulty in changing the law 38/88 mentioned above, without a substantial majority in both houses. This is increasingly unlikely due to the pivotal position held by regionalist parties in the current Cortes. In the long term it is in the interest of all parties to reach agreement on this issue and avoid an internal conflict which could damage Spain's status in the EU.

Finally, the inclusion in regional statutes of clauses such as the one below makes the national authorities' position even weaker. Article 45 of the Euskadi statute states:

"1. The Self-Governing Community of the Basque Country may issue public debt to finance investment expenditure

2. The size and characteristics of issues shall be established in accordance with the general planning of credit policy, and in *co-ordination* with the state" (emphasis added)

In practice the central government and the *autonomías* must co-operate if any restrictions on deficit financing are to be introduced. The consensus in both regional and national circles over the importance of the EU and a single currency makes the current agreements tenable. If ever this consensus should collapse the national government could find itself powerless to act. As long as the current situation holds, regions will continue to have substantial reliance on deficit funding as an independent source of revenue, though within boundaries designed to allow Spain to participate in the single European currency.

6.3(j) Conclusion

Borrowing is a substantial source of regional finance and with the notable exception of the Danish *Amtter* all democratic regions may borrow freely on the domestic market. In all cases, however, the "golden rule" applies, whereby borrowing must not exceed capital expenditure. Although such restrictions are also placed on the national level in many cases, this can still limit regional options. In a time of recession, current expenditure on retraining or benefits are likely to increase. This means the government needs more income to finance them. Such finance cannot come from borrowing as the golden rule states it cannot be used for current expenditure. Instead the capital budget must be cut, which must further restrict borrowing. This makes Keynesian type economics, very difficult to pursue and forces governments into a free-market approach to recession.

The additional restrictions placed on such loans are minimal, with most being designed to protect the debtor from unfair practices rather than limit regional

autonomy. This is especially the case in France, where the regions are only limited by ordinary law on the domestic market.

On the international markets things are slightly different. With the exception of Germany a measure of control exists in all regions, though in the case of Belgium such regulation is undertaken by an independent body (the *Conseil Supérieur des Finances*). The greatest restrictions apply in Italy and Portugal where international borrowing requires the approval of the national level. In practice, the Italian regions have been excluded from international credit facilities by such a restriction. A brief summary of the situation is shown below.

No Borrowing Without Consent	Domestic Borrowing Without Consent	All Borrowing Without Consent
Denmark	Portugal	Germany
	Italy	Belgium
	France*	Spain
		Netherlands

Table 6.3-2 - Regional borrowing restrictions

The above study shows a high degree of independence is afforded to regions in the field of borrowing. I found this quite surprising as I had originally envisaged national governments would keep a tight rein on this critical area of public finance. This has allowed some regions to run up substantial deficits. This already sensitive area has now attained an even higher degree of delicacy with the signing of the Maastricht treaty. Under the excessive deficit procedure signatories have undertaken to limit deficits in the run up to a single currency. In addition, the convergence criteria of the single currency has led several member-states to introduce convergence plans to restrict borrowing.

* International Borrowing subject to central veto if over certain amount

The reason for the heavy regional reliance on borrowing is due to a combination of factors, identified by the O.E.C.D. in relation to Spain (O.E.C.D., 1993). Firstly, throughout Europe, regions are free to raise credit on the financial markets (the exception being Denmark). Secondly, their tax raising powers are minimal. As noted above (see 6.2), most regions are either legally restricted from raising their own taxes or practically limited by their own electorate. In contrast, regions have little restriction on their ability to borrow (at least domestically). The logical conclusion to this has been for regions to turn to borrowing rather than taxation for extra finance.

The markets have been quite happy to lend to the regions. Regions are a relatively new phenomenon, with no debt at their inception (the exception to this is Belgium - one suspects they benefited from Spain's mistakes). This means they have the ability to borrow extensively before they would reach what might be described as saturation point. This has been shown to great effect in Spain where legal restrictions have limited borrowing interest to a certain proportion of overall expenditure. However, when starting from zero, the Spanish *autonomías* have been able to continue accumulating debt at a high level in comparison with their revenues. Secondly, regions are a relatively safe investment as one regional official I met commented; "it's not as if we're going anywhere".

The security of regional borrowing does not rest on the central state, however. Central governments have made it clear that they will not bail out regions which have over extended themselves. In fact, both the Spanish and French governments have allowed local government to go bankrupt, to emphasise the point.

The ability of regions to borrow without restraint has given them a bargaining counter as well as an additional source of finance. With national governments increasingly worried about deficit spending they are forced to negotiate with their own regions on this issue. This has certainly been the case in Spain where regions agreed to voluntary deficit controls only in exchange for changes in block funding mechanisms. Where constitutional restraints do not limit

the national level's options, the regions do not have such a strong bargaining position. In fact only the German, Belgian and Spanish regions are in such an advantageous position.

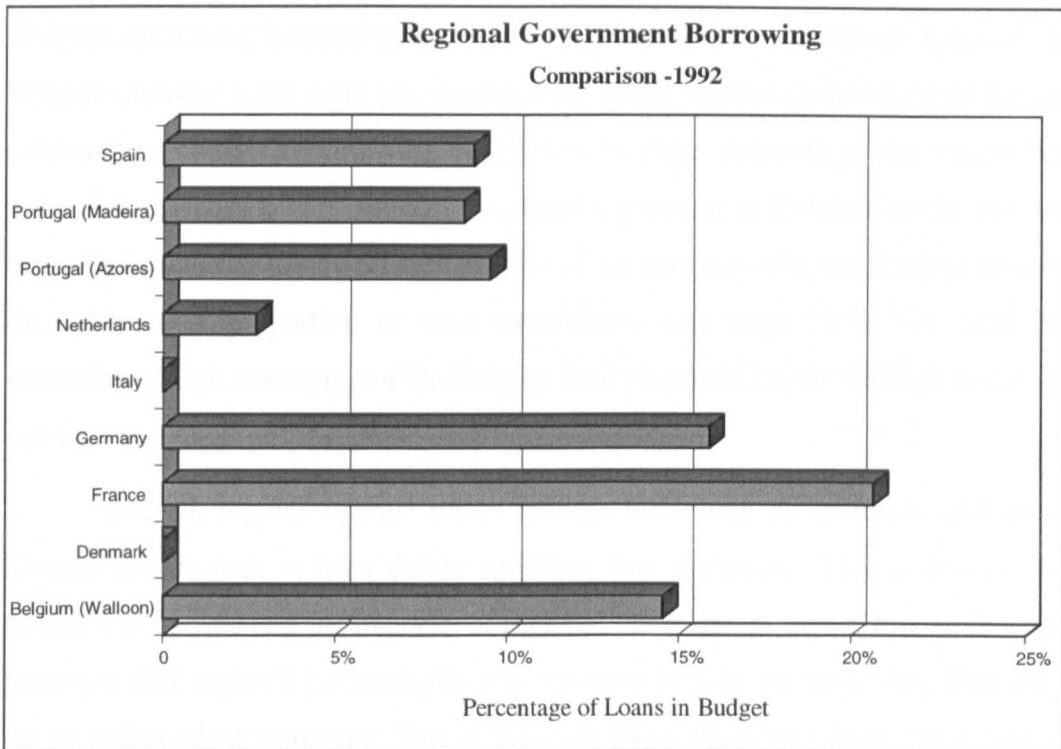


Figure 6.3-10: Regional Borrowing as a percentage of the overall regional budget

Figure 6.3-10 gives a comparison of regional borrowing in the member-states of the EU. Regional borrowing in comparison with total revenue is shown in this diagram which gives a relatively uniform picture. Regions generally fund around 5-15% of their expenditure by recourse to borrowing. This around what one would expect of any western government at the present time. There are fluctuations, however, particularly between individual regions. Two countries worthy of note in this respect are Spain and France. In Spain some regions account for almost 30% (see Figure 6.3-8) of their expenditure through borrowing and similar regional borrowing rates are seen in certain French regions (see Figure 6.3-9). In both cases, the regional variations suggest autonomy within the regional structure. The extent that borrowing is undertaken is notably not linked to the affluence of the region.

The national averages presented above show France and Belgium far ahead of the other regional systems in their recourse to borrowing. In France the high rates of borrowing emphasise the primary role of French regions as conduits for investment. In many cases this borrowing is linked to national and EU projects. Without substantial borrowing, the French regions would be unable to function. In Belgium, however, the wide ranging functions of the regions do not account for the substantial recourse to borrowing undertaken by these authorities. The reason lies instead in the compulsory nature of regional borrowing in Belgium at the present time. As a means of taking on their portion of the national debt, the Belgian regions must borrow a proportion of their expenditure (see page 197). This and the traditionally high borrowing of the Belgian state (financed largely through domestic sources) accounts for the high level of borrowing shown.

Overall, regions operate rather prudent borrowing programmes and are a notable for the lack of high deficit spending they undertake. This is despite the freedom to borrow that the majority of regional governments enjoy. It is noticeable, however, that regional governments rely far more heavily on borrowing than they do on independent resources. This is the case, even when they have the power to raise mainstream taxes (i.e. Belgium and Spain). Regions would rather borrow any additional funding than risk the political fallout associated with tax increases. This is not a healthy state of affairs. In those regions without tax raising powers, borrowing could be seen as an alternative method of finance, independent of the central controls that potentially accompany grant funding.

Regions account for a significant proportion of the national debt in many countries, and therefore in Europe as a whole. This has repercussions for the continued growth of the European Union, and the move to a single currency in particular. The Maastricht criteria set down limits on deficits prior to entry into the European single currency. To achieve these, national governments must ensure their regional governments comply. In Spain this has been achieved through bargaining and agreement. Such an approach is also clear in Belgium. However, there always exists the possibility of a freeloading region. This occurs because regions are not

responsible for their actions under E.C law, rather their parent state is. Yet in many cases, the state is not in a position to enforce any decisions that arise. This is because regions are not recognised participants in the European arena. Unless this is remedied, situations such as this are likely to re-occur. Regions are unlikely to accept obligations without being granted the rights that accompany them.

6.4 Block Funding

Many discussions of regional finance divide types of funding in terms of taxation and grants. In my opinion this is a fallacious division (see chapter 4.3(a)). Whether finance comes from direct taxation or indirectly from national government is largely irrelevant. What matters is whether the taxation is regionally controlled. If this is not the case, taxation resources allocated to the regions should be seen as a specific type of guaranteed block grant.

Grants themselves come in a multitude of categories but, crucial in terms of autonomy is the division between block and specific grants. The former are unallocated grants which regions are free to spend according to their policy priorities. In contrast specific grants are spent by regions on areas or projects assigned by the national (or European) level. The latter, which amounts to regional administration of national or European spending are examined in the next section. Within the block category lie several shades of autonomy. At one extreme some regions receive formula based allocations of taxation which affords them total spending control and a high degree of security of resources. In contrast some block grants are allocated by the central authorities acting in a discretionary manner. The latter obviously gives the central authority a greater degree of influence over the regional tier.

This section focuses on block funding as a whole. This includes all grants and funding over which the regions the regions exhibit spending autonomy but have no (or little) control over revenue acquisition.

6.4(a) Belgium

The Belgian regions are financed almost entirely through block funding. Block grants were abolished in 1989, to be replaced by a combination of ceded taxes, shared taxes and equalisation mechanisms. This produced a complex but generally accepted funding mechanism to last beyond the year 2000. Table 6.4-1 gives the present reliance on funding sources by regional units in Belgium.

Own + Ceded Taxes	V.A.T.	Income Tax	Other Sources
7%	47%	39%	7%

Table 6.4-1: Regional block funding in Belgium (1990)
Source - Engel and van Ginderachter, 1994

The mechanisms used for funding Communities and Regions are distinct and although the regional reliance on block funding given in Table 6.4-1 is interesting, it is only of limited use. In fact the large Communities rely almost exclusively on block finance in the form of V.A.T. receipts and some income tax, (over 88% of Community expenditure is accounted for in this way, with a further 3% coming from T.V. licences) (Moniteur Belge, 1992 and Ministre des Finances, 1994). This represents 62% of the national V.A.T. yield (Engel, 1993). The German Community is funded by a separate system. This allocates a block grant from the federal level in addition to income from T.V. licences. All German Community finance is block funding at present (in the last two years, the Community has used past reserves rather than borrowing for any excess spending) (German Community, 1992). The Regions, in contrast rely on primarily on income tax, receiving 41% of the total raised in Belgium. Nevertheless, their use of borrowing and independent sources is significant (see Figure 6.4-1).

The new Regional funding system introduced in 1989 has seen a dramatic shift in emphasis since it came into operation. Prior to 1989 85% of Regional block revenue was distributed on the basis of need, through federal block grants. This was compared with only 15% given as a rebate on taxes raised in the region. It was argued that such a situation gave little incentive for the region to preserve, or

enhance its own tax base. To combat this, the percentages are being gradually altered in the period to 1999. By then, 55% of tax distribution will be undertaken on the basis of financial responsibility (i.e. receipts from the region) with 15% assessed on the basis of need. Although grants do still exist their influence is minimal (B.E.F. 300 million in 1992) (Government of Flanders).

The major source of finance for the Regions is therefore shared taxes. The distribution of them is divided into two parts. Firstly, the Regions receive a portion of all income tax raised in their territory. As mentioned above, a surcharge may be added to this tax (see 6.2(a)). The portion given to regions is fixed by a complex series of calculations assessing the cost of the regionally devolved functions. In practice this amounts to around 40% of income tax receipts (Van Ginderachter, 1994).

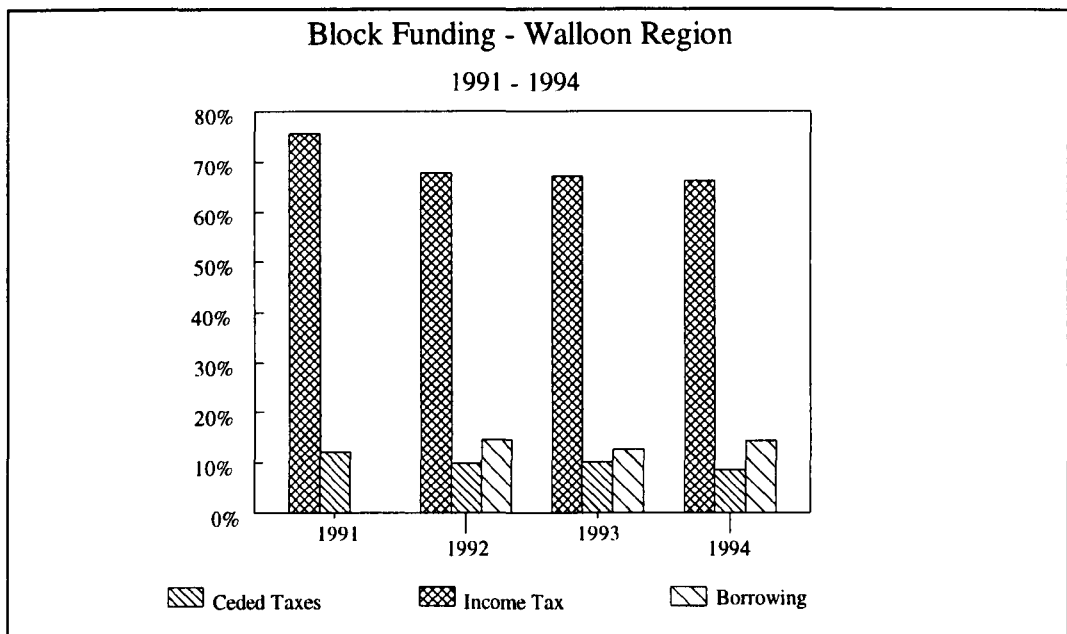


Figure 6.4-1: Block funding in Wallonia, 1991-94

Source - Budget des recettes et des dépenses de la Région Wallonne pour l'année budgétaire 1994

During the "transition" period, the following system is in use but in the year 2000 this will be re-negotiated. At present four criteria are considered:

- 1: Cost of functions in areas of regional competence
- 2: Cost of investment in regional competences

- 3: Cost of provincial and communal funds
- 4: Equivalent of regional grants previously given to cover specific tasks

The amount actually received is based on the cost of national expenditure in the regionalised areas immediately prior to the financial reform, i.e. 1988. Each year the amount given is increased by inflation (Walloon Budget, 1993, pp.50-1). Due to pressure from the regions, a further increase has now been allocated, based on the increase in G.D.P.. Originally, the G.D.P. variable was only to be introduced in 2000, but instead a gradual introduction has been established in response to claims that the regions were being unfairly burdened (the low rate of inflation was restricting the growth of regional grants, while expenditure increased) (Government of Flanders).

A further block grant is allocated according to need based criteria through a basic equalisation process between the regions. For each percentage point that the poorest region's average tax return falls below the national average, the federal government must pay 468BF per person. This sum is index linked and represents the difference between tax base and grant revenue for Wallonia (the poorer Region) in 1989.

The consequence of this complex system is that by a variety of mechanisms the Belgian Regions receive a large amount of block funding both in percentage and real terms. The Communities also receive a high degree of block funding, higher even than that given to the Regions. Thankfully this is a much simpler mechanism. Income tax is granted through a fixed, indexed linked formula, while V.A.T. (by far the greatest source) is allocated on a simple per capita basis. The Community portion of V.A.T. (60%) is divided and allocated, based on the number of students (school and university) in the Community. There is therefore no need for an equalisation procedure.

The introduction of the new system in 2000 will hopefully simplify what is at present, an immensely complex structure. The reason for the complexity is to be found in the genesis of the system. The finance act of 1989 was a compromise

between regions fighting for their own interests and arguing for time to settle into a regime based on taxes and not grants (with some justification). The federal level on the other hand achieved important concessions in the area of the national debt payment (see section 6.2(a), above).

Despite the complex nature of block funding in the Belgian regions, there are some important and (thankfully) simple points to note as regards their financial autonomy. Firstly, the formulas are fixed, with the national government unable to interfere in regional tax receipts. This gives a security of finance, important to any long term policy decisions. Secondly, a relatively simple equalisation procedure exists to subsidise the poorer region (at present Wallonia). Finally, the Communities and Regions of Belgium as far as spending autonomy goes, have almost total independence.

6.4(b) Denmark

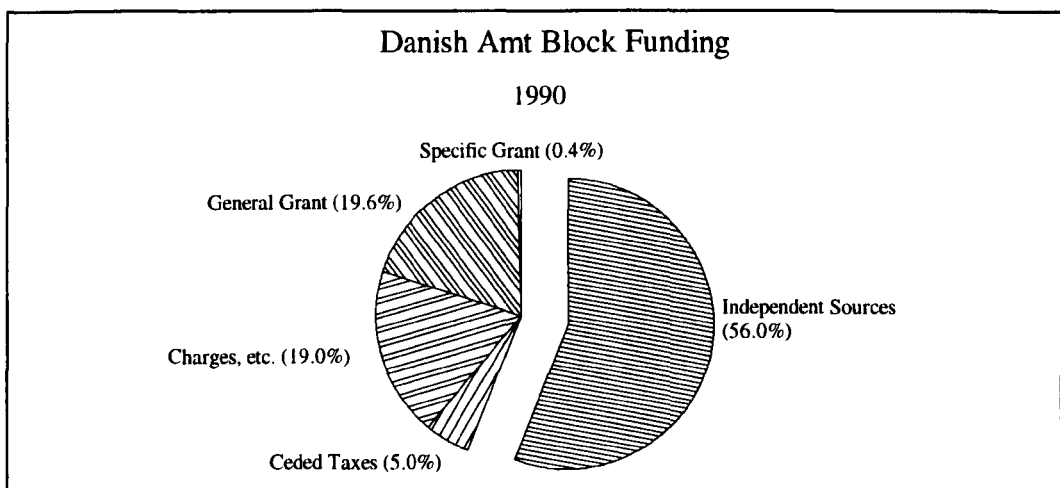


Figure 6.4-2: Block funding in Danish *Amter* (including charges), 1990
Source - Danish Statistics Yearbook, 1991

The Danish *amter* are given a block grant to complement their revenue from income tax. This accounted for 20% of *amter* revenue in 1992 (not including charges) (Andersen, 1993, p19).^{*} In addition, the ceded land tax which accrues to each *amt* is in effect block funding as the regional tier has no power to alter its rate.

^{*} Strictly speaking, 2% of this grant was specified in 1990.

Payment for individual services has increasingly become a major source of *amter* revenue (see Figure 6.4-2). By 1990 this source had reached 19% of overall finance, although it cannot be used by the regions, to finance other activities (Council of Europe, 1993b, p16). In Denmark, if the ring fenced service charges are ignored (which is the practice of many *Amter* commentators), almost all *amter* funding is un-allocated (as shown in Figure 6.4-2), leaving the regional tier free to spend its resources in accordance with the wishes of its electorate. However, as total *amter* spending accounts for only 15% of that spent by the national level, the financial impact is minimal.

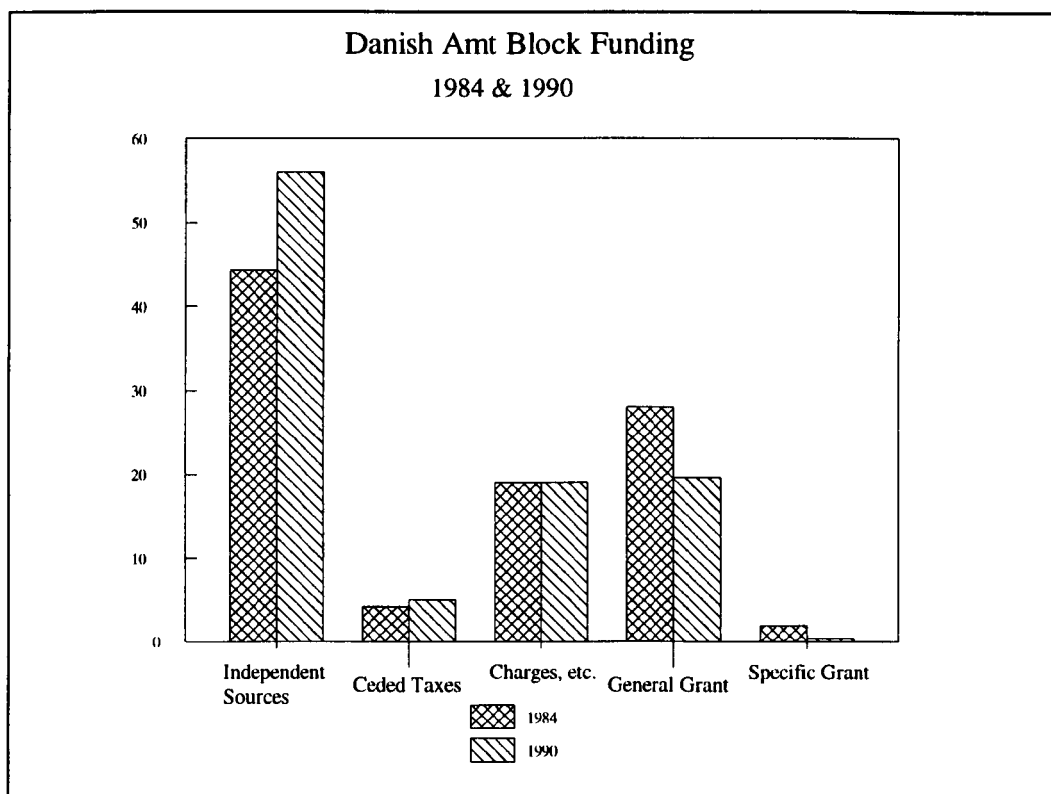


Figure 6.4-3: Block funding in the Danish Amt in 1990, in comparison with 1984
 Source - Danish Statistics Service

The grant itself is calculated with reference to needs and per capita taxable income in individual *amt*. It thus incorporates a degree of equalisation, although tax receipts raised in the region account for most of this procedure (85%). Although the Ministry of the Interior uses objective criteria the national parliament may still alter the formula to reduce the grant as it has done with regard to the *kommuner*.

The *amter*, in contrast, have enjoyed a slight rise in block grant in recent years (Bogason, 1987, p59). Despite this, the percentage reliance on the block grant has declined significantly over the late 1980's (Figure 6.4-3). Instead, more emphasis has been placed on independent financial sources, specifically income tax. The greater emphasis on independent financial resources makes the *amter* more autonomous and arguably more accountable to the regional electorate for their spending plans.

6.4(c) France

French block funding of regions accounts for a significant but relatively small portion of the regional budget. Grants as a whole accounted for just under 30% of total revenue in 1993 (see Figure 6.4-4) This figure has seen a gradual but steady decline since 1988, greater emphasis being placed on independent finance. Most of these grants are specifically allocated by the national authorities and block funding accounts for around a third of this total (see Figure 6.4-5). The non-allocated funds are the *dotation générale de décentralisation* (D.G.D.) and the *fonds de compensation de la T.V.A.* (F.C.T.V.A.). Another block grant, the *dotation globale de fonctionnement* (D.G.F.) originally allocated funds to regions but this now covers only *Ile de France*. The French state also regards the *dotation globale d'équipement scolaire* as a block grant but the provisos attached to it (basically it is spent on school maintenance) mean that it is dealt with later.

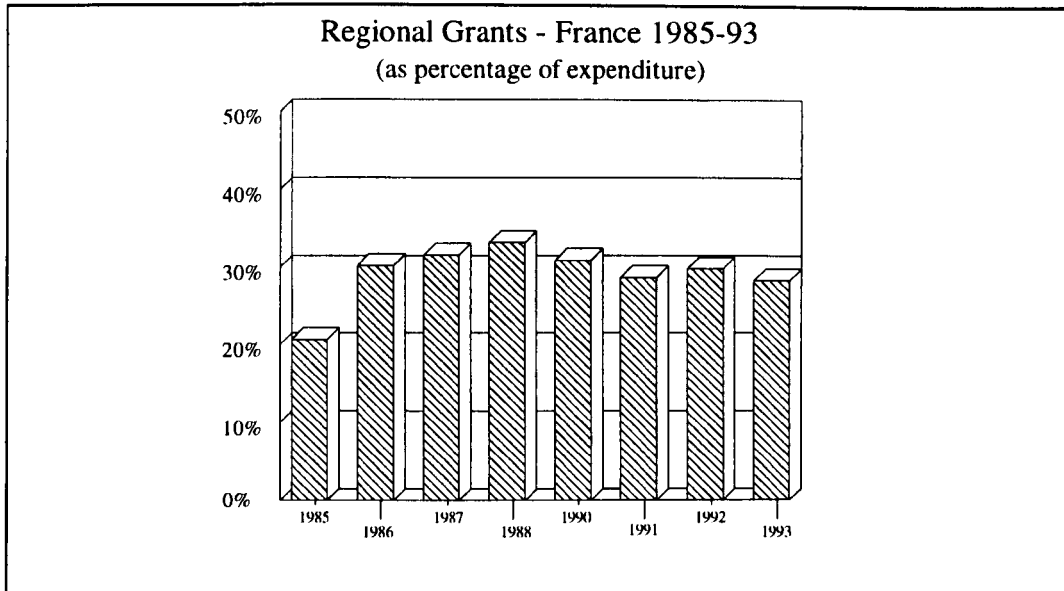


Figure 6.4-4: Regional block funding 1985-93
Source - Les Finances Régionales en 1992

The D.G.D. accounts for over 20% of grant revenue and is thus the largest single grant given to regions. Its *raison d'être* is to compensate regions for providing services and undertaking policy in areas previously provided by the state. When the cost of decentralisation exceeds tax revenue, the D.G.D. is supposed to provide the difference. The D.G.D. is indexed linked to V.A.T. growth and as such relatively free from policy interference (Gilbert & Guengant, 1990, p251). The needs based criteria of this grant gives a degree of equalisation. The only other block funding now given to the regions is that of the F.C.T.V.A.. This is basically a refund of V.A.T. spent on investment projects by the région. Prud'homme has argued that this system actually works as a negative equalisation procedure with rich regions benefiting at the expense of poor ones. In essence, the more a region spends, the more V.A.T. it will incur and thus the greater rebate it will receive (Prud'homme, 1990).

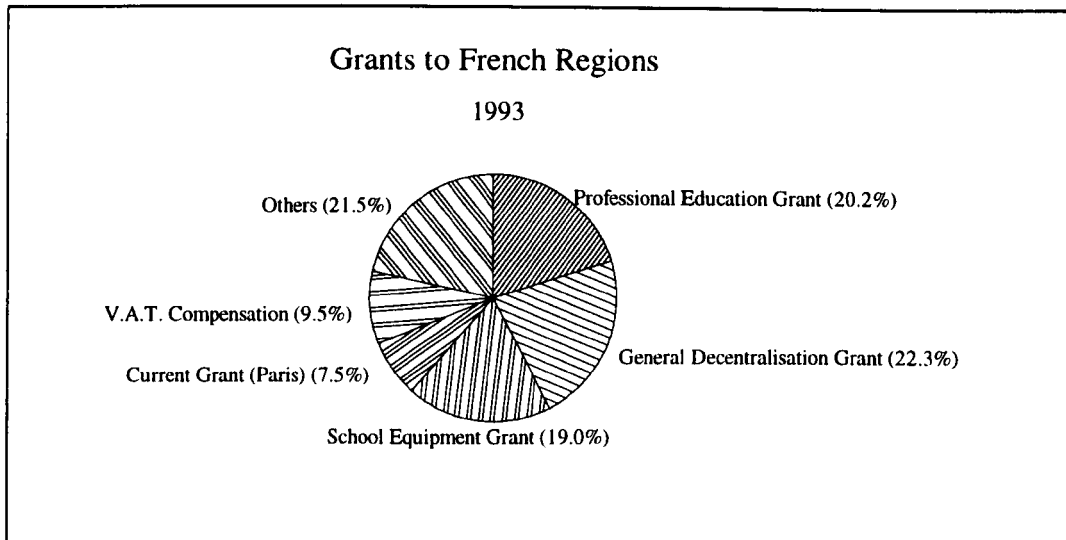


Figure 6.4-5: Breakdown of grants to French regions

Source - Les Budgets Primitifs des Régions en 1993

The organisation of block funding, like the rest of the decentralisation project was thoroughly rushed. The problems of V.A.T. reimbursement were at least partly caused by this haste. Some alterations have been undertaken, though not all have favoured the regions. Since the original reforms of 1982, the D.G.E. (a general grant for capital expenditure) has been replaced by the D.G.E.S., a more specific grant for educational infrastructure. In addition the professional education grant now accounts for over 20% of grant expenditure. Finally, the miscellaneous grants under the ubiquitous term "others" must be taken into account. These are all specific in type and include EU grants, *contrats du plan* funding and energy conservation grants. All of which are dealt with below. In conclusion the 54% of finances raised by the regions independently are complemented by a further 9% which may be spent autonomously.

6.4(d) Germany

Funding by block allocation is by far the largest source of finance for the *Bundesländer*. The reliance on this source was between sixty and seventy percent throughout the 1980's and early 1990's (Figure 6.4-6) In the main, this type of funding is made up of shared and ceded taxes. The former are national taxes of which the *Länder* receive a fixed proportion. The latter are taxes which the *Länder* collect within their own territory but over which they have no authority to set rates,

etc.. However, as with all taxes where the *Länder* receive a portion of the receipts, the legislation surrounding it must pass through the *Bundesrat* if it is to become law. Thus, although individual *Land* control over tax rates was lost in 1947, there still exists a collective *Länder* influence at the national level still remains (see section 6.2(d)). Whether this is actually an example of regional *autonomy*, is debatable.

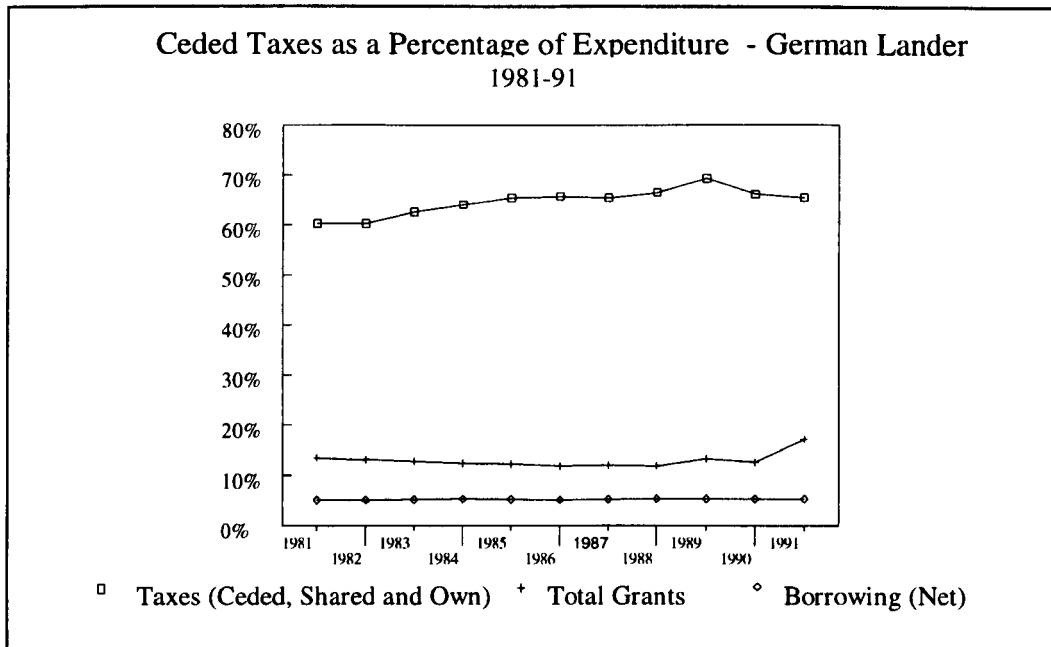


Figure 6.4-6: Block funding (ceded taxes) of German Lander
 Source - Bund Statistics Office

The role of ceded taxes in *Länder* finance is minimal when compared with that of shared. The shared taxes are; income tax, local business tax, corporation tax and V.A.T.. Collectively they account for 81% of the *Länder* tax yield and are thus their single most important source of regional revenue (Engel & Van Ginderachter, 1993, p63). The German regions, although heavily reliant on these centrally controlled revenue sources, do have the constitutional protection afforded by Article 106(3) of the Basic Law. This article, guarantees *Länder* participation in these receipts:

"The *Bund* and the *Länder* shall share equally the revenues from income taxes and corporation taxes. The respective shares of the *Bund* and the

Länder in the revenue from turnover tax* shall be determined by federal legislation requiring the consent of the *Bundesrat*." (Article 106(3) G.G.)

Thus the *Länder* are constitutionally guaranteed 50% of income taxes and corporation taxes (including the local business tax) once the local government portion has been removed. The enshrining of this figure in the constitution gives a high degree of autonomy to the *Länder* within the context of block funding. The *Bund* by the very nature of this provision must fund the *Länder* to a substantial extent, if it wishes to fund itself. The only way *Länder* funding from this source could be reduced is by a policy shift from income related taxation to consumer related taxation in the form of turnover tax. Turnover tax today is, of course, V.A.T..

Länder rights in the area of V.A.T. are less than those of income and corporation tax but are still quite substantial. As the above article makes clear, the formula for the division of V.A.T. must be approved by the *Bundesrat* and therefore the *Länder* enjoy a collective veto over its contents. However, unlike the income and corporation taxes, V.A.T. is not kept by the region in which it was paid. In contrast it is pooled and divided along criteria also laid down in the Basic Law, namely:

"1. The *Bund* and the *Länder* shall have an equal claim to coverage from current revenues of their respective necessary expenditures. The extent of such expenditures shall be determined within a system of pluri-annual financial planning;

2. the coverage requirements of the *Bund* and of the *Länder* shall be co-ordinated in such a way that a fair balance is struck, any overburdening of taxpayers precluded, and uniformity of living standards in the federal territory ensured." (Article 106(3)G.G.)

* Today, turnover tax is V.A.T.

The division of V.A.T. is therefore a first stage in the complex German equalisation process. V.A.T. receipts are divided according to guidelines established in federal law every two or three years. Indeed article 106(4) G.G. makes it compulsory to introduce a new law when, "the relation of revenues to expenditures in the *Bund* develops substantially differently from that of the *Länder*". The current agreement gives 35% of V.A.T. to the *Länder* which is then allocated according to the following criteria.

75%	Distributed on a per capita basis to each <i>Land</i>
25%	Used to bring all states up to at least 92% of average tax revenue (per capita)
remainder	Divided between all states with average tax revenue now between 92%-100% of national average

The first two distribution methods are thus needs based, though through a crude mechanism. The first portion disadvantages rich states since they would have accrued higher V.A.T. returns than their poorer neighbours. The per capita distribution gives at least a portion of the higher tax returns of richer regions to their poorer counterparts. This gives a fairer distribution of V.A.T. throughout the federation. The second distribution method is more obviously distributive and is used to alleviate discrepancies between the regional tax base in general. Zimmermann suggests that this crude equalisation method is vital if the more open method of the *finanzausgleich* is not to be deemed politically unacceptable (Zimmermann, 1989, p383).

The *finanzausgleich* (or equalisation procedure) gives block grants horizontally from the richer to the poorer regions. This procedure is highly controversial. The latest act, passed in 1988 was challenged by all sides in the constitutional court. In simple terms it guarantees all *Länder* at least 95% of the average *Land* "fiscal capacity". In theory the formula for the disbursement of these grants is based upon the needs of each *Land* though it is actually a revenue equalisation process. The only needs based criteria included are the costs of major

port upkeep (Bremen, Bremerhaven, Hamburg and Emden) and weighting for city-states and urban areas within individual *Länder*.

The horizontal equalisation system works by creaming off "surplus" tax potential in each region. The average tax potential comprises the total allocated V.A.T. share and all other regionally received taxes. Prior to 1986, mining, oil and gas royalties were excluded. This obviously favoured those with mineral and oil deposits. The constitutional court finally resolved this issue in favour of those regions lacking such mineral wealth (Zimmermann, 1989, p387).

The collective tax revenues of the *Länder* are added together and then divided by the national population.* This number is then multiplied by the population of the region (weighted at 135% for the city states). This gives the regions' revenue potential. To this is then added the revenue potential of local government within the *Land*. This process involves 50% of the collective local tax receipts for the federation divided on a per capita basis. This is multiplied by the region's population, weighted according to the size of communities. This local government portion is somewhat controversial. Rich *Gemeinden* need less subsidises than their poorer counterparts and since local government finance is controlled entirely by the *Länder*, using only 50% of local taxes in the calculation of tax potential arguably favours those *Länder* with richer local communities. (The *Bund* wish 60% to be included). The sum of local and regional tax revenue in each *Land* is then compared with the national average (Zimmermann, 1989, p387).

If the total tax potential of a *Länder* exceeds 110% of the national average then the entire surplus over the 110% cut off point is placed in the equalisation fund. 70% of any surplus from 102%-110% is also included. A surplus of 102% or under is left untouched. The fund thus established is used to raise the tax potential of poorer *Länder* up to a 95%, if possible (up to 92% is compensated 100%, 92%-100% at 37.5%). If the equalisation fund is not enough to cover this, then the surplus 102%-110% or even the 100%-102% may also be siphoned off.

* At present the Eastern *Länder* and Berlin are funded through a separate system

The scheme gives the poorer *Länder* guaranteed block funding in addition to their tax base. However, these grants do not show up in the national *Länder* income as they are both paid for and received by regions themselves. The autonomy of the poorer *Länder* is more secure under the present equalisation system than if they relied on block grants from central authorities which could be withdrawn or be given as "grants in aid" (see section 6.5).

Nevertheless, the latter does appear in the German system and it has been argued its increased use has undermined German regional autonomy (Bulmer, 1990). Due to the constitutional restrictions and continued reliance on ceded taxation I would seriously question this view. As is evident from Figure 6.4-6, there has been no significant percentage decrease in ceded taxation funding, indeed over the 1980's the portion of *Länder* funding coming from this source actually rose, before dipping in 1990. This period has also seen a consistent increase in the amount of ceded taxes accruing to the *Länder* by value (see Figure 6.4-7). The increase in specific grants recorded in 1991 is due to grants to the Eastern *Länder* (see section 6.5).

Central grants come from two sources. First, block grants are given as part of the equalisation scheme. These amount to 2% of federal V.A.T. receipts and are given to individual *Land* that fulfil one of the following criteria:*

- a) *Länder* with small populations. A fixed sum is given due to the constitutional courts' decision that this criteria should be included in equalisation.
- b) Any *Land* which still falls below the national tax potential average after application of the horizontal equalisation procedure. In this case, the remainder of the *Bund* contribution is divided amongst them.

* In fact this accounted for over 50% of equalisation in 1987 (Zimmermann, p.388)

Although only an optional portion of the equalisation process after 1993 these funds cannot be tied to specific projects. The optional nature of the above fund may give limited scope for a "grants in aid" policy but the constitutional restrictions will make this difficult. The only area in which federal influence is possible is through the provision of specific grants. These account for the bulk of *Bund* grants to the regions (86% in 1990), but the restrictions placed on the *Bund* limit their effectiveness as control instruments. This is dealt with more fully in the next section.

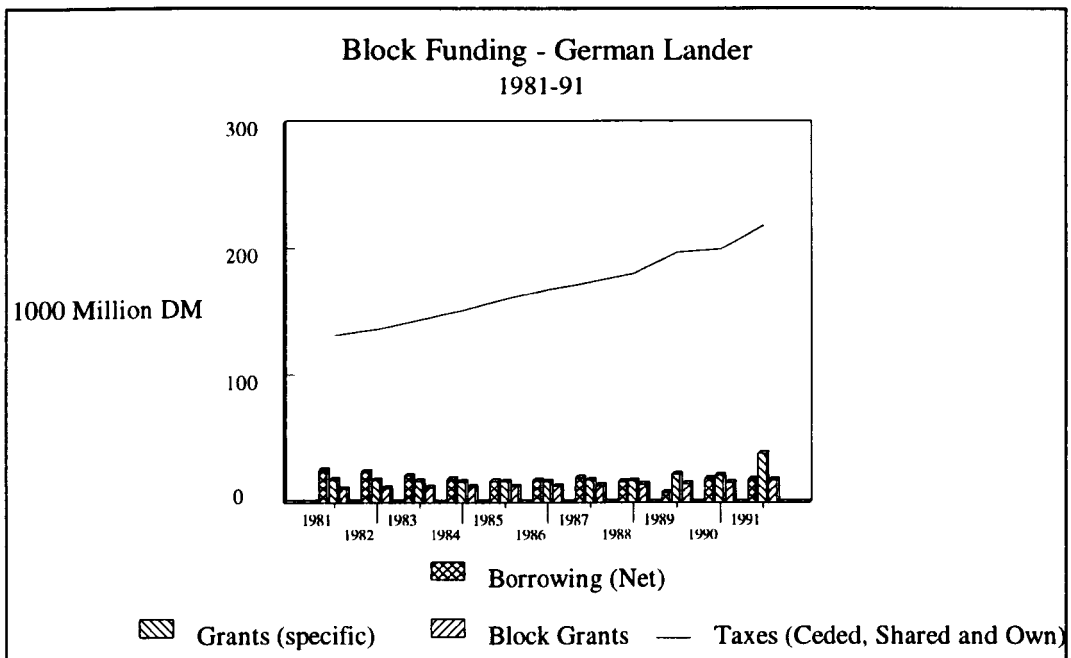


Figure 6.4-7: Block funding in the German Länder

Source - German Statistics Service

The final area of block funding concerns the special procedures used for financing Berlin and the *Länder* of the former G.D.R.. Berlin has had a separate finance system as a result of its unusual situation during the cold war. It was excluded from the general equalisation system and instead received block grants direct from the *Bund*. Figure 6.4-8 charts the increase in this grant in comparison with *Land* tax revenue. Berlin had, as this figure shows, been in a less secure position than its Western counterparts due to the heavy reliance on block grants, prior to 1991.

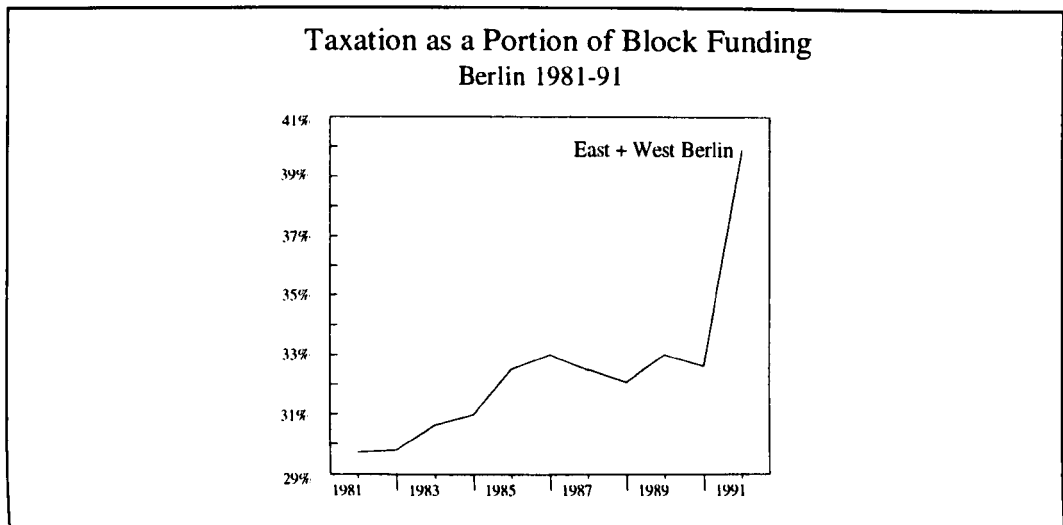


Figure 6.4-8 - Grant funding in Berlin
Source - German Statistics Service

The addition of the eastern *Länder* has had a profound effect on regional finance in the F.R.G.. These regions require major investment in economic development, environmental clean-up and general infrastructural improvement. Because of these huge imbalances between West and East the equalisation system was deemed unable to cope.* Instead, a separate fund (*Deutsche Einheit*) has been established to provide block grants to these *Länder*, as a supplement to their tax revenues. The total fund for the period 1991-94 was set at one hundred and fifteen billion D.M., with the Western *Länder* paying 47.5 and the *Bund* 67.5 billion D.M. (Engel & Van Ginderachter, 1993, p64). In addition, other specific grants have been allocated by the *Bund*. There is a worry, however, that this reliance of the Eastern *Länder* on the generosity of the *Bund* will make them more susceptible to *Bund* influence and thus tip the federal balance in favour of the centre. Whether this is the case, remains to be seen.

6.4(e) Italy

Until 1993 the Italian regions were funded almost entirely through ceded or shared taxation in addition to a variety of grants. The reform of 1993 granted

* Despite the intention to reform the *finanzausgleich*, the failure to agree left the previous system in place.

regions National Health contributions in addition to these revenues (Giarda, 1995). In practice, however, these have merely replaced the sectoral funds allocated to the health service. Tax revenue remains the only the block funding source available to the region, as all other funds are specific. The serious lack of financial autonomy open to the Italian regions is clearly demonstrated in Figure 6.4-9. In the period 1986-91 over 80% of all regional income was financed from specific grants compared with under 20% from (mainly shared) taxation.* There has been a slight increase in reliance on the shared tax portion over this period (from 15-17%) accompanied by an equally gradual decline in specific grant reliance but the overall picture painted is one of a regional tier highly dependent on central discretion for its funding.

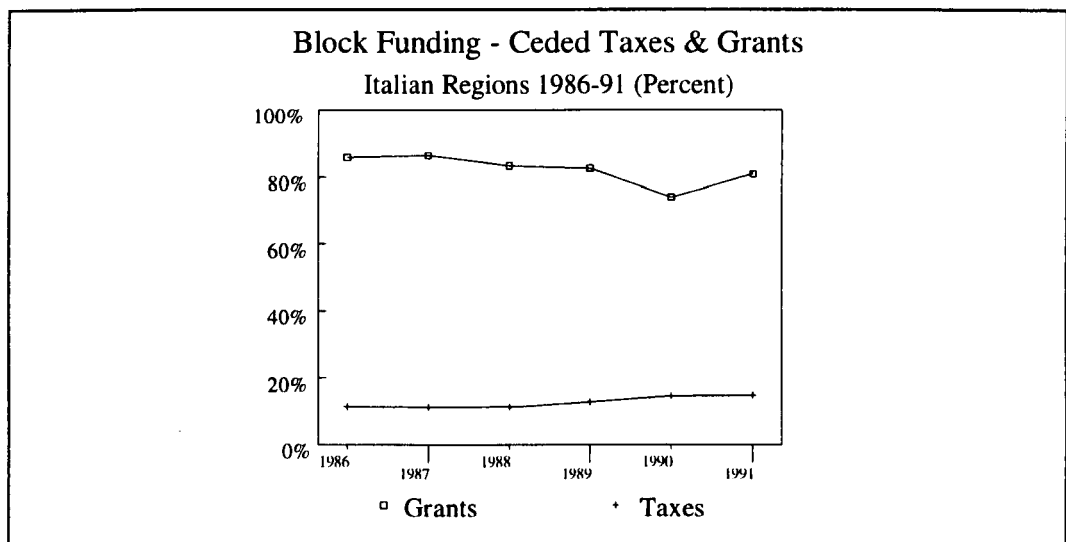


Figure 6.4-9: Italian block funding (1986-91)

Source - I.S.T.A.A.T.

The heavy reliance on specific funding exhibited by Figure 6.4-9, is not the whole story, however. There is in fact a marked distinction between the situation in "ordinary" and "special" regions (Figure 6.4-10). Indeed some authors have suggested this is the only practical difference between the two regional varieties (Zariski, 1987). The "special" regions, when taken as a whole have financial

* The only exception to this are the figures for 1990 which show a sharp dip in percentage reliance of grants. This was due to a sharp increase expenditure, financed by borrowing, while the grants themselves were all but frozen.

autonomy over around 60% of their budget. In fact the funding of special regions varies and Sicily actually collects all taxes within its territory (with the exception of tobacco, production and gambling). This is substantially higher than the 20% enjoyed by the "ordinary" regions. The reason for this is the larger share of national taxes (in effect their block allocation) given to the "special regions" in conjunction with less reliance on sectoral funds. These sectoral funds are the reins by which the Italian state controls regional finance. These are granted to the regions for specific administrative tasks (i.e. transport, health and agriculture) and are dealt with in the next section (see section 6.5(f)).

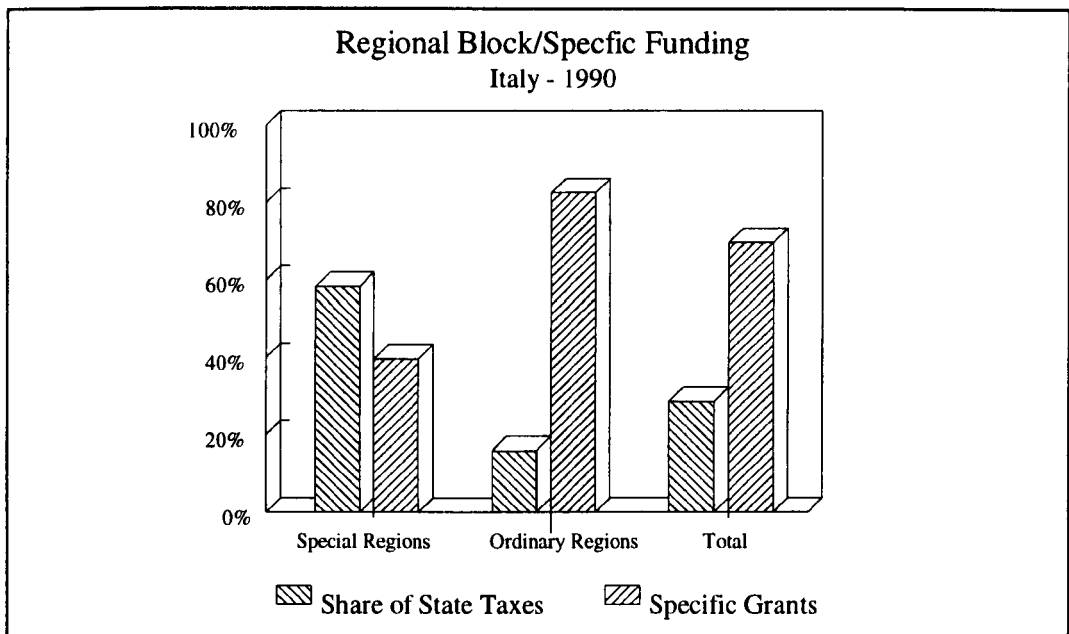


Figure 6.4-10: Block funding in "special" and ordinary regions
 Source - T.E.P.S.A., 1992

The shared regional tax portion is distributed using a system of "common" and "development" funds. These funds are constructed by the pooling of the regional shared tax allocation. The funds are then divided per capita among the regions concerned. The "development" fund portion must be spent on capital projects while the "common" fund is to be used in general expenditure. With the exception of these restrictions, regions are then free to spend these funds as they wish.

A limited amount of equalisation is also included in the division of the regional tax segment. This involves a higher weighting, per capita for certain features such as regional area size, road network length and per capita income, among others. This has the effect of giving 60% of the development funds to the poorer *Mezzogiorno* regions of the South (Engel & Van Ginderachter, 1993, p86).

There is little doubt that the "special" regions enjoy a much higher degree of financial autonomy than their "ordinary" cousins. With only 17.5% of the 1989 budget under their own control, "ordinary" regions are severely restricted, by any measure.

6.4(f) Netherlands

The Dutch provinces rely heavily on direct funding from central government. This takes the form of two types; a block grant from the provincial fund and specific funding direct from government departments. There is a further source of finance open to the regional authorities namely fees and charges for specific services. These actually account for a large section of provincial funding (17% in 1986) but are subject to such severe restrictions, most analysts ignore them when discussing Dutch provincial finance. Provinces are prohibited from making a profit on these services and the charges can only be used to finance the service itself (Council of Europe, 1993j, p22). For the rest of this section they will be ignored.

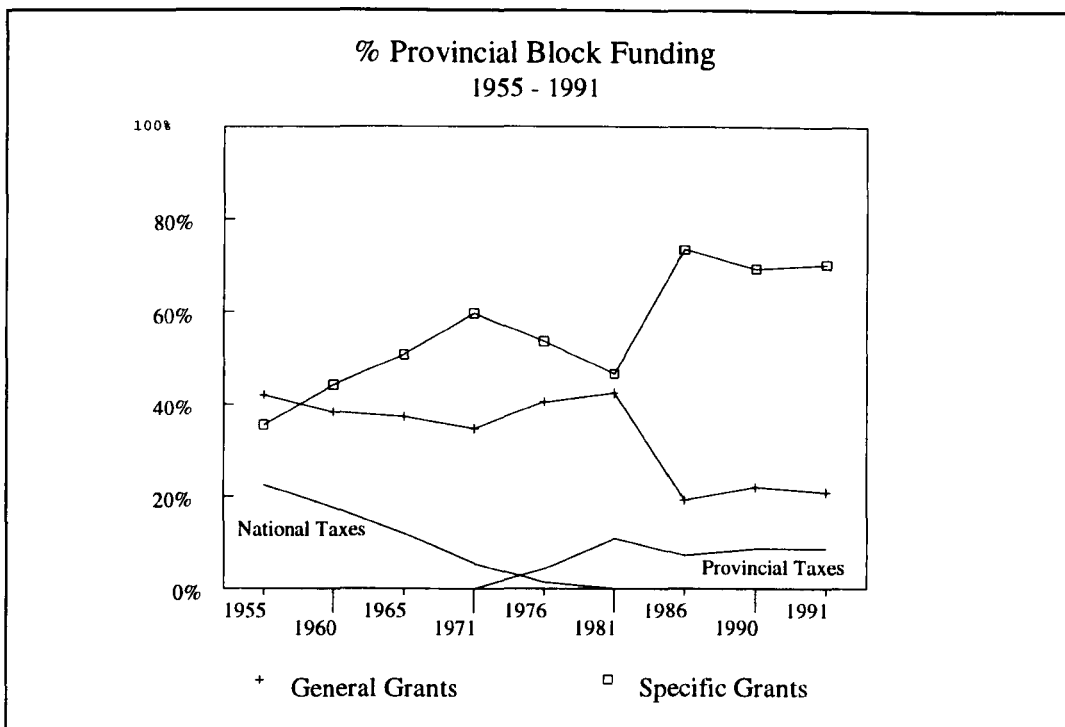


Figure 6.4-11: Provincial block funding as a percentage of budget (1955-91)
Source - Dutch Statistics Service

There has been a steep decline in the importance of general grants in the provincial budget during the early 1980's (see Figure 6.4-11). From a high of over 40% in 1955, the percentage reliance hovered around this level until 1981. The period 1981-86 experienced a steep decline in block grants as a proportion of total income. By 1986 specific grants were around three times the size of the block allocation. The fall in the block grant portion was caused by an increasing emphasis on specific grants, rather than taxes. By and large the provincial taxes introduced in 1971 have merely replaced the national taxes previously allocated to the provinces.

Interestingly, the decline in block grants, as a portion of the Dutch provincial budget, may not indicate an actual decline in financial autonomy. The block grant given to the provinces has generally remained constant (in real terms) due to the formula outlined below. The increase in specific grants has been brought about by the increasing use of Provinces by central government departments to administer central policy at a regional level. This has been financed by individual

departments providing funds for the execution of their policies. This has caused the dramatic increase in specific funding shown in Figure 6.4-11 (Toonen, 1993, p144).

The formula used to calculate the Provincial general grant is laid down in law as per article 132.6 of the Dutch constitution which states:

"The taxes which may be levied by the administrative organs of provinces and municipalities and their financial relationships with the central government shall be regulated by Act of Parliament" (Dutch Constitution, Article 132(6))

This act is the *Financiële verhoudingswet* (Financial Relationships Act), of which the latest version dates from 1984 (Kortmann & Bovend'Eert, 1993, p32). This demands that one percent of the national tax returns are placed in the Provincial Fund, from which general grants are distributed. The allocation of this fund is defined with reference to the following criteria:

Proportion	Distribution Criteria
42%	Divided equally among the eleven provinces
35%	Distributed according to population of province
17%	Distributed according to land and water area of province
6%	Dependent on average canal length and soil conditions

Table 6.4-2: Distribution Criteria of Provincial Block Grants

The Provincial Fund distribution formula thus incorporates a degree of need criteria but this in minimal (i.e. size, population and soil conditions). Nevertheless it is the only equalisation process within the Dutch system. The problem with the relative reduction of this grant in comparison with specific grants is that the latter incorporate no equalisation procedure and are at the discretion of different departments. Whatever the effect of the increased use of specific funds, Provinces still have little spending autonomy in real terms.

6.4(g) Portugal*

The inability of the Portuguese regional authorities to control their own tax rates means they rely totally on their block funding for any financial autonomy. This consists of two distinct portions:

1. Taxes which accrue directly to the region, (though the rates are set in Lisbon)
2. Block grants transferred from the central government to the region.

Both regional statutes give all taxation raised on the islands to the respective government.

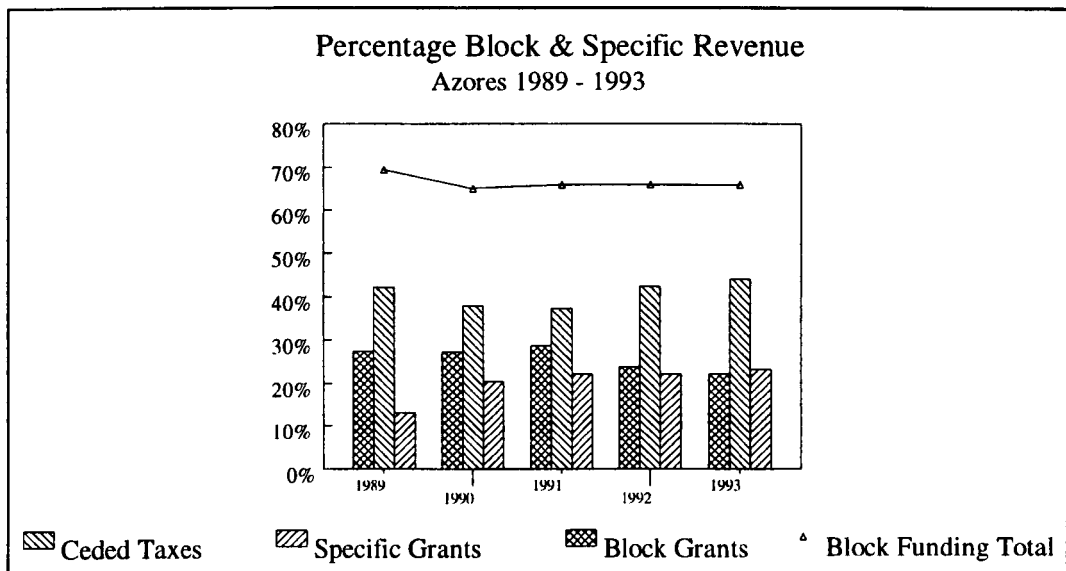


Figure 6.4-12: Block grant as a percentage of the budget (Official figures, Açores)
 Source - Açores Regions Statistics Service

Figure 6.4-12 gives the official government breakdown into transfers, ceded taxes, other receipts (mostly borrowing) and funds administered by the region on behalf of the central authority (*contas de ordem*). The rise in ceded tax income is evident over the early 1990's. In contrast, transfers have fallen back slightly while

* During this research I had difficulty obtaining information regarding the budget of Madeira. For this reason, the figures in this section refer primarily to the Açores.

conditional funding has experienced a steady increase. It is evident from Figure 6.4-13 that the overall percentage reliance on transfers and ceded taxes has remained relatively constant over the same period. It seems that the fall in block transfers and the rise in specific funding has been compensated for by the rise in ceded taxation. Overall the Açorian government enjoys spending autonomy over sixty to seventy percent of its income. On closer inspection, however, this is not actually the case.

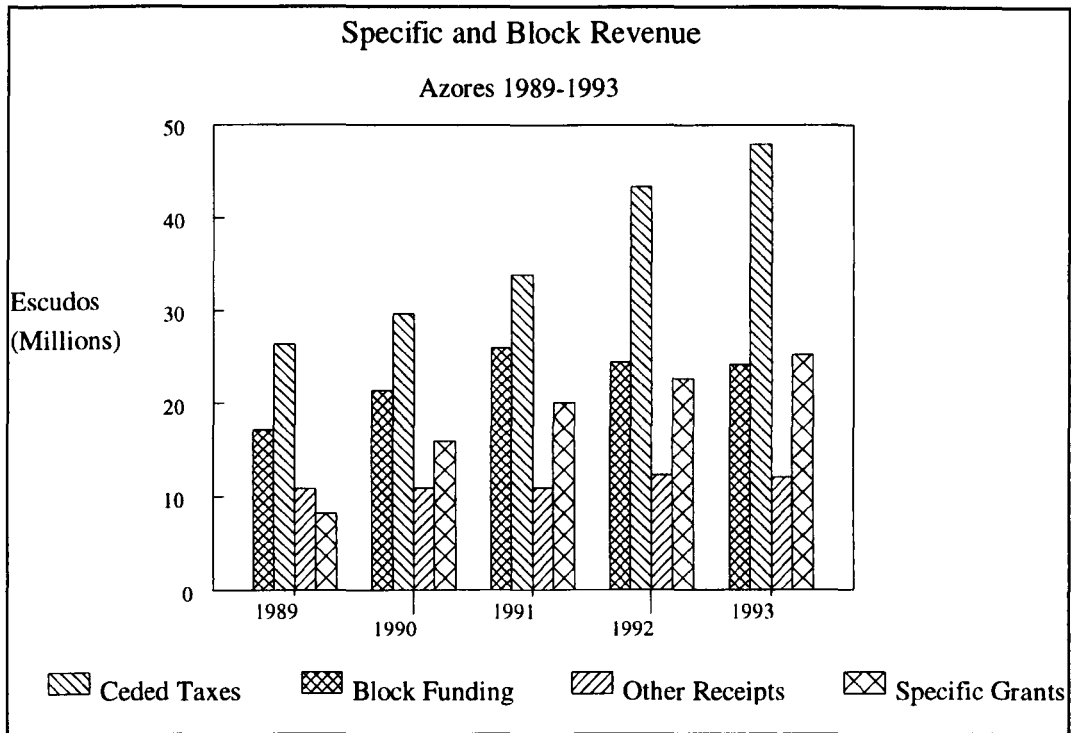


Figure 6.4-13: Block revenue in comparison with other sources (Açores 1989-93)
 Source - Açores Regional Statistics Services

The Portuguese definition of "transfers" is somewhat different from that used in other countries. It comprises three elements; European Union grants, central government transfers and income from third countries. The latter are charges levied, mainly on the American government, for the use of military installations on the Açorian archipelago. This source of independent income has fallen dramatically since the end of the cold war as is evident from Figure 6.4-14 and Figure 6.4-15. This and the fall in EU funding after 1991 accounts for the fall in transfers shown in Figure 6.4-12 and Figure 6.4-13 above. There nevertheless

continues to be a heavy reliance on EU grants, though this cannot be regarded as "block funding". European Union grants must be spent on specified projects and as such will be dealt with under specific funding in the next section.

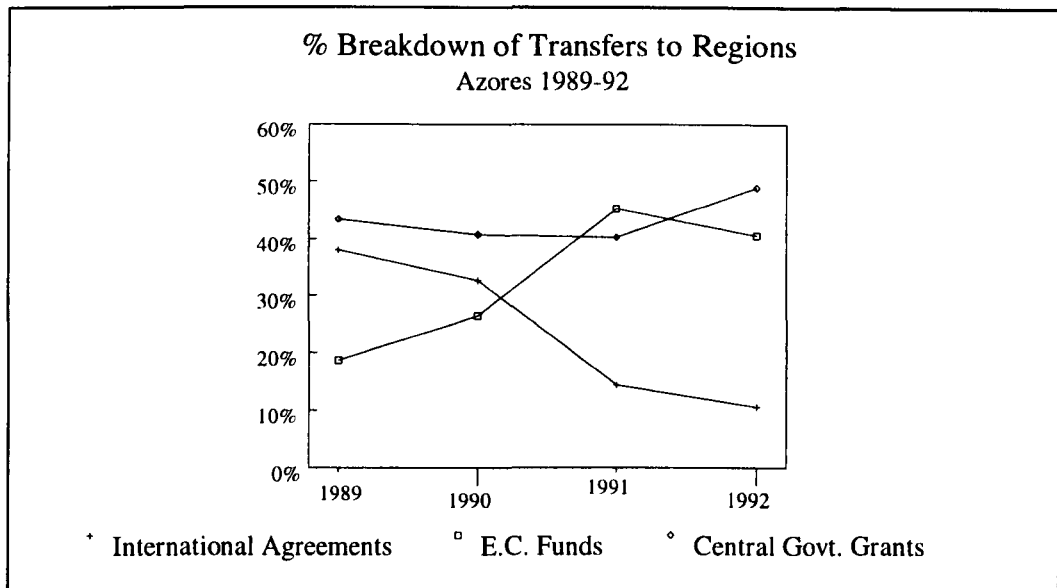


Figure 6.4-14: Breakdown of transfers to regions (Açores 1989-92)
Source - Açores Regional Statistics Service

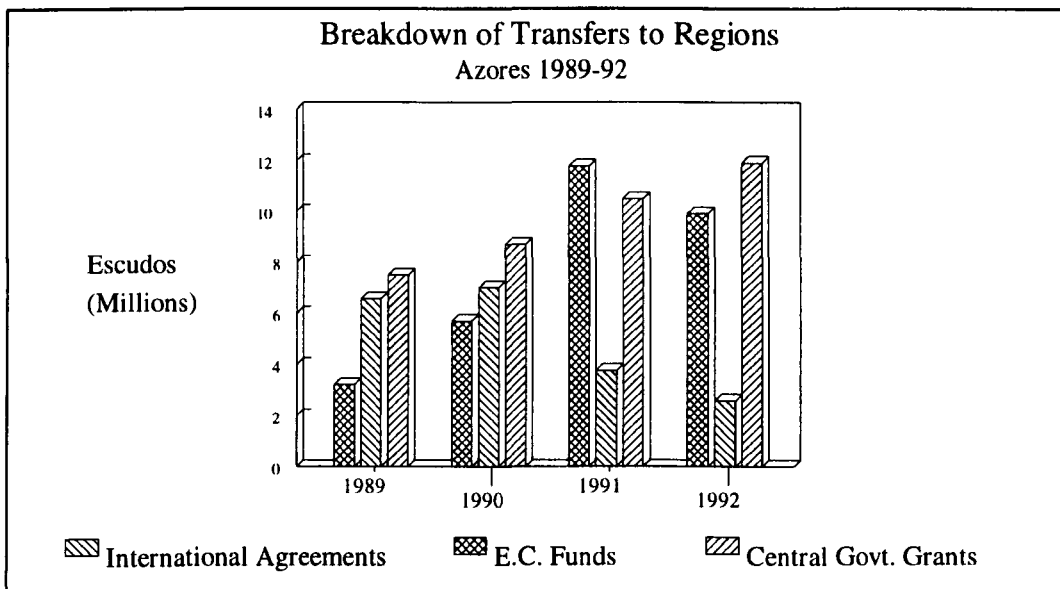


Figure 6.4-15: Breakdown in regional transfers to Açores (Escudos)
Source - Açores Regional Statistics Service

In consequence of the above discussion, a revised version of Açores funding is given in (Figure 6.4-16). This continues to show a high degree of reliance on

ceded taxation but rather more income from specified funds than originally thought. The percentage reliance on block grants shown in Figure 6.4-17, shows little change from that in Figure 6.4-12. Independent spending resources, including borrowing, accounts for around 70% of total income. The real difference is the shift away from foreign government charges to ceded taxes. It is the ceded tax growth that led to the slight increase in spending autonomy in 1992 after a steady decline since 1989. The ability to spend seventy percent of regional income without interference from national authorities guarantees the Açores, a relatively high degree of financial independence.

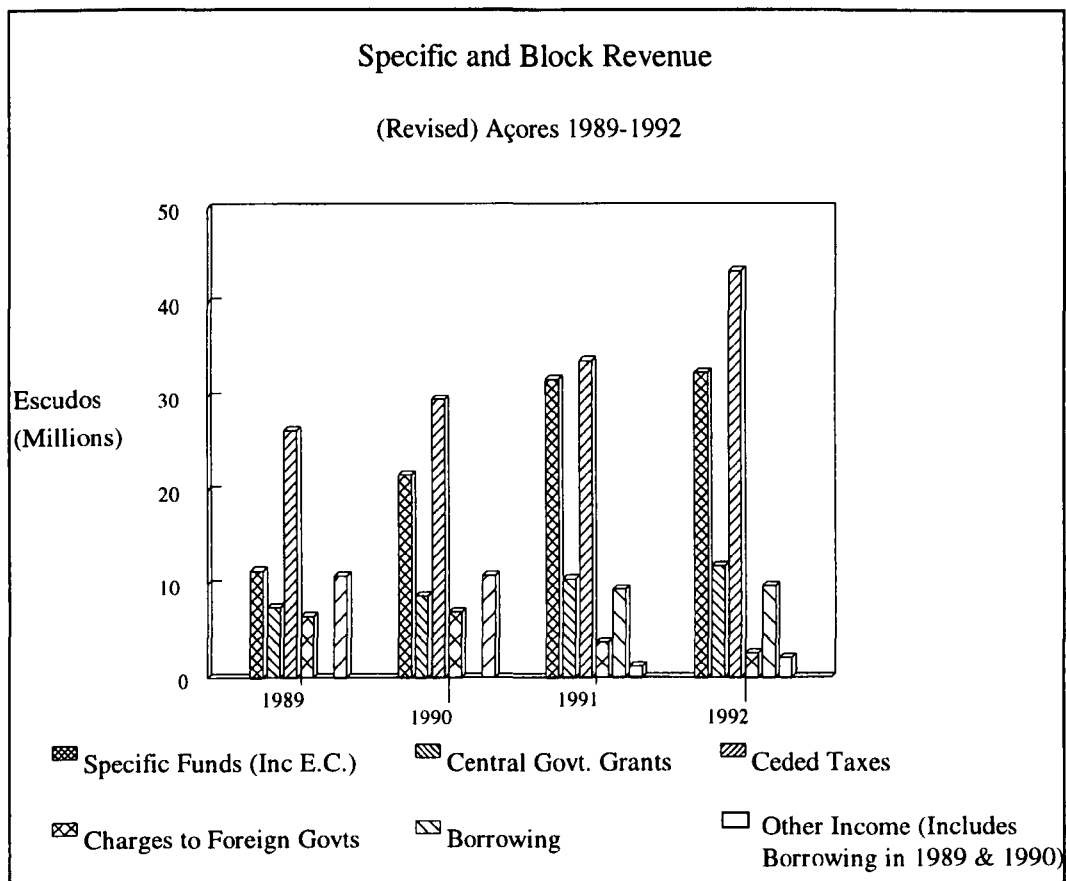


Figure 6.4-16: Revised figures for block (and specific) funding in the Açores
Source - Açores Regional Statistics Service

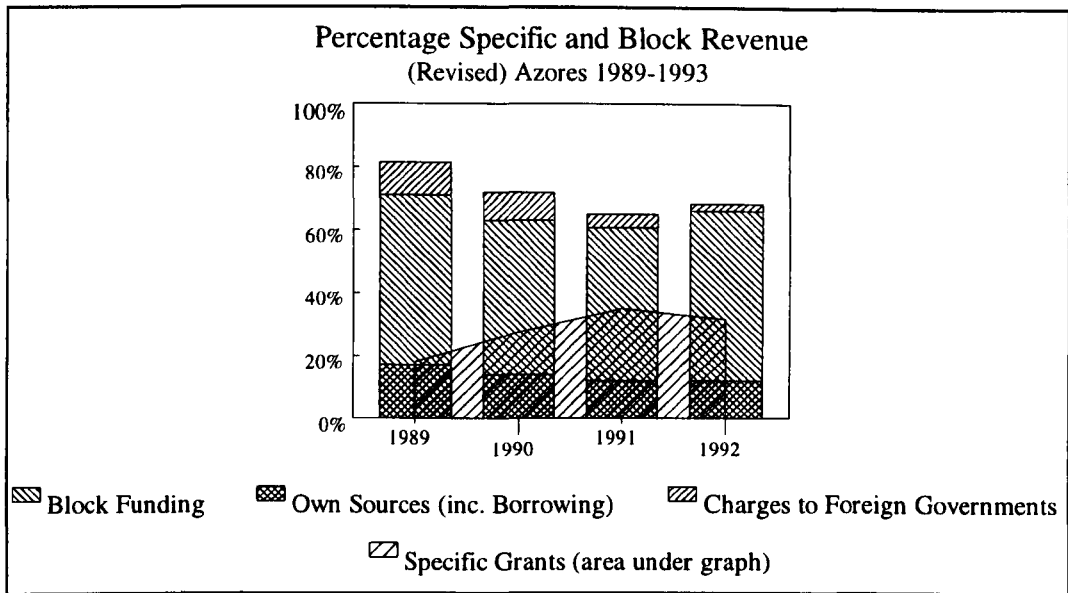


Figure 6.4-17: Revised percentage reliance on block grants in Açores
 Source - Açores Regional Statistics Service

6.4(h) Spain

Block funding, in the form of grants and ceded taxes, is the largest single source of finance open to the Spanish autonomías. Overall, in 1992, this method accounted for 45.5% of regional funding (Figure 6.4-18). When combined with other, non-allocated methods, of finance (own resources and borrowing) just over half (55.5%) of all regional finance is totally free from legal restraints regarding its use. The remaining 45.5% is allocated by the central government for specific purposes.

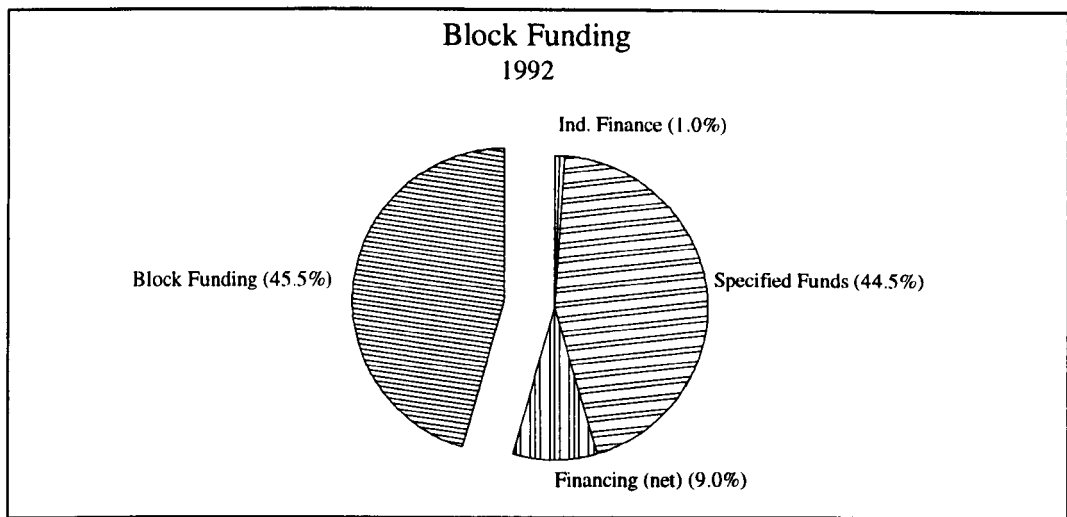


Figure 6.4-18: Regional block funding in Spain 1992

Source - Informe Sobre la Financiacion de las Comunidades Autonomas

The fact that non-specific funding now accounts for the bulk of regional income marks a significant change in Spanish regional finance. At the inception of the regional system, reliance was placed heavily on specific grants and funding, with severe effects on the financial autonomy of the regions. Olivares noted as late as 1987 that the regional authorities in Spain were highly dependent on centrally allocated conditional grants (Olivares, 1987, p260). He notes that in 1984, over 60% of the regional budget was accounted for in this manner. Even at this stage, I detect, there was a major shift in favour of block funding. This seems evident from the figures available since 1986 (Figure 6.4-19). Since this period there has been a steady decrease in reliance on specific funding with its lowest point being reached in 1991. The exceptions were the slight growth in 1988 and 1992 but the trend has been steadily down. Specific funding has been replaced by block grants over the corresponding period. This has been due to national policy giving increased independence over spending resources to the regional level. Notably however, there has been no attempt to transfer financial responsibility to the regions in the form of regional taxes. Spanish regional finance, although experiencing increased spending autonomy, is still largely reliant on centrally controlled funding.

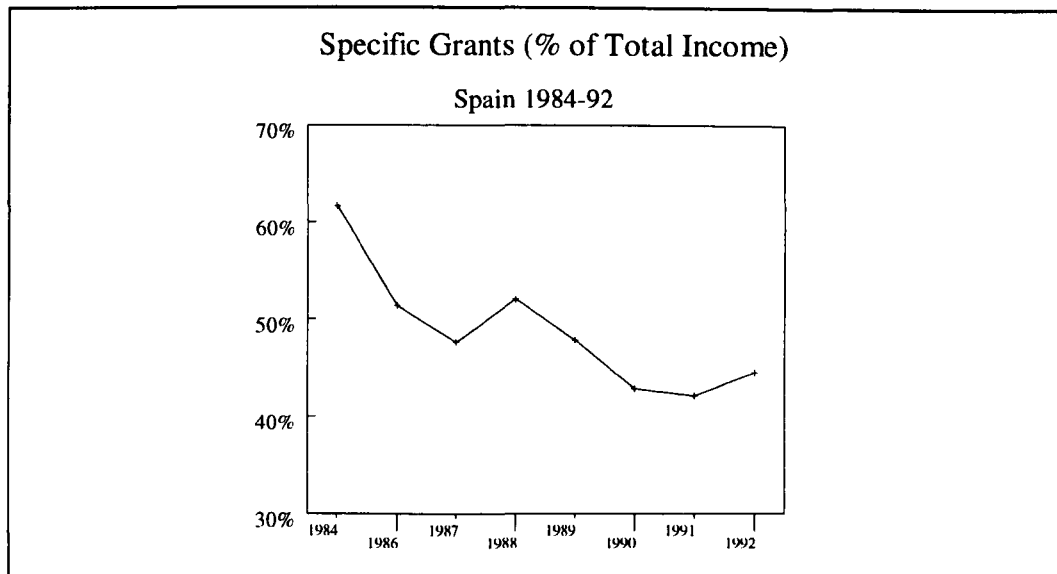


Figure 6.4-19: Specific grants as a proportion of the regional budget
Source - Informe Sobre la Financiación

Block funding consists largely of shared taxes. The exact amount allocated to each *autonomía* is decided with reference to some deceptively complex formulae outlined in the L.O.F.C.A. (Local & Regional Finance Act). The "sharing" rate of each region (S) is defined as follows:

$$S = \frac{N - PC - PF - RR}{TT}$$

- N = Funding needs of region. Depending on amount of transferred responsibilities as well as per capita income, etc.
- PC = Potential revenue from ceded taxes
- PF = Potential Revenue from fees and charges
- RR = Responsibility Regulator. This represents additional or reduced services provided by the region.
- TT = Total Tax receipts of central government excluding those ceded to regions and contributions to EU (Solé-Vilanova, 1990, p343).

The next stage is to multiply the sharing rate by the total taxation (TT), so that the amount of tax sharing (TS) is shown as:

$$TS = S \times TT$$

The problem with these mathematical statements is that they obscure the essentially political nature of the grant process. Although, by use of formulae, some regulation of Central government may be possible the actual grants awarded to the regions hinge on the variable *N*. It does not take a mathematical genius to discover that the second equation is actually a repetition of the first, so that $TS = N - PC - PF - RR$. Furthermore, the only controversial element of this equation is *N*. The potential yield of both ceded taxes and regional fees and charges are relatively easy to establish. The responsibility regulator, even if it was an area of controversy, amounts to very little and as such is largely irrelevant. We are therefore left with *N*, the funding needs of the *autonomías*. This, according to the L.O.F.C.A. must take into account;

"population, relative per capita income, relative costs, **needs**, level of services devolved and 'fiscal effort'" (emphasis added)

Fiscal effort is irrelevant, as the regions have very little autonomy in the area of taxation anyway. The others may all be quantified with little controversy with the exception of needs. Individual regions and the central state do not agree on a formula for quantifying *N* and for this reason, the L.O.F.C.A. is not a final solution. Although this recognises the need for equalisation in such a system, tax sharing remains a highly politicised issue, despite the mathematical sheen.

The tax sharing grant is complicated by two further factors. First, the percentage increase in the grant to each region is not allowed to exceed the accumulative increase in G.D.P.. Second, the increase will not be allowed to fall below equivalent expenditure (i.e. excluding defence and international relations, etc.) by the central government. Thus, although regions are guaranteed a minimum

amount of tax sharing, the growth of regional tax sharing is restricted to increases in Spanish G.D.P. as a whole.

The importance of Tax sharing as a portion of overall block funding by the *autonomías* is obvious from Figure 6.4-20. This graph shows the division of block funding in the "common" regime. As such it excludes Euskadi and Navarra which enjoy a special status outlined below. In 1992, this source of funding accounted for almost 65% of block funding, with Ceded taxes accounting for a further 30%. The contribution for extra services applies only to Madrid and Catalunya, while the 3.1% given to uni-provincial regions applies only to the six that have this status. In other regions, the latter portion would accrue to the provinces directly. Ceded taxes are different from those accrued from the shared tax regime as the regions receive the funds raised within their territory.

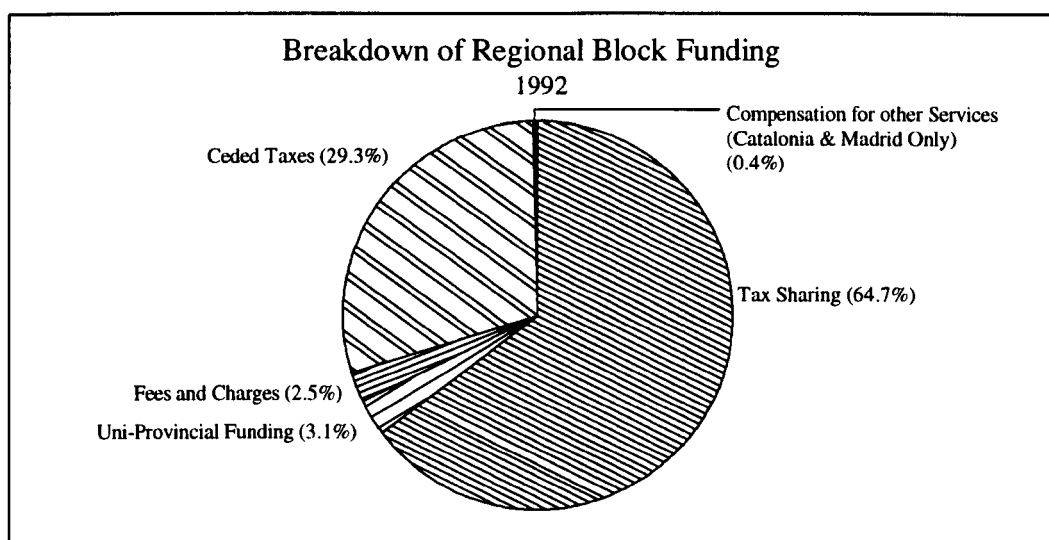


Figure 6.4-20: Regional block funding - Common Regime
Source - Informe Sobre la Financiacion

The "foral" system, which applies only to Navarra and Euskadi, is entirely different from the funding system which operates in the other fifteen *autonomías*. In these two regions all taxes are collected by the regional authorities (the provinces in Euskadi). The region then pays a negotiated amount to the central state for the services it provides. The tax rates are not controlled by the foral regions, but it does

mean they are highly secure and independent in the expenditure of their income (Sevilla-Segura, 1987, p289).

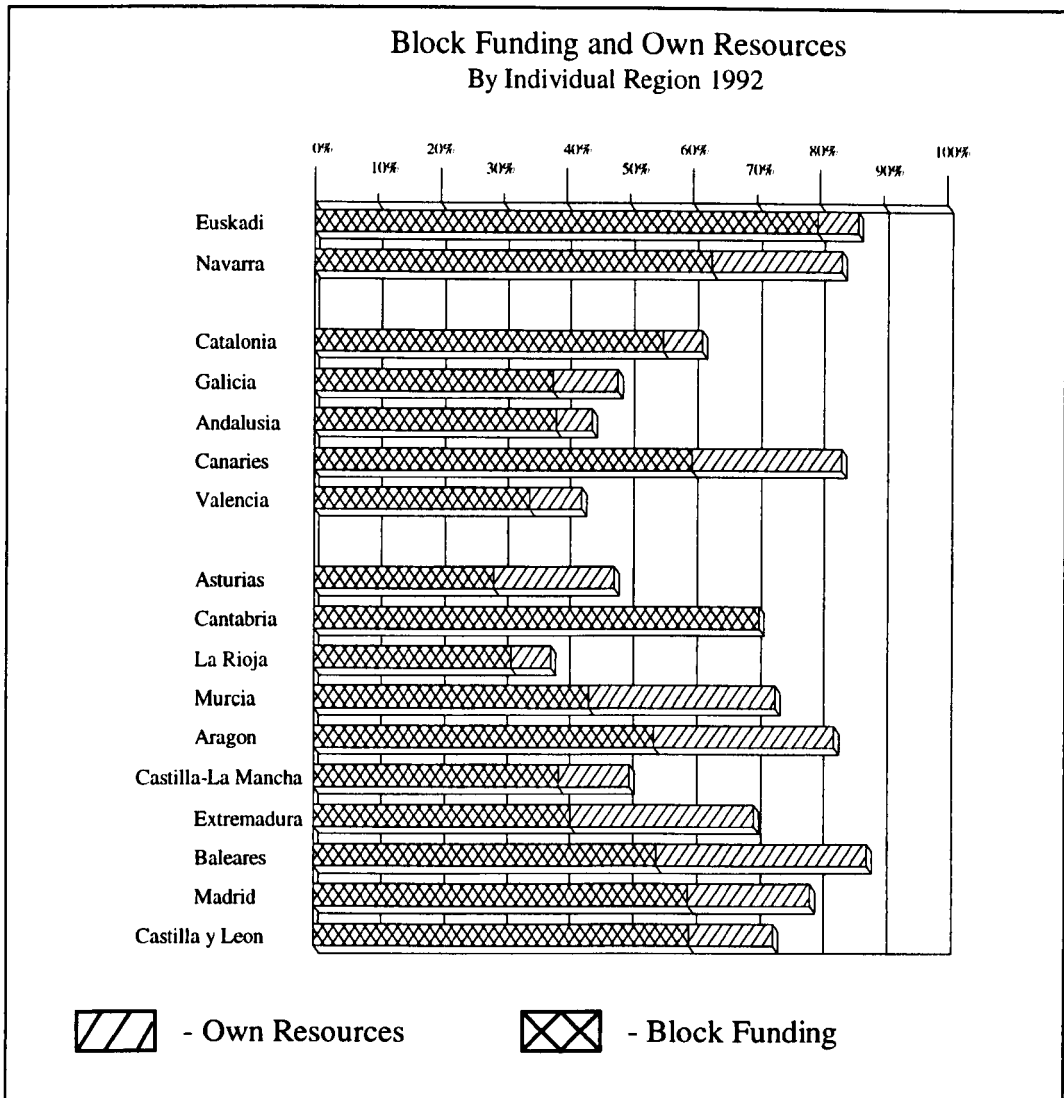


Figure 6.4-21: Spending autonomy by individual regions - 1992

Source - Informe Sobre la Financiacion

The regional breakdown in figure 6.47 shows the difference between the foral and common regimes quite clearly. With around 85% of unconditional finance, the foral regions have a notably high degree of spending autonomy. The differences between them and some common regions can be exaggerated, however. When one includes borrowing and own taxes, the foral regions are matched in their spending independence by the likes of the Canaries and the Baleares. More surprising perhaps is the high level of block funding enjoyed by many "low"

autonomy regions especially in comparison with their "high" autonomy cousins. The poor showing of the likes of Catalunya is slightly misleading, however. A large portion of the "high" regions' budgets are made up of money provided to run health and education. As a result, these "specific" funds distort the percentage of block grant finance they enjoy. In the next chapter the question of these funds will be explored more fully. With this in mind the likes of Asturias, Rioja and Castilla-La Mancha must be seen as having significantly less financial autonomy than other regions. This suggests that there may be a division not only between *autonomías* with "high" or "low" formal autonomy but between those with greater or lesser spending independence.

In Spain the emphasis on block grants since the mid 1980's suggests a policy of regional autonomy in expenditure rather than income. As long as this continues, the formula used for the calculation of block grants will be contentious. Nevertheless, the evidence of Figure 6.4-21 suggests that most Spanish *autonomías* do enjoy a relatively high level of expenditure autonomy.

6.4(i) Conclusions

The above survey gives clear evidence that block funding is the single most important source of finance open to regional governments in the EU. In financial terms it accounts for between 15% and 80% of regional income (Figure 6.4-22). This compares with 1% and 10% from independent sources (with the exception of France and Denmark). This makes most regions spending rather than revenue raising authorities. Their financial autonomy, such as it is, comes from the ability to spend resources, not generate them. This is true both in mathematical terms and in terms of autonomy.

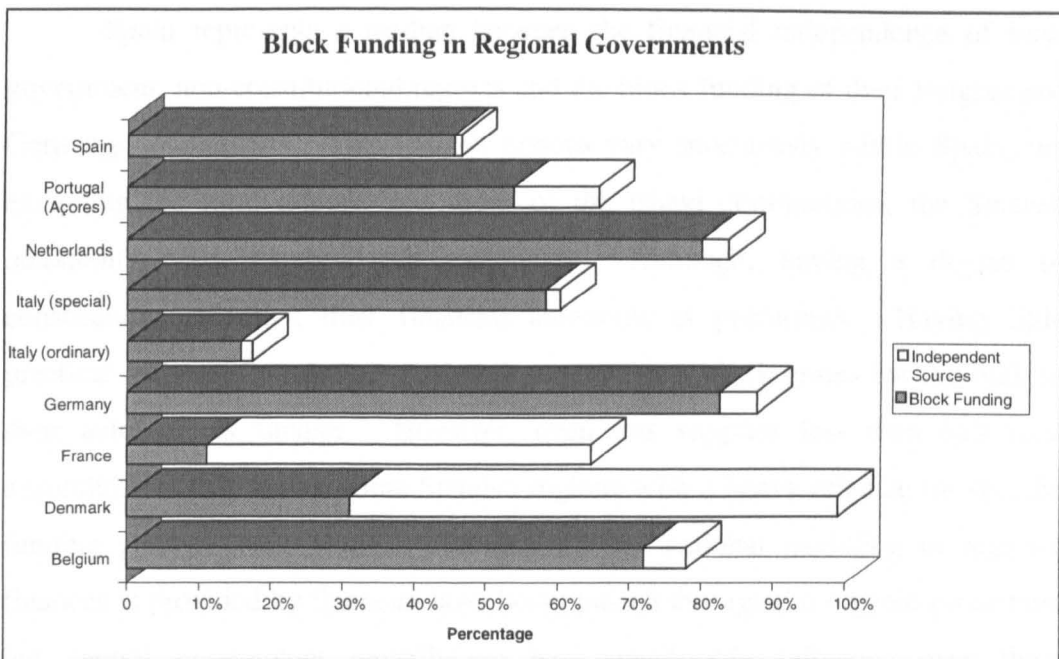


Figure 6.4-22: Block Funding in European Regions

There seems, in this case, to be a distinct correlation between constitutional autonomy and reliance on block funding. At one end we see Belgium, Germany and Portugal all relying on block funds for over 60% of their expenditure. At the other end of the scale, the non-constitutional regions of France and Denmark rely on block funding for less than half of their revenues. Interestingly, the low reliance on block funding in France and Denmark is due to a high reliance on independent finance, giving them high financial autonomy (i.e. both revenue raising and spending freedoms). In these cases the total funds open to regional spending autonomy never drop below x%.

Those in the weakest position seem to be Italy, Spain and the Netherlands. In the latter case the evidence merely emphasises the limited autonomy of the Dutch province generally. Overall less than 20% of funding is available to the provinces for policy use. The majority of their finance is coming from sources already allocated by the central state. Italy also has negligible powers in the area of independent finance and a relatively small reliance on block funding. This is despite the constitutional status of the region in Italy. In financial terms therefore the Italian ordinary region must be regarded as weak.

Spain represents a median between the financial independence of local government, non-constitutional regions and the block funding of their Belgian and Germany counterparts. The Spanish regions vary enormously within Spain, but excluding the foral regions and those of the island communities, the Spanish *autonomías* fall between two categories. Although, having a degree of constitutional security, their financial autonomy is precarious. Having little practical authority to raise taxes, they instead rely on block grants for the bulk of their autonomous finance. However, even this supplies less than half total expenditure. This leaves some Spanish regions with a heavy reliance on specific funding granted from Madrid. Protection from national meddling in regional finances is provided by financial laws being passed through the organic procedure, but central government nevertheless has considerable influence over these procedures (the regions are only weakly represented in the Senate - see section 5.1(e)). The strength of the regions in financial negotiations, at present, comes from the pivotal role of regional parties in the Cortes.

Foral regions, in contrast, are secure in their financial arrangements. In their negotiations with the central state over how much they must contribute to state services, they need not be pressurised, as the funds lie in their hands, not the central governments. Finally, the island regions are also in a more secure position, though this owes itself more to their tax reliance, than block funding.

Overall, most regional authorities possess spending autonomy, but are unable or unwilling to raise independent finance of their own. The importance for regions lies in the methods by which such block funds are transferred. Block grants offer a source of funding which may become a tempting target in spending cuts. Thus, the macro-economic policy of the central state can have a severe effect on the policy of a region financed by such methods. The provision of an objective formula is not necessarily a protection. As the Spanish and Danish examples show, such methods may be used as a cover for politically motivated changes. This is especially true if the "needs" of a region are to be included in such a process. The most secure method of block funding is therefore, tax sharing, especially when

regions have some role in setting its rate (e.g. Germany). Such a method will ensure a certainty of income, unless the national government wishes to reduce its own resources. An unscrupulous national tier could shift tax emphasis away from those taxes upon which regions rely, to other taxes (from income tax to V.A.T., for example, as seen in the UK). The only protection from such methods would be that given to German regions (i.e. a veto on tax rates). The other option available to those regions that can impose tax surcharges (i.e. Spain and Belgium) is to use these to top up the reduced tax revenue. In practice, the political repercussions of such moves outweigh any benefits for the national authority. Nevertheless, if a government was determined enough to restrict regional spending such methods are open to it in every regional state with the exception of Germany.

6.5 Specific Funding

The final type of regional finance examined in this chapter is specific or hypothecated funding. These grants, awarded with conditions attached, are the least autonomous mode of finance available to regional governments. This is not to say that regions have no say over the spending of these resources. The term specific grant can cover a wide variety of funding types, within which regions enjoy varying degrees of autonomy. At one extreme there are reimbursements for payments given by the regional tier on behalf of the national level. This occurs most commonly in relation to social security payments, where the administration or distribution is handled by the regional (or local) level. In this case the region merely acts as a conduit through which national policies are implemented. An example of this type of highly specific funding is evident in Germany where the *Länder* administer the payment of all social security payments. These arrangements offer no autonomy to the administering authority whatsoever as the region merely pays the amount

deemed appropriate by national legislation and claims this from the central government. For this reason they are often excluded from regional accounts.*

Other specific forms of funding do offer slightly more flexibility to the region concerned. These are sometimes described as sectoral funds, which are allocated to regions and must be spent on a specific policy area laid down by the national government. Examples of this type of funding include the *Dotation Régionale d'Équipement Scolaire* in France and the majority of Italian regional grants. The *D.R.E.S.* is allocated for expenditure on educational infrastructure but within this remit the region is free to allocate finance according to its own policy priorities. The autonomy that is offered to the region is thus limited and in the present financial climate may be a poison chalice. If the region is given money to spend on improving school buildings it must decide which projects to favour and which to ignore. These will not be popular decisions in times of financial hardship.

Many other factors determine the regions' autonomy to spend within the allocated sectors. Grants may be given to specific sectors if the region agrees to undertake a specific project. These "bribes" are commonly known as "grants in aid" after their use in the USA. In a non-federal constitution the region may be in a very weak position with regards to this type of funding. By giving offers of increased sectoral expenditure in return for the implementation of a central policy objective, the national authorities hold significant influence over the regional tier. In most cases the project required would be of benefit to the region anyway, and as such the regional authority will find the pill easier to swallow. Nevertheless, the priorities of the region are being determined by the national and not the regional level.

More specific and transparent types of grants in aid are given in the form of matching grants or *contrats du plan*. These grants will be awarded to specific projects on the condition that the regional tier finances a portion of the total project. The French *contrats du plan* are agreements between regional and national levels to

* Belgium and Germany both place Social Security in a separate category in national accounts - neither *Bund* nor *Länder*.

fund projects over a specific time period (usually three years). These funds, though additional to the regional budget, do tempt regions to spend a portion of their funds to gain extra expenditure in their region. Once again the projects will be designed to further regional development but the policy for such development is being influenced, at least in part, by the national level.

Such matching grants are not restricted to regional funding from the national level. Almost all EU regional funding falls into this category. The operation of additionality, the system used in relation to EU grants, has been controversial in relation to the UK. Under this, grants are awarded to the national government for specific projects in specific regions (European Commission, 1991, p3). Although the European Commission wishes the expenditure to be undertaken by a democratic regional tier this is not compulsory.

The problems in the UK have been two fold. First, to pay for their share of project expenditure, UK local authorities must resort to borrowing. However, the government's strict borrowing restrictions will rarely allow local authorities to do this. In response, the Commission withheld regional development grants from the UK in 1991, leading to an alteration in policy by the national authorities (Welfare, 1993). Second, much of European Regional Development Funding is distributed through the new integrated regional offices. These are of course appointed by government decree and not by the regional electorate.

The changes to national policy in the UK have not resolved the additionality issue. Local government borrowing figures still include grants received from the EU, making additionality meaningless. Furthermore under the treasury's "claw back" scheme European funding replaces other grants already allocated to local authorities. In Sheffield, for example the Council received both European Regional Development Fund grants and UK Urban renewal funding. However, the latter was cut by the amount of EU funding received (AMA, 1993). This basically means that the treasury retains complete control of local spending and the projects financed are not in addition to those already in existence (Keating, 1993).

The UK example makes it clear how European funding can be controlled by the national tier. This occurs to a greater or lesser extent in all member states but the UK is a particularly centralised example. In all cases, however, the stipulation that all grants are directed at a specific project leaves regional governments with little autonomy after the grant has been awarded. This is further reduced by EU's insistence that a proportion of these funds are spent on EU initiatives (between 5 % and 10%).

This section also surveys mandated expenditure (unfunded mandates, in the U.S.). This is expenditure that regions are under an obligation to provide, in line with national policy although they receive no reasonable funding for it. Its complexity is such that to do it justice would need another research project. The following survey examines the last and in many ways, most tangled source of regional finance. Specified funding has often been regarded as an indicator of regional autonomy in itself. The higher the proportion, the lower the autonomy. This is far too simplistic, however. Although specific funding is the least independent source of finance open to the regional tier, it is wrong to assume that regions have no control over its use.

The problem with quantifying such expenditure is that any figures are bound to be based on qualitative judgments. Although some clear examples of mandated expenditure exist, it is more common to find borderline areas where a degree of administrative autonomy is evident. For this reason any discussion of this topic in this thesis must be relatively general. Where the mandatory element is evident I shall attempt to include it in the regional autonomy equation. The survey is thus not exhaustive but by addressing the issue I hope to draw attention to this important source of national power over regional finance.

One unresolved question is whether an increase in actual specific funding (and thus regional involvement in a wider range of issues) reduces or increases regional independence. If the percentage reliance on specific funding grows in comparison with block sources but this is caused by an increase in specific funds, what effect does this have? Are regions thus shackled by the belief that the he who

pays the piper calls the tune, or will the effect be to increase regional involvement while their financial autonomy remains as it was (Smith, 1985, p115)? I am inclined to the latter view as although regional actors may have the perception of being beholden to centrally funded policies, I would suggest that their choices when autonomy of action is open to them are unaffected. If the region has the ability to spend only 1% of its resources freely, one must assume the policy priorities of the party in power would drive the expenditure choices. Otherwise why have democratic government?

6.5(a) Belgium

Although the Belgian federal structure is now almost exclusively reliant on block grants and tax assignments, specific grants continue to play a limited role, especially with regard to Wallonia. Primarily, the Walloon region receives reimbursements for unemployment schemes directly from the Ministry of Employment. The exact amounts are negotiated between the region and the federal ministry but the grant is not intended to interfere with regional employment policy. In practice there is bound to be some influence placed on the regional level by the national ministry, if policy priorities differ markedly. Although these funds are specifically allocated to employment schemes, the region does still exercise a degree of autonomy during the negotiations and through the administration of the schemes themselves. These projects account for just over 4% of total expenditure (Walloon Budget, 1993).

An additional source of funding is received from other national departments in return for provision of services. In 1993 this was minimal and in total accounted for only 3.8 million BF (2.9% of total expenditure). The amount of expenditure undertaken by the Walloon region on behalf of the government was small but not totally insignificant. Nevertheless, at just under 7% of expenditure their effect on regional autonomy is minimal. The figures for Flanders are lower, due to the more favourable economic climate of the region (lower unemployment).

As far as mandated expenditure is concerned, Belgian Regions and Communities are relatively free of national restraints on spending. In general they are allocated whole areas of policy without restraints. The limits that do exist relate to quality of service in health care. This applies to the Communities in their capacity as health care providers but these limits are not sufficient to describe health spending as mandatory.

6.5(b) Denmark

No *Amter* revenue is specifically allocated by the national authority but a large percentage of expenditure is taken up in areas where national intervention can be extensive.

By far the largest section of expenditure undertaken by the Danish *Amter* is in the area of health (77% of total expenditure in 1992) (Andersen, 1993, p19). Under this broad banner the regions administer a system of hospitals, health insurance and social welfare. The question is how much the individual *Amt* can decide to spend their money in accordance with their own policy priorities and how much is specified by the central government. The evidence of recent *Amter* initiatives suggests it is the regional tier itself that is undertaking the policy decisions. For instance, it is through regional co-operation that the new system of obtaining treatment anywhere within Denmark has been introduced (one need not go to the regional hospital if expertise lies elsewhere).

Constraints imposed by the national authorities refer only to minimum requirements for the provision of health care. This does restrict the *amter*, to some degree but only if they wished to run down the health service! As the Danish regions are financed by income tax revenues the effect of such requirements are minimal. Only if the national government introduced legislation restricting regional tax rates would such requirements cause financial difficulties. Although this is within their power, the political repercussions would make it unlikely.

One area in which the *amter* do undertake mandated expenditure is in the field of road maintenance. The regional tier undertake all maintenance of trunk

roads and motorways on behalf of the central authorities. However, as the roads and planning budget (in total) amounts for only 4% of regional expenditure (1992 figures) the effect of this on overall *amter* autonomy is minimal (Andersen, 1992).

The Danish regional tier thus loses very little autonomy through specific finance or mandated expenditure. Apart from some minimal caveats regional finance can be used with little national interference.

6.5(c) France

Discussion of specified finance in relation to French regions focuses on two areas. First, the block grants allocated to the regions for infrastructural projects and vocational teaching. Second, the influence of the *contrats du plan*. The latter are grants given to the regions in addition to regional funding for a specific project. The similarity of such projects to grants in aid is undeniable. The extent to which they restrict regional finance is less apparent.

Specific funding accounts for a small but significant proportion of regional expenditure. In 1992 Specific grants in the form of the *dotation régionale d'équipement scolaire* (D.R.E.S.) and the *dotation venant en compensation du transfert de la formation professionnelle continue et de l'apprentissage* accounted for 11% of regional receipts. The former grant is allocated for infrastructural work in the education system, in practice secondary schools (*lycées*). Although priorities as to which schools to improve, etc. are left to the regional authority the money must be allocated to this purpose alone. Although specific in nature, this grant nevertheless allows a degree of autonomy to the region.

A similar degree of autonomy is attached to the grant allocated to regions for vocational education expenditure. Once again regions must spend the money allocated on the specified field but regional policy initiatives in this area still allow a degree of independence. The organisation of vocational education is a function allocated to the region and thus regional policies are used to direct the grant to the desired project. In both the above cases there can be little doubt that although the grants are specific in the sense they must be spent on a specific functional area,

regional autonomy still exists in their allocation. For this reason they lie in the category of less stringent specific funding.

Much debate has surrounded the significance of the *contrats du plan* on regional funding. These agreements, drawn up every five years by the regional and national authorities guarantee funding over this period from both parties. This obviously gives a degree of influence to the national government as to where the region should spend its money (Mazey, 1993, p74). The extent to which this influences the region is limited however, as less than 6% of total regional revenue is raised in this manner. This includes funding from the EU (based on similar criteria to those of the national *contrats du plan*) as well as other miscellaneous specific grants. This would mean that a maximum of around 12% total receipts are spent on such projects, with half of this coming from independent regional sources. It is stretching the point to suggest that this amount of financial muscle could significantly alter regional policy but it is still a factor which could and probably does influence their decisions.

Although specific funding and mandated expenditure continue to influence French regions, their influence is not as much as it once was. Indeed some authors have now argued that the regions themselves are influencing national expenditure in this area, rather than the vice versa (Douence, 1994, p19). Block grants have retreated to around a tenth of total revenue while specific project funds account for under 6%. Although the latter could draw in an equivalent of independent regional resources this would still place total national specific and mandated funding at less than a quarter of total revenue, over half of which is open to negotiation by the region. The remainder is still under regional policy control within the general sphere of the grant. Despite the significant role of specific funding, French regions still have all the hallmarks of considerable financial autonomy.

6.5(d) Germany

In general terms, the national government is explicitly forbidden from giving specific grants to the *Länder*. In practice, grants in aid do play a limited role

in *Länder* finance. These are covered by article 104(a) of the Basic Law which allows for financial assistance to be given to specific *Land* by the *Bund*. Specific block funding is allowed under section 4 of this article which allows *Bund* grants to aid "particularly important investments" by either regional or communal government. These may only be granted to avoid economic imbalance within the federation. The federal regulations surrounding such grants must be approved by the *Bundesrat*.

The opportunity for the Federal authorities to use this power to encourage *Länder* expenditure on Federal priorities obviously exists. Indeed Bulmer contends that such grants have played an increasing role in *Länder* finance, reducing their autonomy in this area (Bulmer, 1989). He has argued that using the Basic Law's principle of uniform (high) living standards throughout the federation, the *Bund* has been able to interfere with *Länder* policy by placing restrictions on grants-in-aid programmes. These cannot be as blatant as the U.S. model, as the Basic Law makes clear but the criteria set for admissible investment projects can be such that the *Bund* could encourage spending of *Länder* funds on their preferred projects. In this respect it is not unlike the situation in France as regards the *contrats du plan* or throughout Europe with the EU's structural funds.

This thesis seems to have to problems in practice. Although such methods have had some effect on *Länder* expenditure, to assert that their influence has been anything other than marginal and sporadic is over-stating the case. In plain financial terms, (see chapter 6.4(c)) *Länder* reliance on specific grants has remained steady in actual Deutchmarks and decreased slightly in percentage terms. Never have they played more than a peripheral role in the funding process. Secondly, as noted by Klatt, the recession of the late eighties led to a decrease in *Bund* grants and more emphasis on the block equalisation scheme. This did have consequences for the regions in reducing their overall funding but this is a separate argument from that advanced by Bulmer. It could be argued that the *Länder* suffered from their previous (though minimal) reliance on specific funds. When they were reduced the regions were faced with financial difficulties and Klatt emphasised the increase in a

North-South divide in revenue terms. The ability of regions to spend their finances as they wish actually increased as is evidenced from the discussion above (see chapter 6.4(c)). The net result was a reduction of specific funding and therefore less federal influence, although the drop in overall expenditure hit the poorer *Länder* harder (they had previously received more investment grants). The increase shown in 1991 is due to those grants given to the East German *Länder* as part of the unification package.

Other methods by which the *Bund* may influence and control *Länder* expenditure are also defined by the basic Law. The *Bund* is able to govern *Länder* expenditure, only when they are acting as its agents. This occurs in most areas of federal responsibility. The only exceptions are where federal field services exist (e.g. Post Office & Railways). The *Land* also acts as the agent of the *Bund* where expenditure by the federation in the undertaking is over 50%, though being a *Länder* competence. In the latter case the *Bund* must obtain approval for such expenditure and its regulation from the *Bundesrat*. However, all these types of finance are either included in the specific grants mentioned above or dealt with in a separate budget (as with Social Security). This does not therefore alter the figures, already quoted, concerning financial autonomy. In any case, the need to pass legislation through the *Bundesrat*, limits the effectiveness of such methods to control the *Länder* in their administrative autonomy.

6.5(e) Italy

In contrast with Germany, the Italian regions are heavily reliant on specific grants. In 1987 these accounted for over 80% of total regional expenditure in the ordinary regions (Cassese & Torchia, 1993, p105). The specific grants given to the regions are highly restrictive with the regions acting as administrators of national policy. In theory their policy can differ from that desired by the state but this would entail a withdrawal of specific funds. The greatest specific funds are in the areas of Health, Transport and Agriculture (62.7%, 6.5% & 5.3% of regional spending) (Engel & Van Ginderachter, 1993, p86). Together, these account for almost 75% of expenditure, making survival without the hypothecated finance impossible.

To make matters worse for the Italian ordinary regions the state has consistently underfunded the health service. The regions in turn are responsible for running this to the standards demanded by the central government. This forces regions to spend their remaining resources on health (a mandated expenditure) or resort to the financial markets. The regions themselves are not permitted to borrow for current purposes but the health trusts are. Further pressure is placed on the regions to conform to national policy priorities in the field of public works. The region must adopt national priorities, to obtain grants-in-aid invest in the projects deemed important at the national level. Financially, the ordinary regions are largely at the mercy of the national authorities.

Special regions, although in a much stronger position (39% specific funding) still have restrictions imposed upon them. Unlike their ordinary counterparts, however, the funds may be spent independently within the areas allocated (if autonomy over these areas has been granted).

6.5(f) Netherlands

As with Italy, the Dutch provinces rely heavily on specific grants for their financial resources. By 1991 these accounted for around 70% of the whole. The question surrounding the Dutch example is whether this amounts to a decrease in autonomy. Although, specific grants as a percentage of total regional revenue rose markedly during the eighties this was not been due to a fall in block finance. Provincial taxation and block grants from central government have remained relatively steady, in monetary terms, during this period. The rise in "reliance" on specific funding has occurred through national government transferring many areas of administrative authority to the provinces. For example, the provinces now administer areas of health care and welfare on behalf of the national government (Toonen, 1993, p142). The finance for such decentralisation has come from specific grants, accounting for their relative importance to the provincial budget.

Does increased power devolved from central government, but paid for by specific grants amount to less autonomy? I would suggest that the executive role

taken on by the region still allows a degree of independence. In addition, the few areas of autonomous action already open to the provinces have remained. Nevertheless, the heavy reliance placed on specific funding does remove a large proportion of what is already a small budget from the category of autonomous spending.

6.5(g) Portugal

Portuguese regional finance is, in the main, block funded through tax allocations. Nevertheless, a significant proportion is merely administered by the autonomous regions. These are the *contas de ordem* which account for just over 20% of total Açorian regional revenue. In addition to these a further 10% are received from the European Union structural funds. This means around 30% of regional expenditure is not regionally controlled. EU funds are used to fund specific infrastructural projects which have been proposed for funding by the region.

In the case of the *contas de ordem* the region acts merely as the agent of the national authority. 20% of regional revenue, although significant is not overwhelming. The fact that they are treated separately in accounts, etc. encourages the idea that these are a totally separate funding source not really classed as "regional".[†] Nevertheless, they must be taken into account when assessing the ability of the Portuguese regions to spend their finances independently.

6.5(h) Spain

Spanish regional reliance on specific funding is at first glance immense. Official figures place it at 44.5% in 1992. However, this figure is misleading for several reasons. Firstly, it includes 8.7% of funds to be transferred directly to the local authorities. The next largest proportion is than to pay for health and social security (23.9%), but this applies only to those *autonomías* which have acquired

[†] The regional accounts actually place them separate from "regional resources" which include all other grants, etc.

competence in this area (7 in 1992[‡]). Furthermore, such funds, although bound to be spent on health, etc. are still spent according to the regional policy priorities in this area.

The real areas of specific funding are concerned with investment programmes of varying types. These include those funded through the F.C.I. This is the equalisation programme of the Spanish state which unusually funds specific projects in under developed regions. These are entirely state funded and thus not susceptible to grants in aid pressures. In addition to these, investment agreements account for a further 1.7% of regional finance. These are grants-in-aid as the region will, in a manner not dissimilar to that of the French *contrats du plan*, enter into joint agreements with the central government. Finally, come the "administered subsidies", these are allocated to certain regions by the central state and the European Union (structural funds). In these cases, the region only supervises the expenditure on the allocated project.

[‡] Euskadi, Catalunya, Galicia, Andalucia, Valencia, Canaries and Navarre

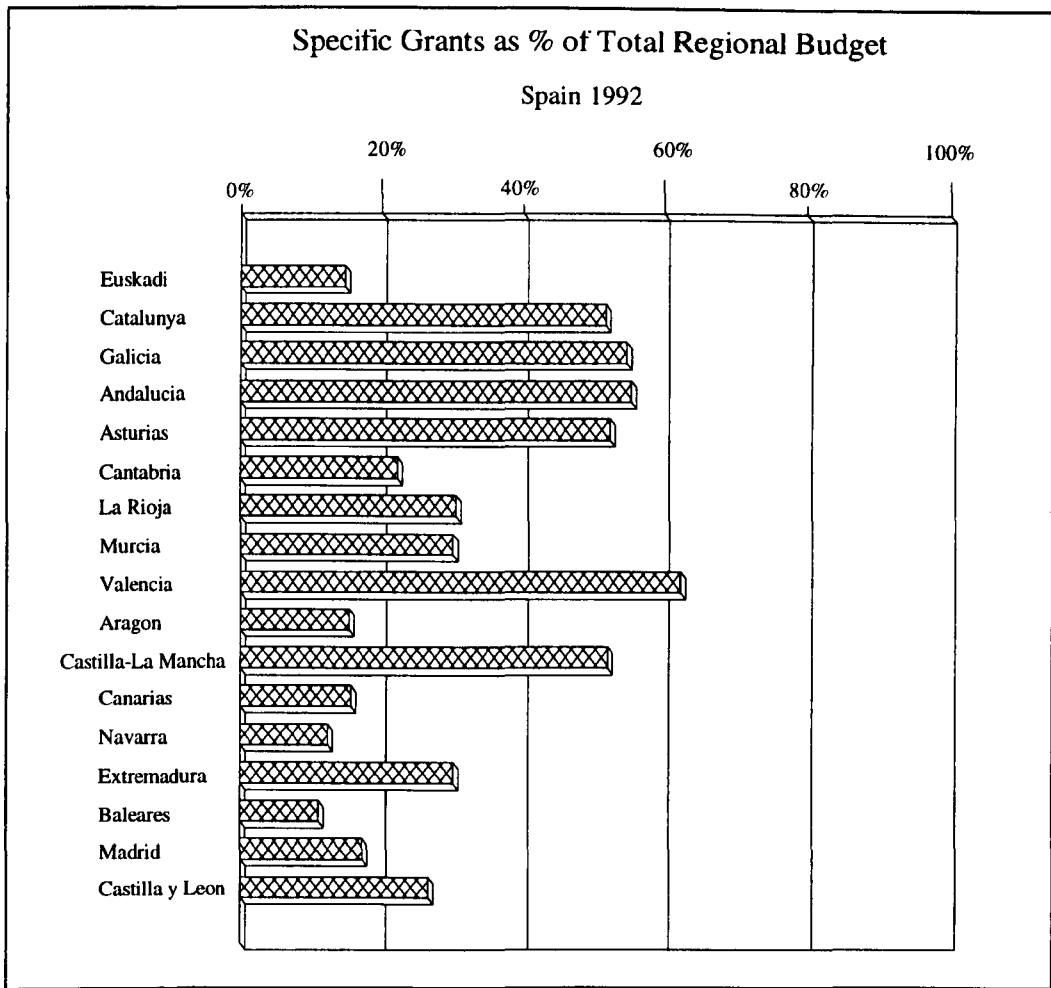


Figure 6.5-1: The role of hypothecated grants in regional budgets (Spain 1992)
 Source - Informe Sobre la Financiacion

The total national figure of 44.5% varies widely between regions. Even then, the types of specific funds granted vary between those allocated to specific projects and those given to policy areas. This confused situation is made clearer by Figure 6.5-1. There is no doubt that all regions are reliant on specific funding. In most cases this is unlikely to amount to significant pressure, due to the amount and type of funding available. In less prosperous regions the influence of government grants-in-aid could nevertheless have a significant effect on regional policy.

6.5(i) Conclusions

From the above, admittedly brief study it is plain that the role of specific funding and mandated expenditure varies markedly from region to region. In Belgium, Denmark, Portugal and Germany the national government has few

opportunities to control the regional tier through a grants in aid policy. The money involved is a small proportion of the whole regional budget.

In others, such as France, the ability to point regional policy in a specific direction exists through the use of the *contrats du plan*. This is also the case in Spain. It is my opinion however, that in these regions the effect has been overstated. Although the regions are almost certainly swayed in their policy making decisions by the promise of extra cash, the sums involved do not suggest an indebtedness to the state of a significant enough proportion. Indeed, in France, some evidence suggests regions are driving such joint programmes (Dounce, 1994).

In the final group of Italy and the Netherlands the importance of specific funding leaves regions constantly vulnerable to central policy changes. In Italy, in particular, this has a fundamental effect on what would otherwise be seen as a relatively autonomous system. Although the Italian regions spend a significant amount of money the dominance of allocated funds makes this statement practically meaningless. The situation in the Netherlands is slightly different as the specific funding has been in addition to that already received by the provinces to conduct their autonomous functions. This may be seen as an improvement in their situation. In Italy, by contrast, the increase in functions granted to the regions in 1970 was accompanied by a tighter control of financial resources. By this method, the financial autonomy of the Italian regions was used as a counter-weight to greater functional authority.

Specific funding and mandatory expenditure therefore play vastly different roles depending on the system analysed. In all eight, these funds must be taken into account when assessing the freedom of expenditure open to the regions concerned. Nevertheless, it is my contention that, except for the Italian case and perhaps that of the Netherlands, their role is over-stated. Although, important as a means of influencing regional policy they no longer give central government a dominant role in regional finance.

6.6 Conclusions

6.6(a) Ordinal Comparison

It should be stated that the following comparisons suffer from several deficiencies outlined in the methodology. However, although the figures within them can be queried in their detail, the overall impression is accurate. The figures I have compiled here have not been brought together before and indeed some have questioned the possibility of such a comparison at all. With some difficulty, I have nevertheless assembled figures which are broadly comparable. It is therefore possible to assess the financial autonomy of European regions and examine their spending power in comparison with the nation-state.

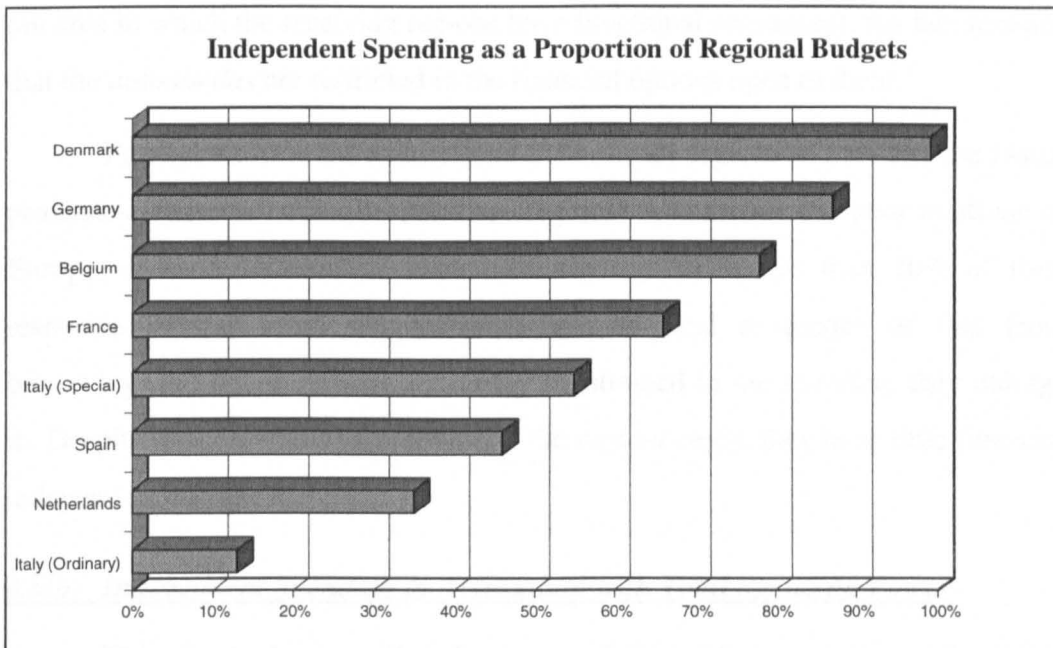


Figure 6.6-1- Independent Spending in European regions

The first comparison is shown in Figure 6.6-1. This gives the independent spending power of the eight democratic regional systems, in terms of their overall budget. It is clear from this that in financial terms, regional freedom is variable. The Danish *amter* stand out as the most independent regional authority. None of their finance is directly influenced by the state. In addition, by far the greatest proportion

of their resources come from "independent finance" (income tax). This might be seen as surprising as Chapter five emphasised the lack of constitutional status afforded to them. Behind the *amter* lie Belgium and Portugal which is unsurprising. In these cases their constitutional position is reflected in a high degree of spending autonomy. Closely following the Portuguese islands are France and Germany. The high spending autonomy of the French regions contrasts with their constitutional status and perhaps surprisingly, the oldest federation in the EU has independent spending control over only 70% of its resources. The greatest surprise is perhaps Spain with less than 60% of resources unallocated. Despite the perception of Spain as an almost federal structure and the oft quoted example of Catalonia as an example of regionalism which the UK should follow, Spanish regions suffer from a distinct lack of financial autonomy. Although, as the previous section showed, much of the remaining "specific" funding is allocated to local authorities and health (an area in which the receiving regions have functional autonomy), the fact remains that the *autonomías* are restricted in the financial options open to them.

Finally, we have the examples of the ordinary regions of Italy and the Dutch provinces. There is no doubt that these regional systems are the poor relations of Europe, at least in terms of financial autonomy. With less than 20% of their resources coming from unconditional sources (and a quarter of this from borrowing) the Italian regions are highly constrained in the spending they indulge in. Despite the constitutional recognition the *regioni* enjoy, they have little financial independence to use it.

6.6(b) Independent Spending in Association with Total Spending Power

This chapter began with a discussion of the relative importance of regional expenditure in the individual member-states of the Union. To get a true measure of regional financial autonomy we must add the data on independent spending with that of regional spending within the nation state. In Figure 6.6-2 the original graph is superimposed with the independent spending percentages used in Figure 6.6-1 above. The result is a dramatic change in the financial status of certain regional systems.

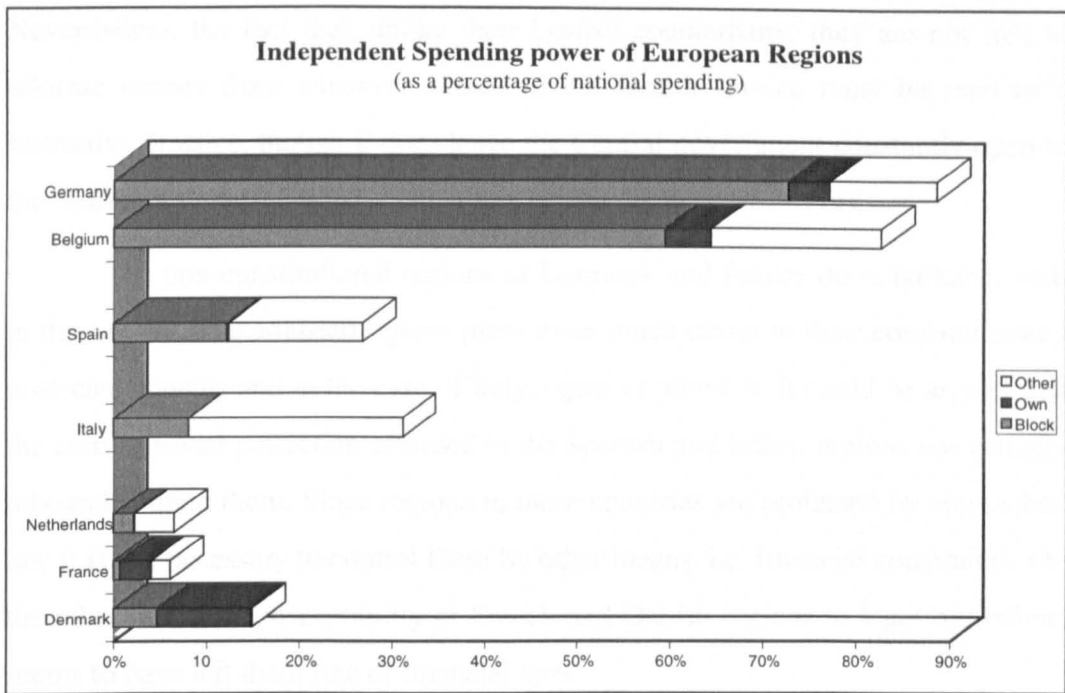


Figure 6.6-2 - Regional spending independence

Figure 6.6-2 emphasises distinct differences in financial power and thus overall independence especially with regard to the constitutional systems of Spain and Italy. The financial weakness of Italian regions is well documented and must come as little surprise. However, the extent of national dominance in financial matters reduces independent Italian regional spending to less than 10% of the central state. Even here, around half of this is due to the special regions. If these are excluded, then the percentage is less than that for the French regions which had previously seemed so financially weak in comparison with their older Italian cousins. Italian regions have acted rather like a conduit for central government policies, which invites the question whether we should class Italy as a regional system at all.

Spain also suffers from a lack of spending autonomy, ranking it in percentage terms close to that of Denmark. Although this is surprising given the perceived status of Spain as a pseudo-federal system, the role of health service grants in creating this situation is sizeable. When one considers that such a large proportion of Danish expenditure goes on Health and Welfare provisions, the Spanish regions may have a greater independence than is apparent from the graph.

Nevertheless, the fact that, unlike their Danish counterparts, they are not free to allocate money from whatever source to the Health service must be seen as a restrictive practice, though it does leave the Central government constantly open to the charge of underfunding (whether this is actually the case or not).

The non-constitutional regions of Denmark and France do remarkably well in this survey. The adjusted figures place them much closer to their constitutionally protected cousins and in the case of Italy, equal or above it. It could be argued that the constitutional protection afforded to the Spanish and Italian regions has actually rebounded upon them. Since regions in these countries are protected by entrenched law it is felt necessary to control them by other means, i.e. financial constraints. On the other hand, the susceptibility of French and Danish regions to legal limitations seems to have left them free of financial ones.

Finally, the two federal systems, though more independent than other regions, still suffer from a degree of financial control. This is most marked in Germany where around a 20% drop in independent finance from total finance leaves them trailing the new Belgian system by a substantial margin. The slight Belgian drop is attributable to employment scheme grants (which are only marginally limited in any case). The *Länder* on the other hand are supported by a number of investment and current grants, specifically linked to certain projects and services.

Comparison by this method puts a different complexion on financial autonomy. The classic federalist systems at first and second (Belgium and Germany respectively), remain streets ahead of the other regional systems in terms of independent financial strength. In Belgium, the regions control funds amounting to around 80% of that spent by the national level, while in Germany the figure is just under 70% (excluding social security). This is a reversal of the situation observed with regard to spending alone.

The comparison of regional financial independence shown in Figure 6.6-2 throws up some interesting conclusions. Firstly, surprisingly, the Danish *Amter* are the third most powerful regions in financial terms. By controlling spending over a

budget amounting to just over fifteen percent of that of the state, they outstrip even the Spanish *Autonomías*. In real terms, of course, the Spanish regions spend a far greater budget as the Spanish state budget is far larger than that of Denmark. Overall it is noteworthy that, with the exception of the federations, the distinctions applied in chapter five, no longer apply.

6.6(c) European Autonomy

The chapter above confirms the wide divergence of fiscal independence between separate regional systems as well as disparities between independent regions themselves. How can the issue of financial autonomy be dealt with on an overall European level? Is it even possible to talk of a European element to financial autonomy or are we merely considering separate nation-state systems? If the latter is true then the entire premise of this thesis begins to unravel. The nation-state remains the paradigm within which all study takes place and a classical comparative study, admittedly now under a supra-national continental umbrella is all we can hope to achieve. I believe this not to be case. Firstly, as noted in the previous chapter the European regions are showing signs of working as a political unit. Those with greater autonomy in the constitutional sphere are using their status to argue for greater regional democratisation throughout the EU. The financial independence of the regions as a whole must also aid this process. The greater the collective financial autonomy of regions the less they can be ignored. If the regions are exerting their financial muscle in a significant manner, their status must but be enhanced. In contrast, a lack of regional finance could be used by the national tier to control the ambitions of the regions. Individual regional systems with high financial autonomy will influence the European whole in two ways. Firstly by acting as a model which other regions will aspire to and secondly by increasing the pro-regional voice of their national delegation on the council of ministers. If the regional purse strings are free, the national government must listen to regional concerns if they wish the region to co-operate in domestic policy. In other words a degree of *Bundestruie* is forced upon the participants.

A casual observer of the figures I have presented above may soon conclude that with the exception of two or perhaps three systems, regional autonomy is a fallacy. By my own argument, that financial autonomy is vital to regional independence as a whole, it would therefore seem pointless to continue talking of a Europe of the Regions even in embryo form. If Spanish regions can independently account for only around 20% of central expenditure (even if Health care spending is included) how can the concept of regions as major players be maintained? At least in financial terms this must be a myth.

However, one must remember that the status of regions is not a long standing phenomenon. Regions spent very nearly no income in 1939. Yet fifty years later they account for a significant portion of EU expenditure. Most importantly much of this is controlled at the regional tier. This rise is remarkable in constitutional terms. The institutional rise of the region and the financial muscle that has accompanied it have been equalled only by the EU itself. Furthermore most regions have actually reached this degree of financial power in many fewer years than that. The Spanish regions have risen from nought percent in 1979 to 20% in 1994. Equally the French regions have taken only ten years to reach 10% in comparison with state spending. For an institution to reach this level in such a short time is certainly evidence of a change in the financial role of the nation-state at least within the borders of the EU. In financial terms we may not yet live in a Europe of the Regions but it certainly seems a possibility should present trends continue.

7 (A& B) - Functional Autonomy

The following two chapters examine the functional authority of regions in the EU. In its broadest sense, this term is used to describe what regions do and their independence in undertaking it. At present this aspect of regional autonomy is perhaps the most written about. There are few works in the field of regional government which do not devote at least a section of their text to listing these functions. However, in the following study I go beyond the “list” approach used by many authors and attempt to analyse regional functions more systematically.

A more thorough approach is needed as mere lists of functions can hide a multitude of sins. The involvement of regions in their policy areas may differ markedly. For example, although both Belgium and French regions have responsibility for economic development, the difference between their respective roles is so enormous as to make the similarity of function meaningless. In an attempt to analyse this issue in a more meaningful manner, the following chapter is divided into two distinct sections.

The first addresses regional functions in the context of their national systems. To some degree this is an unfortunate return to the “list” approach mentioned above. I have attempted wherever possible to go beyond such limited descriptions but in some cases, lack of time and resources have unfortunately limited my ability to do this (see chapter four, above). Within each national section, regional functions are examined under the four categories of economic, social and cultural functions plus law & order. Although this does not claim to be an exhaustive study, it does give the basic role of the region in each of the eight countries studied. The second section looks at regional functions in terms of the extent of autonomy exercised and examines regions on a pan-European basis. The methodology is described more fully at the beginning of the section itself, but the rationale is to assess the functional autonomy of regions on a European basis.

The importance of assessing the extent of regional policy autonomy is two-fold. From the perspective of this research, it is important to discover whether regions exercise a significant amount of policy independence. This is a fundamental portion of overall autonomy. There is little point examining the legal status of regions and their financial resources, without also assessing what they are able to do. Even the briefest examination of this makes it clear that regions increasingly exercise a significant role in certain policies throughout much of Europe. It is therefore not necessarily true to talk only of the policies of member states within the EU. For instance, if we wish to study the health system in Denmark, we must not only examine the national framework, but also the initiatives taken at the regional level. Failure to do this leads to an incomplete and irrelevant picture.

This leads to a wider issue, which this chapter attempts to tackle in the second section. Although the region is rarely the only policy maker within the national system (though in a few areas this is the case), they have increasingly acquired the potential to vary policy within member states to a significant degree. This can make considering only national policy in comparative studies misleading. In some cases discussing policy only in terms of the fifteen nation-states of the EU is patently wrong (tax regimes, for one, can vary significantly within some nation-states e.g. Spain, Denmark, France). Overall, this increases the case for greater regional involvement at the European level. If policy authority is divided and no longer lies solely at the level of the nation-state, the national government will lack “affirmative” democratic legitimacy (Harden, 1996). Where the policies are set by the regions, it is the elected regional authorities who will be the reservoir of such democratic legitimacy (though admittedly in some cases regional elections may be used as “opinion polls” for national government performance). To avoid an increasing democratic deficit between policy makers and European decision making, it is necessary that those with the electoral mandate to pursue policy objectives should be represented (and actively participate) when they are discussed. If this is not addressed, the representatives making decisions for their electorates at a European level will not be responsible for such policies at home. This will by

definition increase the democratic deficit and weaken still further the “affirmative” dimension of the European democratic process

7(A) - Regional Functional Autonomy : The National Contexts

Gauging the amount of autonomy open to regions in functional terms is not an easy task. Although this is the area most reported in the literature, meaningful comparisons are fraught with difficulties. There are two primary reasons why this is the case. Firstly, many national studies of regional autonomy treat the functions they perform in a rather flippant manner. There is a tendency to just list regional competences as they are catalogued in the relevant statute, constitution or law. Unfortunately, this is especially true of works published in English. This is not a satisfactory starting point for a comparative study, as the operation of a regional authority may differ markedly from the theory that surrounds it. The failure to explore the functions of regions more deeply has therefore left a significant gap in the literature.

As this work is an overview of European regional autonomy, there is an obvious reliance on work conducted on each regional system. Unfortunately, the tendency of article after article to repeat, parrot fashion the “regional competences” in a specific system does not aid this task. Although, where possible I have attempted to fill in gaps left by the literature, this has not always been practical. This has also led to an increased reliance on a few works which do attempt a more thorough approach.

The second problem with discussing functional autonomy, assuming that discussions of national systems can be found, is one of definition. National systems have different definitions for the various models of autonomy granted to their regions. For instance, the concept of a framework law in Italy and Spain differs so much as to be almost unrecognisable. In fact the phrase used in these two systems defines entirely different concepts. To rely on national definitions is therefore dangerous, as in many cases we are not actually comparing like with like. Furthermore, to actually find out how a “framework law” operates in any individual system also presents problems. Some national writers have a tendency to assume that their own definition is comparable with that used in other states. They therefore

use the national definition, without fully explaining how it operates. Although I have explained these differences where relevant in the text, it is worth bearing them in mind when considering the national studies.

7(A).1 Introduction

Each study in the following section examines the functional division of powers between regions and other levels of government (though principally the centre) in the context of the individual member state concerned. The first section of each study gives a brief introduction to the general principles surrounding regional functions. This includes their role as legislative or executive/administrative bodies. Although legislative authority is a higher degree of autonomy than administrative, the lack of a law making power does not mean a region has no policy autonomy. As will hopefully become clear, executive powers can leave a substantial amount of discretion to the regional tier.

To aid comparison in Chapter 7b each national analysis is divided into broad functional areas of study. However, a further, indefinable policy area also needs examination in the context of regional policy autonomy. Although described differently in many countries, the closest English definition is that of “general competence”. This concept (sometimes referred to as “subsidiarity” in Germany), is the right of a government to engage in any activity not specifically assigned to another level. National sovereignty implies such an authority is granted to the central government, but local and regional governments may also benefit from such a concept. This will give a region the ability to expand its authority beyond the boundaries laid down in any statute and the possibility of growth in its functional autonomy. The existence of such a principle within the national structure may have more impact than the specific policy areas assigned to the region (in Germany, regional autonomy is entirely based upon it). It is important, therefore to examine the operation of this concept in each regional structure prior to the assessment of specific functional competences.

The four specific areas of functional autonomy studied are:

- Economic - Powers of economic management and development. This includes financial intervention in industry, economic planning, transport and any specific areas of the economy regulated by the region (e.g. electricity, agriculture).
- Social - Powers to improve or maintain quality of life and environment. These include, health, planning and environmental protection.
- Cultural - Powers to safeguard or develop the culture of the region. Most importantly this includes education. Other examples are local language provision, libraries, museums, etc.
- Legal - Powers to defend or define law and order. This includes the court system, police and civil law.

The role of regional government is examined in the context of each of these broad policy headings. I recognise that these are rather arbitrary definitions, (e.g. tourism can be an economic or cultural power), but such a division does allow easier comparison between different systems. An uncontentious division into policy areas is impossible but the distinctions given above accord broadly with such consensus that exists and are certainly sufficient for the purposes of this work. Unless stated otherwise, the definitions of economic, social, cultural and legal powers are the ones given above.

7(A).2 Belgium

7(A).2i Functional Framework and General Competence

At present the competences assigned to the Belgian regions/communities are contained within the relevant articles of the new constitution. These are restrictively defined and in theory the regions/communities cannot go beyond them. They are nevertheless, legislative and in the main, exclusive areas of competence, in which the federal level has little or no involvement. In practice, the allocation of powers and the equality of regional and national law make co-operation rather than

confrontation the over-riding principle. Whether this co-operation will continue as the Belgian federation matures remains to be seen (Deelen, 1994).

The finalising of the federal constitution (in the year 2000) is intended to devolve all remaining unassigned powers to the regions and communities. This granting of a regional general competence or “subsidiarity clause” will leave the federal government confined within its defined powers. In contrast, the regions will have authority in all areas unless otherwise stated. The practical effects of this are difficult to gauge, however. The effect of any “subsidiarity clause” will depend largely on how widely the national powers are defined.

7(A).2ii Economic Management

Belgium is divided into two identifiable economic areas. Broadly speaking, these coincide with the French and Flemish language territories. The northern region of Flanders has become relatively prosperous with heavy reliance on new industries for its economic success. In contrast, Wallonia, one of the first areas of Europe to industrialise, is suffering from a reliance on traditional industries which are now in a process of decline (Thomas, 1990).

These differences within Belgium have been a major factor in the rise of regional autonomy. Although the Flemish feared language domination by the (less numerous) French speaking Walloons, the Walloons in turn felt their industries were being discriminated against by a liberal, Flemish dominated government. For this reason, although the Flemish were the main proponents of autonomous communities to protect their language, the further devolution of economic policy was instigated by Walloon parties. In essence the socialist Walloons wanted autonomy to proceed with a policy somewhat different from their liberal Flemish neighbours. The creation of the Regions in 1970, (in parallel with the cultural Communities) was an attempt to address this issue. These bodies have been granted increased economic powers during the three subsequent constitutional reforms (1980, 1988, 1993) (Alen, 1990, p8).

The three stages of constitutional reform have culminated in most economic issues now being handled by the region. On paper, economic policy is largely

within the policy remit of the regions. However, such authority, though extensive, does not include monetary or fiscal matters. With interest rates and money supply in the control of the national policy, the regions are far from free to pursue their own economic policy. In many ways they are only in a position to alleviate the effects of national policies. It would certainly be difficult for a region to pursue a macro-economic strategy entirely at odds with the federal level.

Further limits are placed on the Belgian Regions' policy options by the constitutional court. It has interpreted the Constitution as including a concept of solidarity (see Appendix I.1) which all components of the Belgian state must adhere to. The Regions are therefore barred from any economic policy that would harm the internal market of the Belgian Union. Further federal competences in areas such as company and labour law are also retained at the national level, in the name of the Belgian internal market (Delmartino, 1993, pp.58-9).

Up until the 1988 reforms, "national" industries such as coal, steel, glass, shipbuilding and textiles were still excluded from regional authority. These interests, the basis of the Belgian economy, were all in serious financial trouble. This was so serious that the cash resources needed were felt to be beyond the capacity of the regional authorities (Covell, 1987, p70). However, due to the Cockerill-Sambre crisis, even these sectors were finally handed over to regional control.

The Walloon steel giant, Cockerill-Sambre was in severe financial difficulty by the early 1980s and an independent consultant was asked by the national government to assess the cost of a rescue package. The minimum cost was estimated at over eleven billion B.F. (around £1.1Bn), a bill the Flemish members of the national parliament were unwilling to foot. The eventual compromise gave a fixed sum to regional representatives in the national government, to spend on the national industries in their territory, any extra having to be found from regionally computable sources of national revenue. Ironically, neither Regional executive wished this power to be devolved, due to the expensive nature of economic support, and the realisation in Flanders that their shipbuilding and mining sectors were also in financial difficulties (Covell, 1986, pp.274-5). In 1988, the constitutional

revision, finally removed the last vestiges of national control in this area, with the Regions themselves undertaking all economic policy, within the context of national monetary and fiscal restraints. Increasingly this is also limited by EU restrictions on the use of state aids

Van Ginderachter now lists the spheres of autonomy open to Regional governments in economic management as economic development, public works, energy and employment (Van Ginderachter, 1993b, p4). However, in the area of energy, the Region is less than totally independent. Overall energy policy is still a national policy area, although the provision of gas; electricity over lower voltage networks (under 30,000 volts) and “local” energy sources are regional responsibilities. The exceptions to regional competence in this area are broad and include nuclear energy, construction of major production or storage facilities and energy rates (Covell, 1986, p279). To describe this state of affairs as giving autonomy to the regions is erroneous. In practice there is a requirement for co-operation in energy policy between the Regions and the Federal government. In these negotiations the federal level holds most of the aces through its regulatory functions.

In the other areas listed by Van Ginderachter, the Belgian regions do nevertheless exercise a remarkable amount of autonomy for a sub-national level of government. One area that is surprisingly absent is transport (the studies below show this to be one competence common to most regions in some form). The only areas under their control are roads, waterways, ports and urban public transport. Their remit does not cover rail or air transport though spatial planning powers (see below) do give Regional authorities a degree of influence over transport infrastructure (e.g. the Dutch government has negotiated with Flanders, not Belgium, over the proposed high speed rail link to Amsterdam) (Delmartino, 1993, p10).

The final phase of reform (in 1993) gave regions responsibility for two further economic sectors, namely, agriculture and foreign trade (Leonard, 1992, p25). The former has led to the ten farms within the Brussels region having a ministry of agriculture all of their own! (Economist, 31/10/92, p52) More

importantly it means the agricultural investment funds as well as the Agricultural Export Promotion Service are now regionalised. Furthermore, the regionalisation of foreign trade has meant a division of the export promotion budget, something many businesses have opposed (Deelen, 1994, p12). The final area of regional economic competence is in scientific research. Here, the regions now co-ordinate all research that falls within their other competences.*

With Regional authority now being exercised over such a wide range of economic competences, from economic aid, to energy, some academics have expressed the view that the federal government has been all but removed from the economic arena (Van Ginderachter, 1993b). In my opinion, more emphasis should be placed on the co-operative nature of the new Belgian federal model. Although a high degree of autonomy is granted to the Belgian regions in economic affairs, some factors reduce the prima-facie independence of action. Firstly, a significant proportion of Belgian economic legislation actually emanates from the European Union, although the Regions implement most of these directives. In addition, national control of energy policy, areas of transport, etc. mean that the region cannot make large macro-economic policy decisions without federal approval. For instance, the Region may wish to move towards coal rather than nuclear power to save an ailing coal industry or for environmental reasons. However, under the present structure, such an option would not be open, due to federal control over both national energy policy and the nuclear industry. This would be true of investment in rail, rather than road, etc.

The evidence for the impotence of Regional governments, at least prior to 1988, is well documented by Covell. Her work points out that in 1985 the Socialist executive of Walloon finally abandoned its policy of extensive state intervention and investment which it had pursued contrary to that of the conservative-liberal government in Brussels. She cites the reasons for this as a lack of financial resources and the fragmentation of policy control in vital areas (Covell, 1986, pp.272-274). Whether an economic policy, substantially different from the federal

* Including research into ways of enhancing the operation of regional autonomy!

one, could be undertaken by today's stronger regions remains to be seen. The continued placing of economic powers at different levels, including the E.C. makes me suspect that co-operation continues to be the key to any successful economic strategy.

For the sake of completeness, it should be noted that the Brussels Region (which has no provincial tier), also has responsibility for urban transport as well as both maintenance and construction of roads.

7(A).2iii Social Powers

In Belgium, the three Communities, in conjunction with the state, exercise the bulk of authority in the area of social policy and health. The state has almost exclusive competence over the former, while the Communities control the latter. The Regions have no authority in these areas, but do control legislation in the field of environmental protection, conservation, water supply and spatial planning. This reflects the Belgian principle of "personalised" matters being handled by the communities and territorial ones being left to the regions (the federal level runs those matters deemed of national interest) (Belgian Constitution, Article 128.1).

Community competences in the area of health cover many aspects of policy but once again the regional authorities do not have exclusive competence. Despite the theoretically clear delineation of functions between levels, the federal authorities still have a role to play. Health falls under the competence of the Communities due to its inclusion in the list of "personalised" matters defined in the Special Institutional Reform Law of 1980.* This excludes authority over sickness and disability insurance as well as the financing and organisation of hospitals. It also specifically excludes areas laid out in constitutional legislation (i.e. that have gone through the special provisions laid out in the constitution for some legislation). These lay down fundamental principles governing the performance of health policy.

Health Education and preventative medicine also fall within Community competences. The only exception is national contraceptive schemes.† In social

* Special Institutional Reform Law, 8th August 1980, Art. 5(1)I.1

† Ibid. Art. 5(1)I.2

security policy, the Communities play a role but it is restricted to certain spheres. For example, family and child assistance, old-age pensions (subject to a national minimum) and social aid to prisoners.* The Federal level controls all other forms of social assistance and thus is by far the dominant partner.

Other Community competences in the social arena include training for handicapped people, integration of immigrants and the care and protection of minors, although the last does not apply to the organisation or development of the civil or criminal law affecting them. It could be argued that in these cases Communities may be footing the bill for national policy decisions. The national parliament could give rights to immigrants or minors, which the Communities would be forced to apply. In the case of immigrants, the federal authorities' control over citizenship means a generous policy could require increased Community expenditure on their integration. Once again, successful policy decisions require a high degree of co-operation.

Regional competences in the social arena are basically those applying to territory. Most important are environmental protection, conservation, water and planning. These are defined more specifically in the 1980 Special Institutional Reform Law. The residual Community powers over environmental protection were transferred to the regions in the 1992 reforms (Leonard, 1992, p25). In the field of environment and water, the regions are restricted by federal guidelines, which they cannot lower their standards below. In practice, this also applies to European minimums in many areas. Positive action by Regional governments in this area is already evident, with the recent introduction of an environment tax on polluters (Van Ginderachter, 1993b, p7). The novel nature of these taxes (they are ring-fenced to fund the Regional environmental agencies) is certainly an example of regional innovation in this sphere although both large Regions have broadly similar schemes.

Complete authority over spatial planning, both urban and rural, now lies with the regional tier. The only exception to this is in the Brussels region, where the

* Special Institutional Reform Law, 8th August 1980, Article 5(1)II

federal government has some supervisory powers to “safeguard” Brussels' role as the capital of both Belgium and Europe (Van Ginderachter, 1993b, p6).

With the notable exception of environmental protection and planning the Belgian regional tier does not have as extensive a role in social policy areas as is often suggested. Although, much of the health service is administered by the Communities, the federal government retains control over important areas notably in hospital provision. The other policy areas granted to the Communities are disparate in nature and are often at the whim of national policy measures (e.g. child protection and immigrants). Thus, although the Belgian regions do have a major role in the social sphere, they are merely partners (and sometimes junior ones) in a co-operative system.

7(A).2iv Culture

Competence in the cultural sphere is once again divided between different units of governance, though in this case the primary role is played by the Communities. Under the Belgian Constitution all “cultural matters” fall within the competence of the respective Community (Belgian Constitution, Article 127(1) - Flemish & French Communities, Article 130(1) - German Community).^{*} In addition, the regulation of language in administration, public education and employer/employee relations are the exclusive authority of the French and Flemish Communities (though not the German). However these *décrets* do not have the force of *loi* in some communes which fall within the Community territory, but are adjacent to another language Community. In these areas, where a large number of non-Community language speakers live, a special organic *loi* can be passed guaranteeing them special language rights (Belgian Constitution, Article 129). In practice this has meant administrative matters for people living in these areas may be handled in the language they chose. This can be extended to all aspects of Community control over language (Alen & Ergec, 1993).

^{*} Belgian Constitution, Art. 127(1) (Flemish & French Communities) & Art. 130(1) (German).

Control over language use in the exclusive areas listed above is not within the competence of the German Community. However, “culture”, in Belgian law, includes promotion of the local language as well as other “traditional” cultural powers such as fine arts, libraries, museums, libraries and artistic training. It also includes youth policy, sport, pre-school education, leisure, tourism and professional re-training. Some further slightly bizarre cultural areas of competence include social advancement, and “intellectual, moral and social training” (Belgian Special Institutional Reform Law, 1980).

The area in which the Communities exert greatest authority is without doubt, education. Education falls almost exclusively under the competence of the respective Community, with a few basic principles being guaranteed by the national level. These are limited to the deciding school entry and leaving ages, minimum standards for diplomas and the regulation of boarding schools.* This leaves curriculum, staffing and general education policy firmly in Community control. Belgian education no longer operates within a national structure.

Overall, the cultural sphere is dominated by regions in the form of Communities. There is still a slight fragmentation of authority, especially with regards to the German Community's language powers but overall, the cultural policy competences granted to the regions are extensive. The strong cultural divisions in Belgium necessitated such a division of authority to enable the nation-state to continue in some form.

7(A).2v Law & Order

Responsibility for both the Police and the judicial system lies with the federal level although some minimal police powers were granted to regions in 1992. A few municipalities have communal police. Nevertheless, although technically all criminal and civil law is regulated at the federal level, the introduction of environment taxes and other regulation amounts to the creation of a limited but growing regional legal order.

* Belgian Constitution, Article 127(2) (Flemish & French Communities), Article 130(3) (German).

7(A).2vi Conclusion

The functional competence of Regions and Communities combined is impressive. Their autonomy in operating these policies is also substantial and Belgium is undoubtedly one of the most decentralised states in Europe, if not the world. However, just as there are few areas where the regions have no involvement whatsoever, there are also few where they operate exclusively. Even areas such as health which are predominantly regional functions still retain significant federal involvement (in this case concerning hospitals). With the exception of language and education, the watchword of the Belgian federation remains co-operation. This is a positive aspect as it encourages a consociational approach to the issues of the day. However, it also brings with it significant difficulties, primarily concerning accountability and democracy. As Sharpf has noted in relation to Germany, such co-operative arrangements can produce a policy dynamic in themselves, unconnected with the issues themselves. In addition, the role of the regional parliament is also likely to diminish as such arrangements flourish. Co-operative arrangements almost exclusively involve the executive branch of government.

7(A).3 Denmark

7(A).3i Functional Framework and General Competence

In 1970 the Danish *Amter* were democratised (and re-organised) as a result of concern in Denmark over the centralisation of welfare services. For this reason *Amter* competences are focused on welfare policies, especially health care. Indeed, the boundaries of the *Amter* were created as optimum areas for health service management (Hansen, 1992, p312). However, in the quarter century of their democratic existence, the authority of the *Amter* has expanded substantially from this welfare based beginning.

The Danish regional tier has no legislative authority. Nevertheless, its executive responsibilities are wide as is the lee-way they enjoy in exercising them. The specific tasks assigned to *Amter* are complemented by a general competence to act in any policy area unless specifically specified otherwise in law. This right is not

constitutionally guaranteed and the boundaries are set by ordinary laws at the national level (Andersen, 1993, p10). In practice the *Amtter* can be barred from acting by a simple act of parliament (but not an executive decree). Nevertheless, the Danish tradition of local self-government means such restrictions are generally negotiated rather than imposed. The stated policy of the national government, in recent years, has also been to legislate minimally. The belief that locally operated services as more efficient (and more democratic) underpins the political scene in Denmark, regardless of party. For this reason minimum frameworks have been set by the national authorities in many areas, with the *Amtter* (and *Kommuner*) left free to develop policy. This policy continues to operate.

7(A).3ii Economic Management

Amtter autonomy in the area of economic management and development is relatively wide, despite the fact that these authorities were not created to exercise power in these areas. The general competence afforded to all Danish local government, has allowed the *Amtter* to expand into areas where they felt their presence would be beneficial (Bogason, 1987, p52). Obviously, specific policies depend upon the individual *Amt* and are restricted by the lack of any constitutional safeguard for such actions. In many economic spheres, the central government already “occupied the field” in 1970. In others, national laws severely restricted local government independence of action.

Since the local government reforms of 1970, a series of laws have been passed, giving the *Amtter* exclusive competence to act in some economic areas, previously addressed at a national level. The main transfers occurred in 1972 (roads), 1978 (Bus companies and Transport authorities), 1990 (Agriculture) and 1992 (Promotion of Business Enterprise) (Andersen, 1993, p9).

With the devolution of these powers a large section of transport policy is now under the control of the *Amtter* (with the exception of rail services). The regional level, is responsible for the maintenance and building of what are described as “secondary” roads. Trunk roads and motorways are the responsibility of the national authority, though even here it is the *Amtter* themselves who maintain them,

with money provided by a national grant. Regional infrastructure provision has also been undertaken by the *Amter* to provide airports, in conjunction with local and central authorities. This is not a specific regional power, but the general competence provisions make this type of venture possible. Through this principle, regional ports could also be established, though only a few *kommuner* have constructed such projects.

With the exception of the railway network which is administered by a centrally regulated public company (D.S.B.), the *Amter* are the dominant player in public transport provision. Since 1978, the Regional bus companies have been under the control of the *Amter* while in the same year they were granted specific authority to create regional transport companies, if they chose to. With the exception of Funen and Aarhus, this has been the case (Andersen, 1993, p30). Each comprises all the *kommuner* in a specific region, representatives of which sit on the company's board. The *Amter* representatives hold the deciding vote. Transference of public transport provision has left a high degree of autonomy in deciding how regional transport should be organised. Some *Amter* rely heavily on private contractors, licensed to operate under the transport authority. Others have used publicly owned bus companies to provide most services. In the cases of Aarhus and Funen, the *Amter* operate only regional connecting services, between *kommuner*, leaving the operation of local services to the smaller authorities. Some ferries are also operated by *Amter*, with *kommuner* involvement (Council of Europe, 1988).

Although, the *Amter* are now the dominant authority in public road transport and maintenance, co-operation between regions has been a major factor. Most *Amter* have moved away from road building and have instead concentrated on safety and improvement. This has especially been the case regarding pedestrian and cycle usage. The latter has led to the completion of a 3,000km network of cycleways, throughout the country (Andersen, 1993, p29). This change of policy suggests a meaningful group of powers have been transferred to the *Amter* allowing a major shift in policy to be effected.

In the field of economic development and planning, the *Amter* play a limit but increasing role in both administration and policy-making. The *Amter* have,

since 1992, drawn up regional economic plans. This was made possible by the national government granting the *Amt* authority to set up development agencies, co-finance EU projects and establish companies providing business services (Andersen, 1993, p40). However, the inability of the *Amt* to borrow without national approval, (see chapter 6.3(b) above) restricts their ability to become involved in EU funding, due to the additionality principle. It will be rare for them to have the funds required to match Commission grants.

The reason for such laws regarding *Amt* powers of involvement in economic development despite their general competence, are two-fold. Firstly, the state had originally dealt with economic development and thus “occupied the field”. Secondly, the *Amt* have no authority to distribute economic aid, or have financial involvement in either public or private companies, unless authorised by law. This could be a major obstacle to regional activity in this sphere. The current national practice of creating “framework laws” has allowed individual *Amt* the freedom to decide on the best course of action within the nationally imposed limits.

Other economic areas where *Amt* have been given specific authority are in tourism and agriculture (including hunting, fishing and forestry). The organisation of regional tourist services is the practical result of the first competence, but the extent that *Amt* have control over agricultural matters, is unclear.

The Danish *Amt* have thus acquired a number of specific responsibilities in the economic arena since their democratisation in 1970. With the exception of primary road maintenance, all these powers have been granted on a general or non-compulsory basis, with wide scope for each *Amt* to address issues differently. In relation to their size the *Amt* have a high degree of autonomy in economic affairs. Nevertheless, constraints imposed by the national level on borrowing (and to some degree, economic investment) mean it is not boundless. However, *Amt* involvement is assured more through the Danish tradition of strong local autonomy and negotiation than by any legal provisions.

7(A).3iii Social Powers

As the decentralisation of health and social services was the primary rationale behind their establishment it is no surprise that Danish *Amter* enjoy a high degree of authority and independence in both areas. These wide ranging responsibilities can be broadly divided into three categories; health care, social welfare and spatial planning. It is in the first of these that they enjoy most autonomy and by far the greatest part of their resources are allocated to this function (49%) (Andersen, 1993, p19). The Danish health service is administered entirely by the *Amter* and *Kommuner* levels with the regional level playing the dominant policy role.* Within national frameworks, establishing minimum standards of care, etc. the *Amter* organise the health service within their territory. This has led to some Counties paying non-profit making companies to provide hospital services (5 hospitals in 1993) while others provide patient care directly. In the end of 1992 the *Amter* drew up plans to allow patients to use a hospital of their choice anywhere in Denmark. All these policies are regionally initiated and negotiated (with occasional national encouragement). Regional autonomy in health care is therefore extensive.

In the area of social welfare payments the counties are responsible only for administration and this only of sick pay. Most other social payments are administered at the municipal level (Hansen, 1993, p313). In actual social welfare provision, however, the regions have become more active. The *Amter* are not mandated to be involved in this sector (Council of Europe, 1993c, p12). Nevertheless, they now provide a number of specialised or less frequently used services for those with disabilities and mental health problems as well as homeless people and victims of domestic violence. The rationale behind this seems to be that the communes do not have the resources to fund these services individually. Instead, the regions run the services for the entire area and share the costs on an equal basis with the local authorities.

In planning and environmental protection the *Amter* also play a significant policy role. Although planning is generally a local authority function, the *Amter*

* The Danish government operates one teaching hospital in Copenhagen and for a brief period there was one small private hospital.

draw up overall plans for the region, which the communes must work within (Council of Europe, 1993c, p13). This process was completed in 1982 and regional spatial plans now cover the whole of Denmark. In environmental protection, the *Amter* play a policy role, although within national guidelines. For instance, it is the regional tier that grants permission to mine certain “raw materials”.* In practice, however, most of their functions in this area relate to administration of national legislation rather than the creation of a regional policy. Exceptions to this include wildlife protection where the *Amter* have the right establish nature reserves (Council of Europe, 1988).

7(A).3iv Culture

The administration of secondary schools (both buildings and staff) falls to the *Amter*, however, curriculum remains a national concern. The only real areas where the regional tier can undertake independent policy in the cultural sphere is in its management of museums, art galleries and libraries. Using their general competences, some *Amter* have financed theatres and orchestras (Andersen, 1993, p36). As there are no minority languages in European Denmark, cultural autonomy is not such an emotive issue as in some other EU member states.†

7(A).3v Law and Order

The *Amter* have no authority in the area of law and order. This is a national responsibility, with some minimal administration undertaken at the local level.

7(A).3vi Conclusion

The Danish *Amter* are general purpose regional authorities and, despite their small size, have a high degree of functional autonomy. The comprehensive nature of powers granted in each policy area leads to a noticeable lack of functional fragmentation. For example, health care is entirely within the regional sphere of competence as is, to a large degree, road transport. This allows policy shifts without

* These include stone, gravel, sand, clay, marl and chalk. Other deeper lying resources must be approved by the state.

† The exception to this is Greenland, which has achieved “home rule” and has responsibility for some language functions.

reference to the national tier and thus, by definition, autonomy. They are nevertheless local government regions and are not regarded as superior to the *kommuner*. This also means that many of the tasks they undertake are within a strict national framework, although their independence in the social and economic spheres would seem to be very substantial. The tradition of local autonomy in Denmark means that although the national government has the authority to curtail the general competence of the *Amter*, it rarely exercises it. Indeed, the trend in Denmark continues to be one of decentralisation (at least officially) rather than centrally controlled services.

7(A).4 France

7(A).4i Functional Framework and General Competence

Regionalism in France evolved from two distinct schools of thought. The region was developed as method of democratising the regional planning process while at the same time appeasing “micro-nationalist” movements and those in favour of decentralisation, per se. The former reason, rather than the latter, dominated the functional division of powers in the French state. This has led to the regions exercising most of their authority in the field of economic management. In addition, the grander schemes of the regionalists were ignored, leaving the regions as a local government body with no legislative power.

In theory, Defferre wished to divide functional authority into self-contained “blocks” each of which would then be given to the relevant level (along with the necessary finance) (Le Galès, 1992). In practice, as the following demonstrates, this idea was almost impossible to implement. The experience of Defferre's reforms in attempting to strictly divide competences is similar to attempts in other countries. No system, as yet, has ever succeeded in achieving such a partition.

In common with all other levels of French local government, the Regions have a general competence to act for the good of their territory in any area not specifically allocated to another level. The strict division of tasks between national, regional, *départemental* and communal government should ensure the practical operation of such a constitutional principle. However, regions in particular have

involved themselves in areas which are under the remit of the national government. Universities in particular have benefited from regional expenditure, which, strictly speaking is beyond their remit. By claiming to exercise their allotted powers using a broad interpretation (in this case using their competence to encourage research) they have avoided an explicit challenge to the national authority. Equally, the national government is not in a position to restrict these actions politically. To do so would be seen as discriminating against the region in question. Overall, such expenditure is in the interests of the nation-state as a whole and subsequent revisions to the 1982 reforms have accepted these encroachments. Generally these have formalised rather than restricted regional actions that were, strictly speaking, outside their competences (e.g. the university 2000 programme).

7(A).4ii Economic management

Prior to the democratisation of the regions in the mid-eighties, the primary purpose of regional authorities was to draw up the regional economic plans. After the reforms of 1982 this function was intended to continue as a major component of the region's remit. Indeed it could be argued that all other regional powers were intended to be ancillary to this primary function. The extent to which the region was linked to the economic planning process was emphasised by Rocard in 1981 (the then minister for planning):

“In effect, planning and regionalisation are inextricably linked, like two sides of a coin. Without planning, regionalisation would degenerate into petty interests; conversely, without regionalisation, planning would tend to become a uniform and centralising straightjacket.” (translated in Kofman, 1985, p17)

Regional economic planning was therefore the foundation on which all other regional functions were built. Regional involvement in the planning process operates at two levels. Regions act as the spokesmen for regional interests in the national process and the main policy maker and conduit for the implementation of the regional plan. This operates through regions being given the freedom to

construct economic plans specific to their territory after being consulted on the formation of the national plan. The only legal restrictions on the region's independence in establishing its own economic plan, are that it must not contradict the national plan or other regional ones. This could be seen as a form of legally imposed national solidarity. In practice, however, regional policies are open to influence by financial methods rather than legal ones. Regions may suffer financial loss if they do not follow the objectives set out at national level (Keating, 1983, p248). The national government will obviously only grant specific aid to any project if it agrees with the region's objectives.

Further scrutiny of this process emphasises its potential weakness in terms of regional autonomy. Although the regional council must approve the regional plan, it must consult the prefect when doing so. This is no mere formality however, as it is the prefect who then negotiates on behalf of the region in terms of the national plan (Baume & Bonnet, 1994, p7).

The establishment of the regional plan is, in practice, only the framework for the regions' wider economic role. Within the confines it has imposed, the region may use their powers of financial intervention to encourage economic development. This can consist of financial aid to, what are described as, "healthy" enterprises as well as all forms of indirect aid such as loans, tax concessions, sale of land to enterprises and loan guarantees (Schmidt, 1990, pp.124-5). The only general restrictions imposed upon these activities are that they must not limit freedom of trade and industry or the legal equality of citizens. The national government may also impose maximum limits on direct investment to companies as well as limitations on the total amount of resources used in this fashion. All assistance to companies given by the regions, must be within the context of regional and national plans (and EU restrictions on state aids) (Keating, 1983). All direct investment must be within nationally set frameworks (Keating, 1986).

In practice, most economic intervention occurs through the *Contrat de Plan* for each region. This is a contract negotiated between the national government and the region. There is also input from other local authorities and private enterprises. This document commits the region and the state to financing certain projects over a

five year period, when another will be agreed upon (the first ran from 1984-88 inclusive). This amounts to a five-year commitment to grants in aid, thus giving financial incentives to those regions which finance projects the central government also wants built.

The fall from grace of economic planning, left the region with a serious gap in its functional role. If planning was their principle *raison d'être* in the economic field (and indeed their most important single function overall), the end of such a system could make them expensive white elephants. In practice, however, planning has continued to play an important part in French policy, whatever the complexion of the national government. The change has been one of emphasis, with more stress now being placed at the national level on public-private partnerships in preference to direct public intervention (Mazey, 1993). Le Galès noted an increase in funding to the centrally controlled regional development agencies (D.A.T.A.R. and D.I.V.) as evidence of increased national intervention in economic development (Le Galès, 1992). Whether this is at the detriment of the regional element is not yet obvious.

The use that regional governments have made of their economic powers has varied enormously. While some, (obviously of a more liberal complexion) have been content to act in a co-ordinating role, others have invested heavily in major infrastructural projects (e.g. Nord Pas-de-Calais^{*}) or indigenous industries (Midi-Pyrénées & Bretagne[#]) (Mazey, 1993). Overall, however, intervention has been less heavy handed than previous excursions by the state into economic development. Emphasis has been placed on small "mission services" overseeing regional projects rather than direct regional involvement. These have been used to encourage partnerships between different tiers of local government in an effort to address the issue of economic development indirectly. The result has often been the establishment of mixed-capital companies (public and private) using private law to develop the infrastructure, etc. deemed necessary for regional development.

* Channel Tunnel, port industries and ferry improvements

Wine production and agriculture respectively

The other main area of regional involvement in the economic sphere is in transport policy. With the introduction of L.O.T.I. (la loi d'orientation des transport intérieurs), control over regional rail services passed to the regions, though the national trunk routes remained the exclusive preserve of S.N.C.F. (the French national rail company). The regional authorities and S.N.C.F. now negotiate agreements on the running of the services on local routes, with the regions integrating the rail services into a public transport network, (in practice S.N.C.F. run most bus services anyway). Subsidisation and infrastructural improvement is thus controlled at the regional level (Le Monde, 22-23/3/92). In many regions, control over rail services was a major issue prior to full regionalisation. In Corsica for instance, the closure of the rail system was seen by the population as central contempt for their island (Boisvert, 1988, p230).

This is one area where the regions have called for further powers. At present the national routes (including the T.G.V.) are the exclusive responsibility of S.N.C.F. and the national government. However, Paris wishes the regions to partially fund the extension of T.G.V. lines to their respective territories. The regions in turn, refuse to do so unless they are granted some responsibility for their construction and operation, (as is possible under the legislation) (Council of Europe, 1988, p63). The increased importance regions are now placing on their powers over transport policy could be a reflection on the reduction of their planning role. It is certainly evident that many regions are using their regional rail network timetables to advertise the achievements of the region generally. As the most obvious point of contact with the public it offers an interesting propaganda opportunity.

Other examples of regional involvement in economic development, include the development of research centres and tourism (Le Monde, 22-23/3/92). As mentioned above, the general competence of the regions means that they are not restricted to activities defined by the state, merely to those issues within their "sphere of competence" (Mazey, 1993, p84). Nevertheless, in practice, the competences of the region in the area of economics are such that few activities can be carried out without the involvement of other tiers of authority. In essence;

“Dans la domaine économique, la région exerce, en principe une fonction de pilote” (Rocard, *Le Monde*, 1982)

7(A).4iii Social Powers

Regional involvement in the social sphere is very limited in France. In fact the only regional functions that could be described as social are in the fields of spatial planning and environment. In the spatial planning field, the regions once again exercise a co-ordination role rather than one of policy initiation. Nevertheless, the region has the final say in approving both the communal land use plans (the P.O.S.) and the inter-communal plans (E.P.C.I.) (Schmidt, 1992, pp.124-5). The communal plans are the only spatial planning documents, thus final control in this area is therefore exercised by the regional authority.

In conjunction with regional authority in the area of spatial planning is a limited competence in the field of environment and conservation. Most obviously, the regions may create regional parks, to protect wildlife in their territory (Council of Europe, 1993e, p20). So far a number of these areas have been created, but in practice this authority is only relevant in rural areas such as the Auvergne or Midi-Pyrénées.

7(A).4iv Culture

Although on paper, French regions do have competence in the field of education, in practice this are almost entirely administrative. Regions have authority over building and maintaining lycées but have no competence in the area of curriculum or education policy. Nevertheless, this involvement, though minimal, has had a profound effect on the structure of education in France.

Regional involvement in the *lycées* is widely credited with averting a crisis in secondary education provision. The central state, through a policy of neglect, left the secondary school system unable to cope with the large increase in pupils expected in the early 1980's. The Regions, after being granted authority over what many saw as a poison chalice, made a remarkably good job of managing the

situation. Through a variety of financial means, the regions embarked on an extensive building and refurbishment programme which is universally seen as a success. This was despite the lack of resources open to the regions to finance it. To do so, they have relied on higher taxes as well as innovative methods such as M.E.T.P. schemes (Douence, 1992, p22).*

The other area of education given to regional authorities is professional training which the regions have invested in heavily (42% of total spending - 1992) (Engel & Van Ginderachter, 1993, p75). Although high in regional terms the cost of this has meant a large degree of state funding through specific grants (80%) (Douence, 1994). However, through the principle of transferred field services (see Appendix I.3 above) the region still retains control over its own projects in this area.

In the early 1990's Higher Education became a point of conflict between regions and the central state, as the national government wished the regions to help finance new universities. However, the regions were loath to do so without acquiring some explicit competence in the field. This impasse resulted in the respective regions becoming involved in university development and planning for their area (Douence, 1994, p20). Le Galés also points out that despite supposed exclusive national authority in the education field, the regions, (and some local governments), through encouraging expansion in certain areas, etc. had already acquired influence in the field of higher education see (see page 328) Le Galès, 1992, p25).

In other areas of cultural life, the regions may establish and support regional museums, libraries, etc. (Council of Europe, 1988). This authority has been used to increasingly good effect in recent years with regions supporting drama studios, orchestras and most notably the establishment of the *Fonds Régional d'Art Contemporain*. This has been despite a lack of authority to actually become

* *Marchés d'Entreprises de Travaux Publics*. These schemes paid a civil engineering firm for building and maintaining a school for 10-15 years. The (lower) payments were thus spread over a longer period while the firm benefits from guaranteed work. It also ensures quality of workmanship.

involved in these projects (*régions* use their general competence). The common thread with all these projects has been their regional focus (Douence, 1994, p20). The regions are therefore acting as a reservoir for, and defender of, France's diverse regional cultures. Intentionally or not, this cannot help but encourage the growth of regional identity, further enhancing the status of the *région* in French society.

The exception is Corsica, which has greater authority in the field of education and culture generally. Control over these responsibilities was a major issue amongst the regional population and the national government was obliged to make concessions in its attempt to appease the "micro-nationalist" movements. Primary amongst these are Corsican language education (controlled by the region) (Boisvert, 1988, p366), a Corsican regional university and powers in the field of broadcasting. These were substantially expanded in 1991 (Engel & Van Ginderachter, 1993).

7(A).4v Law and Order

The regions possess no authority in this field, although in Corsica, the subject has often been discussed in the regional assembly (Boisvert, 1988, p436).

7(A).4vi Conclusion

The French allocation of powers to the regions is uniform (with the exception of Corsica), and except in the economic sphere, relatively limited. Nevertheless, the innovative use of their general competence has expanded regional authority. This is theoretically restricted only to the policy areas under their control (due to the principle of policy blocks being handled by separate levels). In practice, however, the *régions* have become involved in areas only tangentially linked to their competences according to statute. These have included higher education and culture (an emotive issue in France). The influence gained by regions in this area has been achieved mainly through financing of projects. This is only possible because of the independent nature of French regional funding (see chapter 6 above).

Finally, as with every other attempt to create a "dualist" (to use federalist terminology) structure of sub-national authorities, (with regions operating independently in specific spheres), the French example has failed. The enduring

practice throughout the French model is co-operation between several levels of governmental authority.

7(A).5 Germany

7(A).5i Functional Framework and General Competence

Any study of regional functions in the federal republic must use a slightly different approach from that applied in the cases examined above. Unusually, the powers of the *Länder* are not specifically defined anywhere in the Basic Law. Instead, Article 30, often referred to as the “subsidiarity clause”, gives them a general competence to act in any area not otherwise allocated to the federation. This article (discussed in chapter two, in relation to the European subsidiarity debate) states:

“The *Länder* shall have the right to legislate insofar as this Basic Law does not confer legislative power on the Bund.” (Article 30 G.G.)

This clause, gives a clear and constitutionally guaranteed general competence to the regional tier. Uniquely, therefore, regional functions are defined negatively within the constitution. Regions have competence to do anything unless specifically barred from doing so. Regional legislative competence in the F.R.G. is therefore entirely based on the principle of “general competence”, rather than the principle existing in addition to specified responsibilities.

The Basic Law lists the functions which accrue exclusively to the *Bund* in article 73. These are surprisingly limited and include such areas as foreign affairs, the federal railways, defence, etc. The limited nature of the functions specified as federal in this article, together with the ambiguous nature of Article 30 give the first impression that the *Länder* enjoyed something approaching complete sovereignty in domestic issues. However, the federal powers listed in Article 73 are not the only areas in which the *Bund* is permitted to operate. In addition those listed in article 74 have, in practice, become federal functions. Article 74 outlines concurrent powers, which are described in article 72 as;

“...legislative powers [where] the Länder shall have power to legislate only if, and to the extent that, the Bund does not exercise its right to legislate.”

Although in theory, this extensive groups of functions (listed in article 74) is shared between Bund and Länder, the practice is somewhat different. The Basic Law lays down criteria in article 72(2), which must be fulfilled for the *Bund* to take on a concurrent power. These are fulfilled when;

- “1. a matter cannot be effectively regulated by the legislation of individual *Länder*, or
2. the regulation of a matter by a *Land* law might prejudice the interests of the other *Länder* or of the people as a whole, or
3. the maintenance of legal or economic unity, especially the maintenance of uniformity of living conditions beyond the territory of any one *Land*, necessitates such regulation” (Article 72(2) G.G.)

However, the constitutional court's stance on the issue of these “concurrent powers” has been to deny it is a judicial matter. Instead it is for politicians to decide whether such criteria have been met leaving the *Bund* free to assume such powers through the normal legislative process. There is no consideration of whether these criteria are fulfilled and in practice the article has become a dead letter. If it has any authority it is as a convention rather than a constitutional principle. As the *Bund* is free to decide whether or not it should intervene it is not surprising to find that such intervention has been deemed necessary in almost all cases. These powers have, over time, become effectively excluded from the *Länder* general competence.

The recent reforms (27th October 1994) do offer some chance of “takeback” by the regional level, however. As a result of *Länder* pressure, Article 72 now requires the *Bund* to show the necessity for any intervention (or the limiting *Länder* actions). The regions, in theory, will be free to engage in policy making in this area unless the federations proves necessity demands otherwise. This would be

meaningless were it not for the explicit attempt to force the constitutional court to become an adjudicator in these issues. Article 93.1(2a) now places decisions regarding necessity clearly within the remit of the F.C.C.. The purpose of this is to prise the court out of its current position of claiming such arguments of “necessity” or “need” are political and not suitable for their decisions. Whether the reforms will have the desired affect is debatable. At present, the federal establishment awaits a test case to clarify the position (Leonardy, 1994, p14).

Although the legislative functions of the regions have been limited by the *Bund's* “occupation of the field” regional involvement remains extensive. In practice, the many functions performed by the *Länder* can be divided into three categories of autonomy:

- 1) Areas where the *Länder* exercise exclusive authority, guaranteed by the constitution (generally in the fields of culture and police).
- 2) Areas where the *Länder* exercise executive authority and the policy is financed from the federal budget.
- 3) Areas where the *Länder* exercise executive authority and the policy is funded from regional sources.

The first example is the exception, not the rule, with most legislative powers being defined under “concurrent” legislation in the German Basic Law. As already explained, “concurrent” in the German example means that the *Länder* can only legislate until the Bund “occupies the field”. In almost all cases, the Bund has done this.

However, the *Bund* are prohibited from establishing all but a few field agencies (see Appendix I.4). This means they must rely on individual *Länder* to implement federal legislation. If the funding of such policies are predominately federal then the federation has full policy control (the region acting merely as its agent) while in other cases the *Land* is free to provide the service, etc. as it sees fit.

Acting as the *Bund's* agent is less limiting a prospect for the *Länder* than might be expected. Under the Basic Law the federal government can only limit *Länder* policy through legislation and not by executive decree. This makes it substantially different to the grants in aid policy pursued in the U.S., where the national government uses financial incentives to control state policy. The German federal level is therefore limited by the parliamentary system as to which restrictions it may impose.

Further limitations outlined in Article 85 of the Basic Law; include approval of any administrative decrees by the *Bundesrat* and the stipulation that any general administrative requests by the federal authorities, are made to the highest *Land* authority. Direct instructions from the federal government to the *Länder* civil servants are prohibited. This leads to understandable debate in academic circles as to whether losing policy initiative in an area to the *Bund* depletes *Länder* competences when it can also lead to an increased financial responsibility.* The restrictions imposed on *Bund* supervision are such that the regions continue to enjoy substantial independence even when they are administering a policy as the agents of the federal government.

7(A).5ii Economic Management

In 1969, a bill making regional economic development a joint task was passed.† Since then, institutional co-operation between the regional and national level has been the norm in this sphere. The committee established to oversee the joint aspects of this policy agrees a national outline plan within which each *Land* will exercise its discretion. Neither the federal government nor a majority of the regions can be outvoted and in general a wide consensus is achieved (Klemmer, 1989, p405).

* In the "Alpine War" of June 1986, the Bavarian government banned Austrian demonstrators from crossing the border. Although their legal ability to do this was questionable, their control over the border police allowed them to institute such a ban. The Bonn government was severely embarrassed.

† This was confirmed in article 91(a) of the constitution.

Regional economic development has thus been voluntarily moved from a strictly regional policy to a co-ordinate national one. However, regions are still able to manage their own economies within these generally broad guidelines. This has allowed *Länder* such as Bavarian to develop its aerospace industry as a centre-piece of its economic policy. Land interests may also be represented through the Bundesbank. Each Land has its own bank, the chairman of which sits on the policy making Bundesbank Council (Economist, 25/4/92, p53).

These methods of regional involvement rely on collective action. They are not, therefore actual examples of individual *Länder* autonomy. Rather, the joint tasks lead to national decisions being taken with the involvement of regional executives. This reduces the role of regional legislatures in the exercise of regional autonomy. There is a misconception in many studies that if regions are involved in a policy procedure, this is regional policy autonomy. In fact, the decisions taken will be national and apply to all the regions. In doing so, a minority of regions who wish to follow a different policy from the majority, will be barred from doing so. Their policy autonomy is thus restricted and transferred to a national body. The fact the national body contains regional representatives cannot disguise the fact that it is not an organ of regional autonomy. If this trend continues unchecked, regional autonomy in this sphere is likely to suffer (see Scharpf, 1988).

7(A).5iii Social Powers

Länder powers in the social sphere are extensive although strict legislative competence is again limited. The entire social security system is administered by the regions as is the health service but significant areas of policy autonomy remain at the regional level for the reasons outlined above. Legislative responsibility remains primarily regional in the fields of spatial planning and environment. In the case of environment, national standards may be imposed, but in general these are agreed by the *Länder* themselves.

Regional involvement has also expanded beyond the national boundaries. The oft-quoted Lake Constance agreement between German and Swiss regions (as well as some national involvement) is probably the best example (see chapter 5.2(a)

above). The regional autonomy enjoyed by the *Länder* in environmental issues necessitates their involvement in such agreements.

7(A).5iv Cultural Powers

It is in this area where *Länder* enjoy the widest autonomy. Each *Land* is exclusively responsible for education, broadcasting and culture within its territory. The reasons for this are obviously political. In 1948, the decentralisation of these functions was seen as a safeguard for democracy in the light of the nazi regime's successful use of education and broadcasting to undermine the democratic state.

The exercise of these powers at the regional level has, perhaps surprisingly, not led to parochial regional systems. Although, education and broadcasting remain regional, the emphasis has once again been on co-operation. Perhaps the best example of this is the *Länder* controlled national television network. The board of this comprises of appointees from each *Land* government. The question must be raised, however, whether this is an example of regional autonomy or a worrying increase in regional executive competence and thus discretion with only limited democratic accountability.

Further examples of co-operation between the *Länder* occur in the field of education. In this case the *Länder* have established basic standards for compatibility of qualifications between regions. This, in contrast with the T.V. example, has created a co-operation system encompassing the entire federation but retains a significant element of regional autonomy. In the area of higher education, the *Länder* have also agreed to national level involvement through another joint task committee. Once again, although the advantage of a larger university system is obvious, deciding policy within these closed committees does nothing for regional autonomy or democracy. Would these national decisions be better dealt within a national parliament engineered for the purpose?

7(A).5v Law and Order

As with education, this area of policy is classed as exclusively regional in the Basic Law in the belief that central control is a potential danger to democracy. Each *Land* possesses its own police force and court system, which are generally

structured along similar lines (although Schleswig-Holstein does not have a constitutional court). In the case of Bavarian this extends to border police, though not the immigration policy that they enforce (Schweitzer et al, 1995, p361).

Federal involvement is restricted to agencies for the co-operation of police forces within Germany (although the highest appeal courts remain at the national level). Nevertheless, with these limited exceptions the organisation of the judiciary and the police are entirely *Land* competences. The extent to which significant regional differences emerge is quite limited with the culture of Germany ensuring conformity throughout the federation. The regionalised police forces, nevertheless, do allow experimentation in police methods and perhaps most importantly, are democratically accountable to a regional electorate.

The general competence of the *Länder* does give them the ability to develop laws distinct from those in the rest of Germany. This leads to identifiable differences in the legal orders of certain states, which the regional courts enforce (e.g. Hamburg's recent imposition of speed restrictions on Autobahns in the name of environmental protection). The ability to control certain sections of the legal code, allows the development of a legal system closer to the wishes of the regional electorate. For example Bavarian laws regarding the quality of beer manufactured in the region are jealously guarded by the population (much to the delight of beer drinkers world wide!).

7(A).5vi Conclusions

Overall, German regions exercise autonomy over a wide swathe of policies, but the extent of regional independence is less clear. As Scharpf has pointed out, the extensive use of joint tasks and decisions between *Länder* executives has reduced the scope for variation between regions. In addition, use of these methods has led to the adoption of non-optimal policies based on bargaining rather than problem solving. The bargaining process leads to regional representatives protecting their own perceived interests (often financial) when the problem requires a more rational solution.

In conclusion therefore, the German system, although exhibiting the potential for extensive regional policy independence does not necessarily deliver. Regions do more than using their autonomy to conform, instead being driven by a dynamic that ensures non-optimal national decisions, taken by regional executives. This has serious repercussions for democratic accountability and the federal structure. If the German federation is to resolve these issues, they must tackle them explicitly, something that is unlikely to occur in the near future.

7(A).6 Italy

7(A).6i Functional Framework and General Competence

The extent of regional autonomy in functional terms, is a complex issue to address in the context of Italy. Although the regions enjoy both legislative and executive competences, their ability to use them can be restricted in ways that are not immediately obvious. One major reason for this is the Italian Judiciary's (pro-centre) interpretation of the Constitution. At first glance, the list of competences given in article 117 of the Italian Constitution seems fairly straightforward. However, the Constitutional Court interpreted this list as needing national legislative implementation before the regions could operate in any of their assigned areas (Zariski, 1987, p103). To a large degree, this was achieved by the Presidential Decree law 616 of 1977 but all powers granted to ordinary regions remain "concurrent". This means they may only work within "framework laws" established at the central level.* A further type of regional competence has been introduced to allow regions to operate beyond the areas specifically assigned to them in article 117. This allows regions to alter national legislation to suit local needs when national legislation specifically leaves this option open (this happens with regards to some EU directives - see chapter 5) (Elazar, 1991, p130). The other main difficulty in examining ordinary regional autonomy in Italy is that the state can potentially "take back" powers. The extent to which this occurs depends on the mood in Rome.

* Note the difference between "concurrent" powers in Italy and Germany. In Italy, the powers still allow regional policy decisions, but only within the national framework. Until the recent reforms the *Länder* would probably have been excluded from policy involvement, as soon as the *Bund* became involved.

Such clarity that exists as regards ordinary regions is confused by the existence of “special” regions. These regions have individual statutes of autonomy (see Appendix I.5) and their functional autonomy can vary markedly. The extent of their function autonomy has also been complicated by the Constitutional Court’s demand that many of their powers be “confirmed” by national statute. In many cases, this has never happened.

7(A).6ii Economic Powers

When the “ordinary” Italian regions were finally democratised in 1972, the principle reason, in the eyes of the government, was to democratise the planning process. For this reason the regional boundaries reflected the planning regions that were already in existence. The regional governments’ primary role was therefore to create and implement regional development plans, within a national framework. Their rationale was similar to that of their French counterparts and as in France, they assumed powers in broader areas from the outset. Many observers hoped the chance would be taken to create a semi-federal structure, sweeping away the inefficient national one. Their hopes were not fulfilled, but the role of regional authorities in areas other than economic planning meant that the regions have retained an economic role despite the collapse of this form of economic management.

Economic planning and development remains a significant part of regional competences, although the first and only national plan collapsed in 1973 (Zariski, 1987, p129). A degree of piecemeal, sectoral planning has continued in a few areas at the national level* and in this, the regions have continued to have a consultative, spending and implementational role. Nevertheless, the concept of national economic planning is no longer politically acceptable in Italy. However, purely regional initiatives in the field of economic development continue to play an important part in the economic policies of some regions. In some regions such as Sardinia, the regional government created detailed plans setting out specific economic goals (*pianno di rinacita*) (King, 1987, p335). Others, such a Lazio and

* Industrial reconversion, food/agriculture and youth employment.

Puglia, have produced only vague plans outlining general economic priorities and having little practical relevance (Zariski, 1987, p131).

The implementation of economic development policies in the regions can be achieved in a number of ways. Regions are free to give aid to economic enterprises and may also participate in them directly (the latter power is also enjoyed by the communes and provinces) (Council of Europe, 1988). Other competences include employment initiatives, regional public works, electricity production/distribution, industry and commerce (Italian Constitution, Article 117). Nevertheless, the Italian government retains tight legislative control which is complemented by the firm financial controls outlined in chapter six, above.

In Italy, the region plays little independent role in the area of transport. The part they do play is limited to co-ordination of communal public transport and the administration of the regional transport system. This is paid for by a specific grant, which the government gives to the region with rules and regulations attached (Cassese & Torchia, 1993, p106). It is therefore hard to see this as an area in which the region could exercise much autonomy. The only area of concurrent competence in the field of transport is that of inland waterways and harbours.

The other areas of competence in the economic sphere are agriculture and tourism. In these areas things are very different. Originally, agriculture was a competence merely administered by the region, tourism on the other hand was a concurrent power. However, the recent political crisis in Italy has changed this. The regions claimed that decentralisation would reduce corruption (few regional government politicians had become embroiled in the national scandal^{*}). To this end, they sponsored a question in the national referendum of 1993 proposing to abolish the ministries of tourism and agriculture (Scotland on Sunday, 18/5/93). This was duly approved by the electorate and the ministries are no more. The end of national ministries in the above areas is obviously a major development as it now leaves the regions free to pursue their own policies, without national interference. The full

^{*} With the spectacular exception of Sicily

consequences of this development is difficult to gauge at the present time as the regions are still restricted by national framework laws.

7(A).6iii Social Powers

Regional authority in the social sphere relates primarily to administrative functions in some areas of social security and the health service. The legislative actions of regions are restricted to (concurrent) powers in the areas of town planning and social assistance. There regions may also enact policy in the area of environmental protection (Sanantonio, 1987, p115).

The most important social function in terms of monetary expenditure is health (60.5% of ordinary regions' expenditure in 1986) (Cassese & Torchia, 1993, p105). However, the transfer of health care to the regional tier, by a framework law of 1978, did not transfer much in the way of policy autonomy. Regions are instead limited to implementing the health policies agreed by the national government. In the area of social assistance, regions can play a small role, but once again the framework legislation laid down by the state is so tight as to make any autonomy minimal.

When the national health service structure was introduced by the Italian government and transferred to the regions, the regions received what was widely regarded as a poisoned chalice. The national government has consistently underfunded the health structure in its specific grants (see chapter six, above). To make up the difference, the regions have been forced to use their own resources and borrowing, merely to achieve the standards required of it. In practice, the individual hospitals or local health boards undertake the borrowing which regions are forbidden from undertaking. The restrictions of the "golden rule", mean borrowing cannot exceed the expenditure on capital investment. By using the individual health authorities, this problems can be avoided. The new funding methods introduced in 1992 (regional receipt of health service contributions) may alter this situation (Giarda, 1995).

Spatial planning is one area where the region is the dominant level. The region, through either an approval procedure (local planning) or a control

mechanism (town planning) operates as a check on communal planning powers. In this it has the final say.

One area in which some regions have made a significant impact is environmental protection. Emilia-Romagna, which borders the Adriatic coast, runs an environmental protection and research vessel (Daphne) and was instrumental in forcing action to address the polluted state of the Adriatic (Leonardi, 1990, p32). The fact that to do this required inter-regional co-operation on water treatment and national financing says much about the Italian system and regionalism itself. In order to bring about change regions need the co-operation of authorities beyond their boundaries. However, to bring the problem to the attention of other areas often requires a region to take the initiative in addressing the issue. In this case, a combination of regional autonomy and collective action led to action on issues of environmental protection, long neglected by the national level.

7(A).6iv Culture

The ordinary regions have little authority in cultural field. Their competences are limited to regional museums and libraries, but little else.

7(A).6v Law & Order

There are no regional police forces though the regions do possess concurrent legislative powers over the local ones that exist within their territory.

7(A).6vi Special Regions

The powers of the "Special Regions" are in theory more extensive than those of the ordinary regions. Although each of these regions has its own statute, outlining its authority, some general principles are common to them all. The main theoretical advantage of these areas is that they possess exclusive competences in the areas in which the ordinary regions possess only concurrent ones. The only exceptions are in inland waterways and electricity.

In practice, the special regions were denied the competences assigned to them by the Italian Constitutional Court's decisions. The court, as noted above, demanded that the constitutional provisions outlining regional competences were

enacted in national laws. This was also true of the statutes of the special regions. However, as King notes, even when power was granted, as in Sicily, the regional authorities were sometimes slow to exercise it (King, 1987). The Sicilian region also became a synonym for corruption and inefficiency. As with much else in Italy northern special regions (notably Valle d'Aosta) seem to have been more dynamic than their southern counterparts.

The result of government obstruction in granting competences to the special regions has led one commentator to dub their advantages a "dubious privilege" (Zariski, 1987, p103). This is because, while the ordinary regions benefited from a general grant of authority under Presidential Decree 616, many of the special regions are still waiting for the powers they thought they were granted in 1948.

Some special regions, on the other hand do enjoy a varied authority in the cultural sphere due to their distinct cultural and language differences. Most special regions have competence for the teaching of their own languages and all official documentation, roads signs etc. are bilingual. In Sicily the regional governments control over education is exclusive in the case of primary teaching while concurrent over secondary and university levels (Engel & Van Ginderachter, 1993, p84). This is considerably more than that enjoyed in any other special or ordinary region.

Health can be an exclusive competence in some special regions and Sicily also possesses a high court, separate from the national Italian one. In practice the latter has little effect.

7(A).6vii Conclusion

As the above discussion shows, until the recent changes in Italian politics, most regional authority was administrative. Article 118 of the Italian constitution gives administrative authority over the competences listed in article 117, to the region. However, once again this is not the whole truth. The national government has taken to devolving some administrative powers directly to the provinces and communes (Hine, 1993, p267). Although this is done in the name of decentralisation, the real reason seems to be to bypass the regional level. The

regions are seen by some as a threat to national authority, furthermore, local governments are more open to grants-in-aid pressure than their larger counterparts.

Whether the recent changes will cause a shift to more legislative control being exercised by the regions is unclear. However, the situation prior to 1993 prompted some to compare the Italian experience with that of Germany, i.e. the regions adopting an implementational role for national policies. Unlike the *Länder*, however, the *regioni* lack the constitutional weapons to “strike back” (Jeffrey, 1994).

7(A).7 Netherlands

7(A).7i Functional Framework and General Competence

The history of the Dutch Provincial tier stretches back to the United Provinces of the Eighteenth Century making them the oldest “regional” government in Europe. However, today their functions are severely limited and although they are able to introduce by-laws the responsibilities they exercise are almost entirely administrative in nature. Furthermore the autonomy they exercise is always open to control by the central government. As mentioned in Appendix I.7, any measure of the provinces can be annulled by the Central Government on the grounds that it conflicts with other laws or the “general interest” (Harloff, 1987, p101). This obviously makes any regional functional autonomy rather relative to national whims.

Nevertheless, Article 124 of the Dutch constitution states:

“The powers of provinces and municipalities to administer their own internal affairs shall be delegated to their administrative organs.”

This amounts to a general competence, giving provinces (and indeed municipalities) the right to undertake action, unless barred from doing so in law. Nonetheless, due to the veto power mentioned above, the exercise of this right very much depends on the attitude of the national government.

7(A).7ii Economic Management

It is in this sphere that the provinces exert most of their very limited powers. Most notably this includes supervision of water authorities, some road maintenance and exclusive authority for river transport (Council of Europe, 1988). Provinces also have authority to organise regional gas and electricity supplies (Toonen, 1992, p135). The delivery of these services is generally a municipal responsibility (Council of Europe, 1993j, p15). Provinces may also involve themselves in economic development initiatives.

7(A).7iii Social Powers

The provinces have a few powers in the social arena, but once again these are not extensive. The most important are spatial planning (in co-operation with municipalities), care of the mentally ill and environmental protection (Engel & Van Ginderachter, 1993, p90).

In the realm of spatial planning, the provinces only provide a general plan to conform with the national one. It is the municipalities that create the actual zonal plans defining areas for specific uses. In caring for the mentally ill, the provinces seem to be administering a form of “care in the community” programme within national regulations. In the field of environmental protection, the provinces act as co-ordinators of municipal actions. The latter situation is also true in areas of service provision such as refuse collection (exclusive provincial authority does exist in the area of water purification).

7(A).7iv Culture

The provinces can use their general competence to involve themselves in cultural issues. However, the only specifically defined area, is the co-ordination of municipal measures to provide parks (Council of Europe, 1993j, p15). This hardly amounts to substantial involvement!

7(A).7v Law and Order

The Dutch provinces are not responsible for police or public order, with the exception of co-ordinating municipal civil defence measures. Provinces may create

bye-laws in any area not assigned to parliament (using their general competence), however the *tutelle* makes this power reliant on central government discretion. In addition, bye-laws may only be used in the interests of the province and may not become involved in areas, “relating to the private interests of their residents”. It is up to the courts to decide whether such an infringement has occurred (Kortmann & Bov’end, 1993, p30).

7(A).7vi Conclusion

The powers of the Dutch provinces are thus strictly limited in both scope and independence. Although the general competence exists, it is within the state's power to limit provincial policy at will. The powers that provinces do exercise are very limited and cover completely unrelated areas (e.g. mental health and parks), leaving little room for coherent policy. This makes them generally irrelevant to the Dutch political system. The evidence of this is the lack of research into provincial government in Dutch, (or English).

The role of Dutch Provinces has increasingly been to implement national policy. To this end, most provincial spending is undertaken on behalf of other agencies and funded directly by them. It is unclear, however, how much influence individual provinces have on these functions. Once again, the lack of domestic research in this area seriously hampers any discussion of this issue.

7(A).8 Portugal

The establishment of the Portuguese Autonomous Regions was based on a general demand for autonomy in the archipelagos of Madeira & the Açores. This pressure for self determination led to large areas of autonomy being granted to the islands and the establishment of a general competence to:

“legislate on such matters of specific interest to the regions as are not within the exclusive powers of the organs of supreme authority.” (Portuguese Constitution, Article 229.1a)

It is clear therefore that Portuguese regions enjoy a legislative general competence. The regional statutes nevertheless go on to give lists of the matters of

“specific interest” to the regions. It seems, that these merely guarantee a minimal competence for the regions rather than restricting their actions to these fields. The lists are nevertheless substantial and “home rule” in these island regions is extensive. Ironically, the most emotive issues have been those having little bearing on the islands' real autonomy. For example, a political crisis emerged in the mid-nineteen eighties over the Portuguese government's refusal to accept the Açores' anthem and flag (Elazar, 1991, p201).

7(A).8i Economic Management

Under the Constitution of Portugal, several areas of economic management fall exclusively within the competence of the regional authorities. Some of these are outlined in Article 229 of the document. These include agriculture, supervision of nationalised industries (and public bodies), fiscal, monetary and foreign exchange policies; “to secure regional control of the means of payment in circulation and to provide funds for the investment necessary for their economic and social development”. Control over fiscal and monetary policy within the region is an unusually broad power to be held at regional level, though it is unclear to what extent it is actually exercised by the regional authorities. Of more practical importance is perhaps the regional governments' right to participate in policy formulation at a national level where this concerns them (Lewis & Williams, 1994). Control over the regional development plan and involvement in the national counterpart are also guaranteed under article 229.

As already mentioned, (see chapter 5) each region has a constitution or “statute” which elaborates on the powers outlined in the national founding document. Under Articles 32 and 33 of these documents the economic powers of each region are enlarged upon (Açores Statute & Madeira Statute). Although article 32 outlines certain specific powers enjoyed by the regional parliament, (including the ability to create public institutions and services) most regional competences are defined in the next article. This defines areas which are specific to the region, and thus fall under the general competence mentioned above.

In the economic sphere, Article 33 defines regional matters as including public bodies and industries operating mostly or exclusively within the region (or where the regional portion is clearly identifiable); all island (and inter-island) transport including price controls and routes; administration of airports; fishing; agriculture and forestry; spatial planning; local energy production; use of hydro, mineral or thermal resources and finally, employment.

Economic control over some of these areas such as thermal and hydro resources is, as noted elsewhere, often given to regional authorities. The reason for this is that, in general, it is of little import. However, in the Portuguese islands this is not the case. Thermal and hydro power are the prime sources of electricity production. In Madeira for example 85% of electricity is generated from thermal sources and 15% from hydro (Government of Madeira, 1992, p45). In effect, the regional government has responsibility for the entire electricity industry. This also goes for water consumption, thus quite substantial authority springs from this one clause of the regional statutes.

The only explicit limits to regional autonomy in these areas are contained in Article 230 of the national constitution. The Regions must not, in the exercise of their authority;

- “a. Restrict the rights of workers as recognised by law

- b. Impose restrictions on the passage of persons and goods between them and the rest of the national territory, except restrictions on goods dictated by health requirements

- c. Restrict any occupation or public office to persons born or resident in the region.”

These amount to little more than measures to ensure non-discrimination and freedom of movement, something already enshrined in the EU treaties.

7(A).8ii Social Powers

In the Social sphere the Portuguese island regions also exercise wide ranging authority. Although none are mentioned specifically in the constitution, the statute of the Açores, when defining areas of regional significance, includes spatial planning, land management, environment, health, social security, housing and urban planning. The Autonomous regions may not, however alter the basic laws in areas such as the “foundations” of the social security system or the health service (Portuguese Constitution, Article 168(f)). This means in effect the regions must operate a health service and social security system up to a national minimum standard. They have the authority to develop their own systems but not abolish them.

7(A).8iii Cultural Powers

Regional autonomy in the areas of education and local heritage are included in the statutes. Thus, as in Germany, education on the islands is entirely the responsibility of the regional governments.

7(A).8iv Legal Order

This is one area where the regional powers are notable by their absence. Police on the islands continue to be a national responsibility, and the courts are part of the Portuguese structure. However, the legislative competence of the regional authorities plus their specific powers to introduce by-laws (both civil and criminal) mean the legal orders of the islands have the potential to differ significantly from the national norms.

7(A).8v Conclusion

The functional responsibilities enjoyed by the Portuguese island are probably the most extensive of any regional government within the EU. With the exception of police matters, the region is in practice the primary unit of government in the territory, as far as domestic matters are concerned. This is unusual as the mainland regions of Portugal have never been created. The imbalance is therefore stark. In practice the Portuguese regions are federal regions

without a federation to belong to. Although this situation holds many lessons for an unbalanced regional structure in the UK, the geographical isolation of these island regions makes the unbalanced nature of the Portuguese system easier to sustain.

7(A).9 Spain

7(A).9i Functional Framework and General Competence

The Spanish system of regional government is not uniform (see Appendix I.8). For this reason, regional responsibilities vary considerably across the peninsula. The reasons for some variations are rooted in the history of the regions themselves and it is helpful to bear this in mind when studying their functional autonomy. The “historic” regions of Catalonia, Euskadi and Galicia were given special dispensation to negotiate an immediate statute of autonomy, with advanced functional independence. Apart from these three exceptions, those areas wishing a high degree of autonomy, had to go through a difficult process. A less arduous procedure, granting only the minimum amount of powers in the first instance, (negotiation of further powers being left until a five year period had elapsed) was open to those areas wishing for only limited regional responsibilities, initially. Nevertheless, all regions enjoy legislative as well as administrative responsibilities though in none is there an explicit “general competence” for the region. Regions have compensated for this by resorting to private law in areas that may fall strictly outside their remit.

The end result is a complex system with policy responsibilities lying at the regional level in some territories and remaining under central control in others. This bears some resemblance to the Italian structure and the variable autonomy granted to the “special” regions. Some powers held by the regions are based entirely on the specific demands of the regional territory. The existence of a separate Catalan civil law, for example, meant regionalists in this territory naturally felt it should be developed in Barcelona, not Madrid. Equally, in Andaluçia, where regionalism was originally based on economic rather than cultural issues, the authority to develop

this under developed area of Iberia, was of prime importance. Discussion of functional autonomy on a Spanish basis is thus not strictly correct. Importantly, and unlike the variable geometry evident in Italy, all lesser regions are defined by individual constitutional statutes, including those with lesser autonomy. This makes each individual statute potentially different, leaving the functional division of authority between centre and region to vary across the country. Each *autonomías* therefore has an individual relationship with the central state (and local government), although in practice, some regions exhibit more similarities than others.

7(A).9ii Economic Management

Despite, the potential differences, across Spain, the less autonomous, article 143 regions (see Appendix I.8) can be broadly discussed collectively. The minimum powers devolved to all these regions in the sphere of economic development are listed below:

- Public Works within regional territory
- Railways & Roads within regional territory
- Recreational ports and Airports (non-commercial)
- Agriculture (within national economic planning)
- Forestry
- Exploitation of water (including canals), thermal and mineral resources
- Inland fisheries & shooting
- Local fairs
- Economic development (within national objectives)
- Handicrafts
- Research
- Tourism

These powers, though significant, are not very extensive. Indeed, Donaghy and Newton see them as comparable with local government competences in a unitary state such as the UK (Donaghy & Newton, 1987, p112). I think this is slightly exaggerated, as the national state may not intervene if the region wishes to exercise one or more of these powers, something not true in a unitary state such as

the UK. However, the caveat in the areas of economic development and Agriculture that these powers must be exercised within national objectives, does effectively turn these “exclusive” regional powers into powers exercised under national framework laws.

To these minimums can be added some extra powers negotiated by some *autonomías*. Euskadi, for example, has exclusive authority over savings banks and credit institutions, internal trade, industry, transport (including sea, river and land) and ports (including airports) (Basque Statute of Autonomy, Article 10). Although, in theory exclusive, the Euskadi constitutional statute is typical in limiting most of these “extra” functions by certain caveats. These, relatively minimal restrictions are concerned with national unity in most cases. For example, banking controls must be within the established national guidelines and internal trade regulations must not infringe pricing policy, free movement of goods or competition rules. Others such as transport policy are subject to specific restrictions laid down in the national constitution. Article 149.1(xx), for example, states that national authority will remain over:

“The merchant navy and the registering of ships, lighting of coasts and signals at sea; general purpose ports; general purpose airports; control of the air space, air traffic and transport; meteorological services and registration of aircraft” (Spanish Constitution, Article 149.1(xx))

Apart from the seeming contradiction between the Basque statute and the national constitution, (i.e. this authority is regionalised in Euskadi, despite Article 149.1(xx) stating that it remains a national competence), the limitations placed on the activities of the Basque government in these areas of “exclusive” regional competence once again gives them the effect of framework laws.

Interestingly Article 11 of the Basque statute then goes on to give a list of areas where the Euskadi government must act in addition to implementing any national legislation in the area concerned (i.e. executive autonomy). Some examples are fishing policy and legislation applying to co-operative societies (Basque Statute of Autonomy, Article 10). The executive autonomy can be quite substantial and in

the area of labour law the *autonomías* has authority over “organising, directing and safeguarding, in conjunction with the state inspectorate, the State services for the implementation of labour legislation”. This could potentially grant a significant degree of autonomy to the Basque government in this field, despite its role as merely the executor of state legislation (Basque Statute of Autonomy, Article 12).

The Catalan statute contains similar clauses to those listed above for the Basques but extra economic powers (to be exercised under a national framework) are contained in article 10. These include mining and energy organisation (something missing from the Basque statute) as well as insurance (Catalan Statute of Autonomy, Article 10). Exclusive authority is also given to the Catalan government to establish markets for commodity and security exchange (Catalan Statute of Autonomy, Article 9.20).

The authority of regions to engage in economic development is relatively wide, although first impressions can be misleading. The term “exclusive” is often applied to areas where the national tier retains a co-ordinating or watchdog role, through the use of framework laws. In contrast, some functions classed as merely administrative are open to wide interpretation by the regional government. Although regional economic policy must operate with the constraints of national monetary and fiscal policy, the regions are able to develop packages for economic aid with the use of European structural funds as well as their own resources. The poorer regions are, nevertheless open to national influence, thorough the use of “grants-in-aid” (see chapter 6.3(1) above).

7(A).9iii Social Powers

In the social sphere the difference between individual regional responsibilities is marked. In health for example, only six of the seventeen *autonomías* run their own health services. These are Andalucía, Catalonia, Galicia, Valencia, Euskadi & Navarre (Solé-Vilanova, 1989, p212). The others may offer extra services above the basic standard of health care provided by the national government (Council of Europe, 1993m, p37). An example of the scale of

autonomy enjoyed by those regions with authority over their health service is given in the Catalan statute:

“It is the responsibility of the *Generalidad* of Catalonia to develop and implement the basic legislation of the State on internal health matters.....

The *Generalidad* of Catalonia may organise and administer for these purposes and within its territory, all the services connected with the matters previously expressed and shall supervise institutions, organisations and foundations as regards health and social security matters, The state shall reserve for itself the inspection facilities that will enable it to fulfil the duties and powers contained in this article.” (Catalan Statute, Article 17)

This is obviously not an exclusive power, but the basic legislation mentioned covers only basic standards of care, etc., not the policy used to achieve it. Social security is another area where regional participation is evident, but only on a very limited scale and again, only in some regions. At present seven regions have acquired administrative authority in this area (Council of Europe, 1993m, p37).

Apart from authority in the fields of health and social security which vary extensively from region to region, some minimal social powers are the responsibility of all regions. These are; spatial planning, environmental protection, social assistance and public health/hygiene (Spanish Constitution, Article 148). Although, not extensive, these powers are nevertheless exclusive, except with regard to national minimum standards.

7(A).9iv Culture

The sphere of culture was a particularly emotive one in many parts of Spain during and immediately after the Franco regime. The Nationalists had suppressed all languages, other than Spanish and some regions naturally wanted powers in the field of education to develop both their distinct languages and their culture. Again this is an area where major differences exist between regions. Seven regions now

exercise control over their education system* Although Article 149.1(xxx) of the Spanish Constitution, gives the state authority to ensure compatibility between qualifications and basic rules regarding such basic rights as free universal education, the Communities which have acquired this competence are in sole charge of curriculum, staff, buildings etc. There is thus no longer a Spanish education system, but a regionalised one, rather like that existing in the UK between Scotland, England and Northern Ireland. In many regions the national role is limited to ensuring compatibility, (something achieved through regional co-operation in Germany). In Spain however, the national government remains education provider in the majority of regions (though not over the majority of population).

In addition to education, which additional regions can ask to be devolved, there exist rights for all regions to promote “culture, research and, where applicable, the teaching of the language of the Autonomous Community” (Spanish Constitution, Article 148.1). This competence is especially relevant to areas such as the Balearic islands which do not have autonomy in the field of education, but still have a distinct language (a dialect of Catalan). Other cultural areas open to all regional governments are sport, regional museums, libraries, art galleries and promotion of tourism. All these competences are exclusive.

7(A).9v Law and Order

The field of law and order is one where most regions have no authority. The exceptions are Euskadi and Catalonia. In these cases each has an “autonomous” police force established under their respective statutes (Basque Statute of Autonomy, Article 17 & Catalan Statute of Autonomy, Article 13). In the latter case there also exists a separate but limited Catalan Civil code and legal structure, which the *Generalidad* has authority to develop (Catalan Statute of Autonomy, Articles 18 - 24).*

* Andaluçia, the Canaries, Catalonia, Galicia, Valencia, Euskadi and Navarre.

* The Catalan Civil code only covers some areas of law, mostly areas of family law. Interestingly, the Spanish code, still applies in Catalonia yet is set aside when it is (cont.) contradicted by the regional law. Equally, it is not territorially restricted, as a Catalan citizen may be covered by it in any other region, or indeed nation-state.

In the Basque case, the creation of a separate police force was a major concession in the attempt to defuse the violent situation left behind by the fascist dictatorship. The distrust felt by the Basques and especially E.T.A. (the Basque terrorist organisation) towards the *Guarda Civile* was intense. To avert further bloodshed a separate Basque police was established. Although originally very restricted in its remit and with limited manpower, it has since developed substantially. It now operates as a fully fledged police force within Euskadi even having authority for anti-terrorist activities. This has proved a poison chalice for the Basque police. The violence has continued, (with increasingly little political context) although E.T.A. now kills Basque policemen as well as Spanish ones.

7(A).9vi Conclusion

The functions undertaken by the Spanish regions are broad and relatively well defined. Co-operation, though important, is not as all pervading as is the case in Germany and Belgium. This leaves the health and education systems regionalised in large sections of the country. The variety of regional functions is the most striking feature of the Spanish system. In the Article 151 regions (and equivalents), regional functional autonomy is substantial, and it is likely to be the region, rather than the national government, that is the most involved in the lives of individuals.

Once again, the existence of an unbalanced system may have interesting parallels in a future UK system. The plethora of individual regional constitutions, outlining different functions for specific regions is confusing for the academic but seems to work relatively smoothly in practice. In Spain it is clear which government is responsible for which activity. Each tier is not slow to advertise its achievements!

7(B) - Regional Functional Autonomy : The European Context

The aim of this chapter is to analyse regional functions with a view to establishing the policy areas in which regions are potentially independent actors within the European Union. The methodology is comparative and can be divided into two parts. First, the general functional frameworks of European regions are examined. This vague phrase is used to describe the classical types of functional authority. For the purpose of this study these are defined as legislative executive and general competences. This preliminary section assesses how regional decisions are implemented (e.g. do they have legislative power), and the role of general competences in their operation. The question of common regional responsibilities across the Union is also addressed.

The second, more detailed analysis attempts to draw on these more general aspects to establish the extent of regional autonomy across Europe, in some identified policy areas. Although the differences between legislative and administrative autonomy can be significant, I contend that policy autonomy cannot be seen entirely in these terms. For this reason I have constructed a methodology that assesses policy independence in a wider context. Rather than focusing on the legal status of decisions undertaken by the region, this tries to assess the extent to which these decisions are taken independently by the regional tier.

Two themes are common throughout this chapter. Firstly, do nation states devolve only those areas which are expensive to administer or where any regional policy is likely to be restricted by financial weakness (the poisoned chalice argument)?

Second, the question of “soft” powers. Are the areas of major regional competence meaningful? When considering this, however, it is important to bear in mind the subjective nature of such importance. The term “soft” is often used to describe cultural powers or peripheral competences of allegedly little value. Although the work of some political economists sees economic development

policies as the only ones that matter, outside academia and politics, “parochial” issues such as local languages or spatial planning remain important and in some cases highly emotive. The perceived irrelevancy of these competences perhaps reflects some writers' prejudice more than the importance of the policy area itself. It is also important to consider their context in the individual region. The responsibilities of some regions in supposedly peripheral policy areas may have a disproportionate impact in the region concerned.*

7(B).1 Functional Frameworks

7(B).1i Legislative Autonomy v. Administrative Autonomy

This distinctly legal description of the powers afforded to governments is often over emphasised. The ability of regions to make statutes does not in itself tell us much about their autonomy. As has already been explored in Chapter six, the Italian regions suffer from a lack of financial independence that leaves them vulnerable to influence and control by the central state. They also have the ability to enact regional laws. The latter power does not negate the former weakness.

Nevertheless, legislative authority is an integral part of the autonomy of any government and this is as true of regional governments as it is for the national level. The difference is that legislative competence at the sub-national level can be less distinct from administrative decisions than is the case at the national level. National legislation is limited only by constitutional restrictions and limits imposed through the European Union. Most importantly, national legislative acts are not open to the wider legal challenges of administrative law. Regional legislation is not necessarily so immune from legal challenge. Firstly, regions are often restricted by moveable limitations, in the form of framework laws. This makes them subject to more than the principles laid down in the constitution. Second, some regions, notably in Italy, can be restricted in their legislative acts by

* Probably the best example of this is in the Portuguese islands where the autonomous regions control the use of thermal and hydro energy. Although this power is normally insignificant, almost all electricity generation on Madeira is achieved by this means. The island's government is therefore responsible for electricity generation, though this is not explicitly mentioned in its constitutional statute (see chapter 7A.7(a)).

the decisions of the national parliament (although in practice, the Italian parliament has never intervened). The net result is that regional legislation, by operating within these tighter constraints is subject to a quasi-administrative judicial straightjacket unheard of at the national level. This is not to ignore the fact that any legislative competences that the regions do exercise (though vulnerable to constraints tighter than those imposed on their national equivalents) are generally less open to limitation than the administrative autonomy they possess.

The following table gives a brief survey of the legislative power of European regions at the present time:

Table 7B-1: Regional Legislative Autonomy

Member State	Legislative Autonomy	Executive Autonomy
Belgium	x	x
Denmark		x
France		x
Germany	x	x
Italy	x	x
Netherlands*		x
Portugal	x	x
Spain	x	x

* Dutch provinces have a very restricted authority to make by-laws

The above table shows a direct correlation between those regions which enjoy constitutional protection (see chapter five) and the ability to introduce legislation. This is not surprising as legislative competences on the continent rely on constitutional provisions for their legitimacy. Without such explicit constitutional legitimacy, the region cannot be a legislative body. Interestingly, proposed regional government in the UK will not be grounded in constitutional theory. If the Constitutional Convention's plans in relation to Scotland are implemented, the Scottish parliament will be unique in Europe by having

legislative competence, without the legitimacy of a written constitution. Will this mean the courts will treat Scottish legislation as delegated legislation (i.e. administrative autonomy)?*

7(B).Iii General Competences

General competence is the power given to a unit of government to exercise authority (which can be either legislative or executive) in any area, unless specifically denied it by a higher authority. The restricting factor can be both a higher unit of government or a legal document. In the UK for instance, local authorities do not enjoy general competence and are thus subject to the doctrine of *ultra vires*. In a legal system where the regional or local tier has a general competence, such a concept is inappropriate. A public authority cannot be ruled to be "beyond its powers" if its powers are not limited. It could nevertheless, be found to be encroaching into areas where the policy of another authority is supreme. In these cases it is something similar to the German concept of, *Bundesrecht bricht Landesrecht* (federal law overrides regional law), that applies, rather than a question of going beyond designated competences. The question that European courts must address in such cases is whether one level of government has strayed into the competence of another. In practice, however, the use of the courts to restrict regional incursions seems to be minimal.

The concept of national sovereignty is the ultimate example of the principle of general competence. National governments can (in theory) make any law within the limits of their constitution. Increasingly, however even the sovereignty of nation-states is becoming limited by international obligations. This has occurred most obviously in the European Union, where member states are potentially limited by a new constitutional structure (the E.U, treaties) as well as a higher level of government (the European Commission). This has similarities to the position of a region working under a general competence.

The limitations to the sovereignty (or general competence) of EU member states is summarised below:

* The flawed example of Stormont in Northern Ireland suggests this will not be the case.

- a) The Treaty of European Union *
- b) European legislation passed under the treaty
- c) The constitution of the member-state

When sub-national governments are considered, further restrictions apply. In the case of regional governments these can be classed under the following headings:

- d) National legislation passed under the member-state's constitution
- e) The constitution of the region (where one exists)

General competence is therefore not a form of authority specific only to sub-national authorities but merely a version of one common to all levels of government. Although the additional restrictions do not apply to all regions, regional general competences are generally much more restrictive than those enjoyed by "sovereign" member states. Nevertheless, in some regions it takes on a disproportionate importance, especially if the defined powers are limited (or non-existent, as in Germany). The existence of a general competence allows regions to expand their powers beyond those specifically assigned to them under their statute or national constitution. This allows regions to adapt their authority to changing situations, not unlike the nation-state.

There are two forms of generally competent regions in the European Union. Those having a constitutionally guaranteed general competence and those with a general competence through ordinary law or convention. A third group of regions enjoy no general competence whatsoever. In this final category, regional authority is limited to those areas specifically assigned to the region (by whatever means). The members of these three categories are shown below:

* Some, including myself would include International Law as an extra level of restriction, but to avoid controversy I have omitted it.

Table 7B-2: Regional General Competences

Constitutional Gen. Competence	Non-Constitutional Gen. Competence	No Gen. Competence
Germany	Denmark	Belgium
Portuguese Is.	Netherlands	Italy
	France	Spain

As will become apparent, these prima-facie groupings are somewhat misleading, with the status of each being limited by other factors.

A constitutionally guaranteed general competence is sometimes referred to as a "subsidiarity clause". This refers specifically to the name given in German to the general competence clause in the Basic Law. This was mentioned above in relation to the incorporation of the subsidiarity concept into the EU treaty (see chapter two). Germany remains the only EU member state where such a principle is clearly incorporated into the constitutional text (articles 30 and 70). This explicitly grants all areas, not otherwise assigned in the Basic Law, to the *Länder*. However, such generosity must be tempered with the amount of powers acquired by the state, *de facto* through the "concurrent" competences outlined in article 74 (see Chapter 7A.4, above). Nevertheless police, culture and education are all conspicuous in their absence. In theory this gives complete autonomy to the *Länder* in these policy areas, unrestricted by framework laws or other caveats as is the common practice in regions relying on specifically devolved powers for their authority.

The other regional units with a constitutionally guaranteed general competence are the Portuguese archipelagos. These are guaranteed the explicit right to address issues, "of specific interest to the regions as are not within the exclusive powers of the organs of supreme authority" (Portuguese Constitution, Article 229.1a). However, this is not as wide as the German example as it only covers areas "of specific interest" to the regions. In addition, within the regional statutes, areas of "specific interest" are actually defined. This could effectively remove the general competence granted under the constitutional article. I have been unable to discover whether the Portuguese constitutional court regards this list as exhaustive.

Within the group of the regions with a non-constitutionally guaranteed general competences there are some marked difference in application. The French regions have, in theory, only a limited general competence. In practice, this is not the case. The "block powers" principle should mean that the region will not be able to move into any policy area (block) not granted to it. The intention was that they would be occupied by another tier of government but this has not always been the case, (as noted in section 7.1(c), above). The ingenuity of the regional tier (and the impossibility of dividing functions into clear policy blocks) has led to their involvement in several policy areas, not intended to be within their remit. Some examples have been quite obviously outwith their authority (such as university funding), but by using their financial clout regions have become involved and achieved influence nonetheless. The bodies on the receiving end of such largesse are obviously unlikely to complain.

The Dutch provinces, on the other hand, have a broad general competence going back to the Nineteenth Century based on a the Dutch concept of subsidiarity. In reality, however this has done them little good. A combination of lack of financial independence and their small geographical size has left them unable to use this concept to enhance their role. In fact many now regard their position in Dutch life as irrelevant.

The Danish *Amt* in contrast have expanded into areas such as specialised social services and the arts using their general competence. What is it that makes the Danish examples so successful that is denied to the Dutch provinces? It could be argued that it is the stricter confines of Dutch legislation that have hampered provincial involvement. Examination of Dutch legislation would not bear this out however, with large areas free of legislation banning provincial involvement. The real reason lies elsewhere.

To discover why some regions are able to expand beyond those competences assigned to them while others are not, it can be helpful to examine those regions not endowed with a general competence. In Chapter 7A.8 I gave examples where *autonomías* have extended their authority, despite not possessing a general competence of the kind described above. The only common link between

these Spanish regions and the Danish *Amt* is their financial independence (see Chapter 6.6). The ability to control a significant portion of their own funds gives regions the ability to use financial means to extend their influence. This is mainly achieved through what Daintith describes as dominium powers (Daintith, 1989). Although he is describing a complex phenomenon, in simple terms this concept describes actions taken by governments acting as private organisations. In most cases this relies on financial independence. Nobody will deal with the region if it does not have money to back up its plans. Therefore, if you will forgive the cliché, money talks.

This seems to answer the difference between the Dutch and Danish examples and indeed give the reason why the *autonomías* and the French regions have successfully expanded their competences. This also explains why the Italian regions have failed to extend their authority significantly using this method. In addition to their lack of financial autonomy, the Italian regions have been curtailed by a vigorously anti-regional constitutional court. This has the practical effect of continuing a policy *tutelle* (see Appendix I.5).

In Belgium there is no subsidiarity clause, as yet, but the situation is slightly different. The courts have interpreted the constitutional definition of regional competences strictly and will not tolerate regional excursions beyond them. However, as regional competences are extremely broad anyway, the restriction is of limited effect. As the Belgian federal state is still in its infancy it is difficult to comment on whether the exercise of dominium authority will aid the regions (or the federation). This situation is due to change dramatically in the year 2000, when in the final constitutional revision, a subsidiarity clause will be added to the Belgian constitution. By this stage the timetable envisages the recognition of definitive federal powers, the remainder (which should be few) going by default to the Regions or Communities (depending on their content).

The existence of a general competence is therefore not a good indication of functional regional autonomy. Although the existence of such a power can allow innovative policy initiatives in a region, most of these cost money. In the final analysis it is not the existence of a general competence alone that limits the

extension of regional authority into new policy fields. Instead, a combination of financial independence, regional ingenuity and national acquiescence or impotence all play their part in the process. National impotence may be limited by political rather than constitutional restriction. For example, if a region wishes to finance a new research station, although it lacks the power to do so, is the national government going to step in and either finance it itself or risk being seen to disadvantage the region in question? To take an actual example, although the Spanish government may publicly castigate the Catalanian *Generalidad's* attempts to get the T.G.V. extended to Barcelona, will it really attempt to ban the Catalan government from spending money on a project which will bring jobs and investment to the Catalonia, and therefore Spain (assuming of course it has the power to do so)?*

The only regional structure where the general competence itself remains of fundamental importance is Germany. This is because all *Länder* authority stems from it. In all other cases the powers specifically assigned to the regions have proved more important than any general authority. These can often be interpreted broadly. For example no region could seriously argue that it had a right to intervene in higher education when its competences cover only potato growing. However, if it has a responsibility for research, that is a different matter. Nevertheless, a general competence, when coupled with financial muscle and ingenuity can be a useful tool in the exercise of regional autonomy (as the French regions have demonstrated). Furthermore, it may force the nation-state to officially recognise regional involvement in these areas. The financial involvement of the French Regions in higher education certainly helped to give them the recognised role they now enjoy.

Nevertheless, although a general competence can be important it is those powers specifically devolved to the regions that form the functional bedrock of regional autonomy in the European Union.

* The Spanish government seems to have accepted this state of affairs. The T.G.V. is now to be extended to Madrid.

7(B).1iii Common Regional Policy Areas

Through whatever combination of competences (specific or general, legislative or executive) there are noticeable similarities in the functional role of regions in Europe. Although all regions do not operate in the same capacity within them, seven major areas of policy have significant regional involvement in most systems.

Table 7B-3: Regional Functional Competences

	Health	Culture	Education	Economic Planning	Spatial Planning	Transport	Police
Belgium	x	x	x	x	x	p	
Denmark	x	x	x		x	p	
France			x	x	x	p	
Germany	x	x	x	x	x	p	x
Italy (ordinary)	x	x		x	x	x	
Italy (special)	x	x	x	x	x	x	x(s)
Neth.					x	p	
Portugal	x	x	x	x	x	x	
Spain	x	x	x(s)	x	x	x	x(s)

x - Regional involvement
 p - Regional Involvement in part of policy area
 x(s) - Regional involvement (some regions only)

Some policy areas are noticeably non-regional. There are, for example, no regional armed forces, monetary or fiscal policies. Regions are almost exclusively restricted to "domestic" issues. They are involved in the alleviation of social problems, care of their population and economic development but all of these areas are likely to be dependent on the policies of the national tier. Regional policies are able to alleviate the excesses of national decisions but are likely to be subject to them.

Some responsibility for health and education falls within the remit of most regional governments. The only exception is in the Netherlands where the

Provinces are excluded. Although the extent of involvement varies markedly (see below), why are these social and cultural functions common to most regions? One argument is that of the “poison chalice” and there can be little doubt that Health and Education policies are highly expensive to run and controversial to administer.

Of those regions that are involved with health, only the Danish *Amter* have prospered (only 5% of Danish G.D.P. is spent on health care). In Italy, the under funding of the health service by the national tier, through their grant to the regions, has passed the financial burden to these authorities. This leaves the regions with the unenviable task of finding the extra finance necessary, while the national level is removed from at least some of the political responsibility. The high cost of health care (both political and financial) is also evident in Spain. Those regions who, as yet, do not possess autonomous health services, do not wish them established. In Germany, where health care is an executive function of the *Länder* the issue is both politically and financially seen as the responsibility of the *Bund*. However, even executive responsibility for health can cause political problems. If rationalisation or reform is deemed necessary, the political costs may be high. Health professions can offer substantial obstacles to reform while the population will inevitably protest against any closures to its hospitals. If the region is seen as the body responsible for closing the facility, the national level may avoid the blame, even if it is its policy that has been the root cause.

Education presents similar policy problems. Few political points are to be won through education policy while in government. Nevertheless, changes in education strategy can be extremely contentious and have the potential to inflict damage on the government concerned. Once again, monetary considerations may force the closure or reform of schools and this is unlikely to be popular. If the regions are the responsible authority, it is likely they will take the flak, rather than the national level, though it may be central policies may have forced the regions to act. In both education and health, therefore, the poison chalice argument may have some validity. Unless the boundaries of responsibility are clearly evident (and it may be in the interests of both tiers to blur them) the chain of accountability is likely to confuse the electorate.

Cultural issues, although important to the population are generally regarded as peripheral to the work of government. This is not the perception in France where notably culture is excluded from regional competence, though the regions have moved into these areas using their general competence. It is noticeable that the only country that regards cultural issues as a primary function of the government attempted to bar the regions from involvement in it. With the exception of France, the low political prestige associated with these responsibilities (apart from Jack Lang, can anyone mention a past or present European minister of culture?) means these areas are easily devolved to the regional level. In some areas this may be politically significant (i.e. in micro-national regions) but in general the transfer of cultural responsibilities to the regional tier is unlikely to cause difficulties for national government. For this reason, the transfer of cultural responsibilities, to regions with sub-national tension, can be a relatively painless way of defusing challenges to the nation-state (e.g. Corsica, Valle d'Aosta, Catalonia, German Community in Belgium, etc.).

The remaining common regional powers (economic planning, spatial planning and transport) need further explanation. These powers can have a significant impact on policies within the nation-state and are not associated with the high cost difficulties linked with education and health. The connection between these powers seems to be their previous handling at this level. Economic planning and spatial planning in particular have long been associated with sub-national units, often at the regional level. The democratisation of regions made these areas ripe for control and accountability within the new structures. Transport is another area where regional deconcentration has long been seen as advantageous. The democratisation of the tier merely allowed an increase in its accountability.

One other point should be made about the final three areas of common regional activity. These areas are traditionally ones in which local governments operate. The regional involvement is likely to have repercussion on the local level, perhaps more than on the national. Although this is not true in all cases, the regional responsibilities in creating transport networks (e.g. in France and Denmark) was one that the national government had not performed previously. The policy only

effected the autonomy of the local authorities to run their public transport services. The centre is unlikely to worry about regional power created at the expense of local authorities.

The above discussion is perhaps too negative in nature. Many functions have been granted to the regions in response to calls for decentralisation and democratic accountability. This is noticeable, for example in those regions who possess regional police forces. However, the willingness of central governments to devolve has been variable. The similarity of regional functions suggests that either these functions are most suited to the regional level (the regionalist argument) or that the national level would rather be rid of them anyway (the state-centrist argument). The truth lies somewhere between these two extremes. Nation-states have in several cases been obliged to devolve areas of authority to the regions. However, in doing so they have ensured the minimal damage to their own perceived areas of sovereignty. The effect is that regions are restricted largely to supply side economic measures, social protection and cultural defence. This can leave them open to national policy decisions in other areas. It has nevertheless ensured a broad plank of policies where European regional governments operate, regardless of their parent nation-state. However, the extent of this involvement varies substantially between the member states themselves.

7(B).2 Policy autonomy

The second part of this chapter moves away from the more formal divisions used above and attempts to address regional competences in the broader context of “policy autonomy”. This phrase is used to cover the ability of regions to make individual policy choices for their territory. I have specifically avoided use of the term legislative autonomy as this excludes the choices open to regions under executive or “dominium” power.

In the modern state, the ability of a government to engage in policy is not restricted by its ability to pass legislation. Thus, although the French regions have officially no legislative power whatsoever, they have a significant policy role in the French state. In practice the lack of an ability to make *loi* or *décret* is irrelevant.

This is not to suggest that legislation is unimportant and the ability to introduce it may add to the region's authority. However, legislative competence is merely one facet of policy autonomy. Without legislative competence, the region's independence will depend on the breadth of "administrative" decisions under its control and its ability to exercise dominium power through financial autonomy.

The most significant distinctions in the exercise of functional autonomy are not between law-making and non-law-making powers. Rather, it is a question of policy independence. In regional terms the distinction is between those regions with such independence and those which lack it. Even this is a simplification, however, as policy autonomy is not a single power. Unlike legislative competence, one cannot say whether a region has "policy autonomy" or not. In recognition of this I have divided the concept of policy independence into four variations. This allows a clearer analysis and although each type could be further subdivided, it does give a basis on which pan-European comparisons can be undertaken.

The four types are summarised below:

- i) Areas in which regions are the only policy making authority
- ii) Areas in which the region can pursue independent policy within its territorial area while inter-regional aspects are handled by a higher level (usually the nation-state)
- iii) Areas in which the region may initiate policy but only within national parameters. Sometimes described as framework laws.
- iv) Finally, areas where the region has no recognised policy power and merely administers national policy.

The most independent actions of regions are those which they undertake exclusively. These areas have no significant national policy involvement and regions are the sole source of government policy. Any national involvement will

consist only of minimal standards of service or a role in co-ordinating regional policies. Understandably, such regional functions are rare. Classic federal theory would describe such a division of powers as dualist. Each tier of government has a distinct area of functions over which it is exclusively responsible. This allows for clear lines of accountability and little need for co-operation and therefore executive deals between levels. In practice this is almost impossible to achieve.

The second group also offers substantial autonomy to the regional authorities, although the limitations are tighter. In areas such as transport, for example, regions commonly operate “regional routes” while the main trunk routes between regions are the responsibility of the national government. The distinction here is that regions will continue to exercise their autonomy freely in the relevant policy area, although only in relation to definable parts of the policy as a whole. Regions are no longer the only policy making level. This is not dissimilar to the layer cake concept of federalism adopted in the United States and to an extent, in the Federal Republic of Germany. By definition this will require greater co-operation between levels but in theory retains a fair amount of clarity. In practice the clarity of responsibilities required is very difficult to achieve.

The third variety of policy autonomy can be described as “framework laws” and has no strict parallel in federal theory. It is, in fact, a variety of the co-operative federal model. This model, which in practice develops from the layer cake/dual models described above requires high levels of co-operation and tends to blur the accountability of each level. It also has a tendency to encourage executive relations between the levels, rather than legislative ones. This can lead to the development of a democratic deficit.

This concept can vary in its application between member states, but the general principles remain the same. Unlike the first two examples of regional autonomy, the region is restricted in its policy choices by specific legislative parameters. Unlike where the region is responsible for the regional portion of a national policy, in this case there is no area where the region is the final source of policy making authority. Instead, the nation-state, through framework laws can

always limit the choices facing the region. The amount of power granted to the region under these laws can vary markedly between member states.

In fact, almost all regional policy is limited by some framework legislation. In many cases this is linked to minimum standards and compatibility. In effect, the national level performs the task of quality control or co-ordination. Although these functions remain important, the minimal restrictions they place on the regional level, mean such restrictions are not recognised as framework laws in this study. The national government role as “auditor” is not one which severely hampers the policy choices of the region concerned.

This is not the case when the framework establishes significant policy limits within which the region must operate. This can restrict regional policy options to purely executive decisions (Germany) or to small alterations in national legislation (Italy). It is such cases, where the region is not fully responsible for the policy, that make this type of autonomy distinct from the region only and regional policy variants described above.

The final type of policy competence is not strictly a policy competence at all. Administrative authority covers the role undertaken by regions as the implementing bodies of the national level. Although specifically denied policy autonomy, the regions may nevertheless use the inevitable discretion they have to exercise a degree of independence. The amount of discretion they enjoy, is very hard to establish, however and this is the hardest area of policy autonomy to assess.

A final group is, of course those areas where regions exercise no policy autonomy whatsoever. For the sake of analytical simplicity. These are outlined and discarded first.

The remainder of this chapter operates within this typology and assesses the functional areas that fall into each. By examining the regional functions that fall into each category the extent of regional policy autonomy in Europe becomes clearer.

7(B).2i Functions with no Regional policy involvement

Regions are conspicuous by their absence in certain policy areas, throughout the EU. For example, regional governments are not involved in issues of defence. There are no exceptions to this. Another two areas where regional policy involvement is practically nil is in immigration policy and social security. In the former case, the Bavarian government does run an independent border police force which is responsible for admission of aliens into the Land (though they operate the national policy). In addition, the Belgian Communities are charged with giving support to refugees but in neither case is immigration policy affected by the regional role. Indeed, in the Belgian case, the Communities may have to foot the bill for national government decisions regarding immigration.

Other major areas which lack regional involvement are in the macro-economic sphere. A whole swathe of Monetary and Fiscal policy areas come under this heading. Currency, Interest rates, Money Supply, etc. are all managed at the national level (and perhaps soon the EU). A minimalist regional involvement can be detected in Germany, where the individual *Länder* through their *Land* banks appoint members of the Bundesbank's board. *Länder* representatives also sit on the bank's Council. The Portuguese regions also possess a right of involvement in policy formulation, to the extent the issue affects them. With these small exceptions, however, the regions are totally excluded from Monetary or Fiscal policy decisions. This must, by definition, restrict their economic policy choices. In effect they are only able to use supply side measures (economic investment, infra-structural development) to make small adjustments to economic policy instituted at the national level. In some cases, regions may be left to undertake the social costs inherent in the economics-led policies of national administrations.

It should be remembered that, as the EU undertakes an increasing role in many of the monetary policies listed above, national governments themselves become concerned less with the overall policy and more with ameliorating/maximising its effects. The arrival of the single currency, for example, along with the excessive deficit procedure could dramatically curtail the member-states' choice of economic strategy. Only in social security does the nation-state

look secure as the only policy making body. Even here, the Social Chapter and the legislation emanating from it, may eventually limit member-state actions. At present, regional economic activities are firmly restricted to supply side measures and responses to social crises but the EU member states could soon find themselves in a similar position.

7(B).2ii Region-Only policy

The national studies quoted above indicate that exclusive policy making by the regional tier has, until recently, been confined to the German federation (notably in the area of law and order). Even in this case, the *Bund* has encroached to some degree, through regional acquiescence. Increasingly, however, regions in Belgium, Spain, Italy and Portugal, are exercising policy in areas where the nation-state remains noticeably silent.

In general, areas of region-only initiative have evolved in the social and cultural spheres. Specifically, education policy in Belgium, Germany, seven *autonomías* and the Portuguese islands is now addressed at the regional level. By its very nature, this power is both legislative and administrative, using the classical terms. In the examples listed, education policy is no longer nationwide in its application.

In countries where education is an emotive national issue, a unified national system continues to operate. This is the case in France and to a lesser extent in Italy. As already noted Sicily has exclusive authority in education at certain levels. In areas where a regional language has become a politically sensitive issue exclusive policy regarding its teaching and use has often been transferred to the regions. This is true in the Special Regions of Italy, some Spanish *autonomías*, the Belgian Communities and Corsica. The notable exceptions are the metropolitan French regions of Occitania, Brittany and other areas with distinct regional languages. Although the non-national languages are taught, it is not the region which has authority for them. It is important to note that the lack of legislative autonomy in Corsica has not inhibited its role in issues concerning the Corsican language.

Spatial planning is another area where regions are the highest authority. This is the case throughout Europe with the exception of the Dutch provinces. In all seven other regionalised nation-states, planning authority lies with the region (although some limits can be imposed on the Brussels region). Limits to regional authority in this area are minimal and the construction of regional plans are not open to discretionary veto by the national government.

With the exceptions of education and spatial planning it is not easy to recognise any general trends in regional-only policy. Health policy falls into this category for the Portuguese islands and six *autonomías*. However, as the higher autonomy Spanish regions do not cover the entire Spanish state, by definition they are not the only policy makers in this area. In regions where regional health services do not exist (the majority), national policy remains. In Belgium it is often stated that health policy is now entirely regionally decided, but this is not quite the case. As noted above, the building and maintenance of hospitals is still influenced by a heavy national presence. In other regions where health falls within their competences, the national authorities retain a significant policy role.

The economic sphere is another area where few regions are the sole policy making authority. The reasons for this are obvious. With most economic decisions having repercussions at a higher level, it is generally asserted that limits need to be set on regional actions. Furthermore, national governments argue that they should have the ability to intervene to protect the national interest. For this reason, the only sectors of economic activity which are regulated exclusively by the regions are very specific and in many cases relatively insignificant. Any importance they have lies in the local/regional context alone. Some common examples are hunting and forestry policy, internal fishing, small ports, etc. The Belgian regions do have exclusive authority for agriculture and this may be extended to their Italian counterparts. The development of the latter will depend on the national governments response to the lack of a ministry for agriculture.

There is no doubt therefore that region-only competences lie predominately if not exclusively in the "soft" category (with the notable exception of the German & some Spanish regional police). Many would be regarded as insignificant by

political analysts. However, at least some of these powers may not be regarded as such by the electorate. Education, especially is an area of vital importance to the future of any territory. Equally, as any historian will testify, people have a nasty habit of going to war over their languages and cultures. If regional authority allows the population to identify more with the policy makers in these "unimportant" fields, the risk of conflict is certainly lessened.*

Environmental issues are another "soft" area where the region exercises a degree of exclusive powers. Primarily through spatial planning but also in control over hunting, forestry, fishing, etc.. Once again the European electorate increasingly regards these issues as important. The fact they are dealt with at the regional tier gives the potential for a policy closer to the desires of the region in question. The real problem for regions in the areas where they have required exclusive authority is the financial burdens they are likely to inflict. The ability of regions to exercise meaningful autonomy in these areas is likely to be influenced by the degree of financial autonomy/stability they can rely on (see Chapter 6).

It is true that many region-only powers are "soft" and/or place a severe spending burden on the regions. However, this is not to say they are irrelevant or must necessarily cripple the regional tier. Many "soft" powers are major issues at the regional level, perhaps because they are dealt with closer to the electorate while the financial burdens placed upon the regions can be alleviated. For this reason, the powers summarised below are largely dealt with entirely at the regional level in the countries concerned.

* Witness the Belgian example's success in defusing what was becoming an extremely volatile situation in the 1960s and 70s, between the Flemish and Walloons.

Table 7B-4: Region only functions

	Belgium	Germany	Portugal	Spain
Education	yes	yes	yes	no
Economic Intervention	yes	no	no	no
Health	within limited areas of policy	no	yes	no
Police	no	yes	no	no
Spatial Planning	yes	yes	yes	yes
Transport	no	no	yes	no

7(B).2iii Regional Policy within territory

This model of legislative autonomy encompasses those functional competences where the region is authorised to exercise authority over the "regional" issues of a specific policy while the national tier addresses the "national" dimension. This distinction is necessarily arbitrary and there is likely to be a degree of conflict between national/regional authorities in competences organised under by this method.

Perhaps the most common example of this functional variant is transport. With the exception of the Netherlands and Italy, all regional authorities enjoy a degree of independence as regards transport policy, within their region. However, the regional competence is restricted to "regional" routes. In the case of Denmark and Germany this excludes rail transport. In France, it excludes roads, while in Spain the competence covers transport in general.

The common thread (with the exception of Spain) is the fragmentary nature of these competences. Policy over individual areas of transport are held by separate tiers of authority. This severely limits the policy options open to the regions. Decisions cannot be taken beyond a single area of transport policy without entering into co-operation with another tier. This by definition ceases to be the region acting autonomously, but rather in collaboration. In France, for example the transport choices open to the regions concern railways (and to a limited extent, buses) alone. Thus the options open to the regional tier are to; a) spend money on railways or b) not spend money on railways. They cannot develop a regional transport policy by

transferring money from one sector to another, (i.e. from railways to roads or vice-versa). Any such plans must be approved by another tier, invariably the central state.

A second effect of this fragmentation of transport policy in particular, is not unconnected with the above. If a region (or indeed any local authority) is given authority for a particular mode of transport, they will invariably promote it. For instance, the French regions are hardly likely to say, "lets spend more money on roads by taking money from the rail network", when the repercussions would be less money for them to spend on rail and more for the state to spend on roads. Thus, if a region wished to improve infrastructure or commuter services and only had authority over road transport, the net result will be a road building programme. An example of where this has been avoided is Denmark. The *Amter* although responsible for the majority of road building have halted their programme in favour of cycle paths, but Denmark is I believe a special case. The fragmentation of transport or any other policy entails the inherent danger of creating a dynamic in favour of one policy option over another, simply because one option is within regional (or local) competence, while another is beyond it.*

Further responsibilities enjoyed by the regions within their territories include economic planning and intervention. Regions are empowered to encourage economic development at a "regional" level, sharing competence with the "national" government for "national" concerns. Such a distinction exists in France, Germany, Spain, Denmark and the Portuguese archipelagos. In practice, however the distinction are obviously very blurred. When does a regional project become national? Many regional initiatives may also have spill-over benefits for their neighbours, or the country as a whole (the T.G.V. link to Barcelona being one example). The distinction is therefore a rather false one. It might be more correct to

* Evidence of this is widespread in the UK. Strathclyde council's insistence on building a new motorway through Glasgow has been largely influenced by the fact that if it was not built the money supplied from the national government would not be released for another purpose. Equally Sheffield council's tram system would almost certainly never have happened if local control over bus services was a policy option available to them.

state that regions and national authorities engage in economic development in tandem and often in partnership, to the extent that they have the funds to do so.

The enduring question in these areas of national and regional shared competences, is whether in reality the regions are exercising any individual autonomy in the process. Although in practice national and regional governments are forced to act in partnership, it is far from an equal one. In France especially, the resources open to the national government far outweigh anything the region can provide. The region may therefore be faced with the choice of funding economic projects which the national government approves of or funding another project and losing national aid. This is the essence of “grants-in-aid”. Through the power of financial patronage, the national tier is able to encourage regional expenditure on approved projects by offering funding, if the region will also contribute. In France this is legitimised through the *Contrats du Plan*, negotiated every five years. In this, both sides pledge financial resources to certain projects, but it has been alleged that the region can be little more than an interest group during the negotiations. The amount of resources central government can offer so outweigh the regional ones, that the region cannot help but assent to those projects favoured by the national tier.

This assumption assumes a knowledge and subtlety that is unlikely to exist at the national level. Dounce has argued that in the course of these negotiations, it is the regions and not the national government that take the initiative (Douce, 1994). By having more detailed knowledge of the needs of the region, the region is able to present the national government (in practice, the state is meant to be represented by the Prefect, which further decentralises the process) with something approaching a *fait accompli*. The result is a process, which although potentially dangerous for regional autonomy, actually allows significant regional choices to be successfully inputted into the national structure. Whether the change of government in Paris will effect this relationship remains to be seen. The attempts to reduce French regional involvement in the partnership requirements for EU structural funds, suggests the present settlement will not endure (Conzelmann, 1995, p155).

The potential for national control in areas of shared competence varies from system to system. In Germany, for example, the threat is almost nil. National

funding for specific projects is barred by the national constitution. Italy is at the opposite extreme. Here, the areas of shared competence are financed through highly restrictive finance granted for specific projects. The Italian regions therefore suffer severe limitations on their independence in these areas.

Shared competence between the national and regional levels is also the dominant type of functional autonomy in the cultural sphere. Regions often have control over regional museums and cultural events while “nationally important” events and collections are handled by the central state. Nevertheless, despite this rather patronising approach to culture, co-operation and joint funding remain the order of the day in most cases. In environmental issues this is also the standard method of dividing competence. For instance, regions in *all but the Netherlands* can create nature reserves within their boundaries, while the national level can still create reserves in areas of national importance. This is equally true of environmental protection but in this case, the regions seem to have taken a more active role than their national counterparts. Environmental issues have been emotive ones in regionalist movements and continue to provide much of the substance of regional autonomy. The reasons for this are unclear, but evidence of regional policy initiatives in this area abound. Most notable are the *Länder* agreements on protection of rivers and lakes (most famously on Lake Constance) (Harris, 1983, p566), Belgian regional environment taxes, some Spanish regions’ taxes on environmentally sensitive acts and the Italian regional initiatives in the Adriatic. These are only a handful of a large number of regional initiatives to protect the environment. Although the high profile regional involvement in the environment has not been explained, I would hypothesise that the reason lies with the dynamics of limiting competence examined above. In essence, they protect the environment because they can.

One final area of this type of functional autonomy is seen in the regional police forces of Catalonia and Euskadi. Although operating independently they were, until recently concerned only with regional matters. However, some national security matters are now handled by the regional police forces, notably terrorism.

The transfer of this function to the Basque force cannot be seen as an enviable competence to enjoy.

There is a difficulty, well documented in the study of federalism, that encompasses all the areas where authority is divided between "regional" and "national" spheres. Both theoretically and in practice it is difficult, if not impossible, to divide between such spheres without controversy. For example when does a road become a national road. When is a development of "national importance". The net result is a descent into co-operative arrangements, not in themselves un-desirable, but certainly limiting the ability of the regions to operate autonomously and often giving increased competences to the executives of both levels. This does nothing for the concept of democratic accountability, something the region as a concept is claimed to enhance. If there is a need for certain policy areas to be divided along regional and national lines (and it seems there is) then it is imperative they be defined carefully and that co-operation procedures are formalised and open. This could limit the reduction in accountability and openness associated with this division of competences, to an absolute minimum. Scharpf has observed this phenomenon quite clearly in Germany (Scharpf, 1988).

Table 7 B-5: Regional functions, within the regional territory only

	Belgium	Denmark	France	Germany	Italy	Portugal	Spain
Economic Intervention	-	yes	yes	yes	no	yes	yes
Education	-	no	no	-	yes (regional languages)	-	yes (regional languages)
Health	-	no	no	no	no	-	yes
Police	no	no	no	-	Valle d'Aosta	no	Catalonia Euskadi Andaluçia
Spatial Planning	-	yes	yes	-	-	-	-
Transport	yes (roads)	yes (roads)	yes (rail)	no	no	-	yes

7(B).2iv National Policy Frameworks

In the strictest sense this is the most common type of functional distribution between the regional and national level. Unlike those described above, in this case, the regions do not exercise exclusive autonomy in any specific area of policy.

Instead all regional actions are restricted by legislative frameworks constructed at the national level. These may be minimal and restricted by constitutional texts to standards of service or compatibility (e.g. educational certificates). In practice, these restrictions mean the policy is effectively left to the regional level. For this reason, these minimal restrictions are dealt with in the section on “region only” autonomy. In contrast some frameworks can deny regional policy autonomy almost completely, despite the theoretical independence they may enjoy. The judiciary’s interpretation of this area can play a large role in how tight these restrictions are. In Italy, for example, where the court has until recently exhibited a pro-centre bias, the Italian regions have been placed in tight frameworks since their inception.

In areas of economic management, the national governments of all eight regional systems retain the right to set framework laws, within which the region may develop policy. The extent of autonomy varies substantially, but regional policies are, without exception, significantly restricted. Even in Belgium, where economic development and financial intervention is entirely left to the regional level, the state still retains control over national monetary and fiscal policy. In practice, this represents a restrictive framework in which the Regions can only modify the effects of federal (or European) policy through supply side measures. Restrictions on state aids imposed by the EU mean the practical options for the regions may be quite limited. The failure of the Walloon region's attempts to follow a different course to that of the federal government gives weight to this argument (see chapter 7A.1(a)). Further limits are placed on the region by the constitutional requirement of the internal market. In practice all regions must work within these restraints.

Aside from these restrictions common to all regional governments, several operate their economic policies within much tighter limits. The main losers in this seem to be the German *Länder* and the Italian *Regioni*. Framework laws are used by the *Bund* most notably in areas of joint tasks. Importantly, the passing of such legislation will require either the collective approval of the regional tier (through joint tasks institutions) or of the *Bundesrat*. This does ensure, at the very least, that regional positions have an opportunity to be heard, though individual regions may

be voted down in the final decision. The areas where such framework laws apply, remain limited. In the economic sphere, the *Bund* has the right to implement such legislation with regard to regional planning, the press and film industries. Even then, the limitations must be for the specific purposes laid down in Article 72 for concurrent legislation, i.e. the need for national regulation or the improvement of living standards. To this can be added the “joint tasks” of improving regional economic and agricultural structures. The operation of these additional areas for framework legislation have certainly limited *Länder* policy choices (Zimmermann, 1989 & Scharpf, 1988), but the retention of regional involvement in the structures of decision making means the results have not been as catastrophic for regional autonomy than could have been the case.

This cannot be said of Italy, where the bulk of regional policy, economic or otherwise, is limited by strict frameworks. Indeed, the constitutional courts’ interpretation of article 117, meant that the regions did not have the right to exercise any of the policy autonomy outlined in the constitution, before the national government defined the relevant framework. As mentioned above, some special region powers have never been devolved (Zariski, 1987, p103). The requirement that such frameworks be followed if funding is awarded means that regional autonomy can and is severely restricted by the policies of the national government in Rome.

Health and environment are two areas in the social sphere where the national level commonly sets minimum standards which the region may extend or decide how to implement. In general these are vague, leaving a degree of policy leeway to the regions which is often quite wide. This is the case in Belgium, Denmark, Germany (for environment) and Spain (some regions only for health) and Portugal. In many ways this method is not dissimilar to the application of European Union directives to member states. As with EU directives, the national legislation can be implemented to suit the political desires of the region in question, while retaining the prerequisite of minimum standards, etc. Such minimum standards for health exist in Belgium, Denmark, Spain (at least as regards the Article 151 regions) and Portugal. These are perhaps the most ambiguous, being concerned with general

standards of care, rather than specific policy. In Spain the national legislation is constitutionally barred from restricting regions in the field of health policy, except in reference to standards. Once again the situation in Italy is entirely different. The tight "frameworks" imposed around the region in health are such that Italian regions merely act as the agents for national policy. A policy which they are not given the financial resources to deliver. In environmental legislation, in common with all regions that exercise authority in this area, the limitations are minimal. Nevertheless, the requirement for regions not to implement legislation/policy which adversely affects other regions can have a practical effect on environmental provisions. The Walloon water tax, for example, was ruled unconstitutional due to its disproportionate effect on Flanders (which imports a large amount of Walloon water). Such restrictions on policy are certainly tighter than anything a nation state would encounter in relation to the EU.

Frameworks are also common in a variety of other spheres, especially where co-operation between regions is seen as essential. In Spain, for example, the national tier is charged with ensuring compatibility between regional education systems (where these exist), though such limitations are not substantial. They could also be handled regionally as in Germany where such measures are agreed between the *Länder* themselves.

The variation between different frameworks in different regional systems makes it difficult to assess their impact and as such it is difficult to come to any overall conclusion. The frameworks imposed on the regions are generally lax, although the potential to tighten them remains, where the constitutional protection is weak or non-existent (i.e. France, Italy and Denmark). That the restrictions remain weak in two of these cases seems to suggest either benefits are available for the national level from such a free hand; the region can be controlled by other means (e.g. financial) or the culture of government in the country regards such leeway as a good in itself. The legal requirement in all regionalised states, regardless of the constitutional situation, that framework legislation must be passed in law may aid this protection. The lack of discretionary power allows scrutiny where such restrictions are imposed. As already mentioned it may not politically

advisable or indeed practical to restrict regional autonomy more than is strictly necessary. The exception to all this is Italy, however, where the frameworks are universally regarded as being very tight. Whether this is connected with the ability of the national government to pass them as executive decrees is unclear, but such a power is unlikely to aid the regions' cause. Either way, the strict functional framework, coupled with the lack of financial autonomy discussed above, has had a significant effect on the ability of the regions to function. This is despite the supposed protection granted them under article 173 of the Italian constitution.

From the above discussion it is plausible to suggest that the nature of framework laws depends not on the constitutional status of the region but rather on the existence of a "culture of decentralisation" such as has been evident in Denmark and recently even in the Netherlands (Toonen, 1993). In Denmark the authorities could, by using their framework laws, restrict regional autonomy to a bare minimum. That they do not, reflects the acceptance of the regional autonomy as an asset not an enemy (this is most notably not the case in Italy). Nevertheless, the constitutional limitation on framework legislation in Germany and Belgium, does give them an edge in their dealings with the nation-state. If they do not wish to pursue a national policy, the nation-state will have to use more subtle methods than legislation to influence the regional decision.

Table 7 B-6: Regional responsibilities under national framework laws

	Belgium	Denmark	France	Germany	Italy	Neth.	Spain
Economic Intervention	min	yes	yes	agreed	yes	x	yes
Education	min	yes	no	agreed	x	x	min
Health	min	yes	no	no	yes	x	min
Spatial Planning	no	no	no	no	no	no	no
Transport	no	yes	no	yes	yes	yes (river)	no

7(B).2v Administrative Autonomy

This final area of autonomy is at first sight something of a contradiction. If the region only has authority over administrative functions, and not policy ones as described above, how can it exercise any autonomy? Administration as described

here, is not the broad classification of executive autonomy. As mentioned in the previous sections, the lack of legislative authority does not necessarily mean regions do not exercise policy. However, where they only exercise an authority on behalf of another level and completely at its command, the task becomes truly administrative. For instance, the French regions' ability to fund regional rail services may be an executive power, but it is nevertheless a policy one. The Danish *Kommuner's* role in paying benefits, set by the national level (e.g. pensions) offers no such policy options. Nevertheless, some policy variations can be enacted in areas where only administrative autonomy is presumed to exist. In effect, I would argue that some areas of supposed administrative autonomy are wrongly classified.

Germany is the most obvious example and the easiest to describe. Regional autonomy is almost exclusively in executive areas. The lack of national field services means everything from unemployment to roads are administered regionally. Regional autonomy is nevertheless extensive. As the *Bund* is restricted to orders passed to the *Länder* president, the scope for policy variance is wide. Only when the *Land* fails to obey the commands may the *Bund* intervene and even then, only with the consent of the *Bundesrat*. In practice, this does not occur.

With the exception of Germany, the position is less than clear. All regions, with the exception of Belgium, have some role in delivering national services. In Portugal, the costs of these are treated separately from the rest of the regional budget. This is also the case in the Netherlands and Italy, although the extent of nationally mandated services may exceed the resources allocated. In Italy, as already mentioned in relation to health, this is a severe financial handicap. In others such as Denmark and France the costs are taken from the general regional budget. This could lead to financial control by the "back door" by limiting the freedom of expenditure afforded to the regions.

In the Netherlands, where the majority of regional functions (if measured in proportion of expenditure) are undertaken on behalf of national departments, the extent to which the region (province) has an impact is unclear. The potential exists for tight national control but this would seem to defeat the object of deconcentrating the services.

This whole area needs further research and as yet I am unable to draw clear conclusions as to the extent of regional influence in the areas where they administer national services. It is clear, however, that the current distinctions are unsuitable. The extent of “administrative autonomy” given to the German *Länder* has the potential for significant variation between regions. This does not seem to be the case in Italy but may be so in the Netherlands & France. The regional role in the later varies from policy to policy, but in education for one, the executive power to organise infrastructure is highly significant. Although further work must be done to recognise the extent that regional administration gives a regional slant to the implementation of national policy, that it offers significant scope to do so in some regional systems and in certain policy areas, is beyond dispute.

Table 7 B-7: Regional administrative responsibilities

	Belgium	Denmark	France	Germany	Italy	Neth	Port	Spain
Economic Intervention	no	no	no	possible	yes	x	yes	yes
Education	no	yes	yes	no	no	x	no	no
Health	no	yes	x	yes	yes	x	no	no
Police	yes (local)	x	x	no	yes (local)	x	x	no
Transport	no	yes (roads)	no	yes (roads)	no	no	no	no

7(B).2vi Regional Functional Autonomy in the EU

Table 7 B-8: Regional functional autonomy in the EU

	Region Only	Regional Policy	Framework Laws	Regional Administration
Economic Intervention	1	5	2	0
Environment	1	1	5	0
Education	4			2
Health	3		3	2
Police (law & order)	1	2	0	2
Spatial Planning	6	1	0	0
Transport	0	4	3	1

The above summary table gives an idea of the regional input into the seven key policy areas studied. Although slightly misleading (in some countries, only a

few regions hold the powers mentioned) it is evidence of the potential for regional policy diversity within the European Union. It is also, I believe a strong argument for greater regional participation at the European level and greater openness in regional activities within the nation-state.

There can be little doubt that regional functional autonomy is focused in the cultural and social spheres. To this degree, the accusation that regions are involved primarily in "soft functions" is correct. The lack of regional involvement in law and order further supports this argument, but regions are also noticeable in the areas of economic development, where they are free to operate policies within the national framework. In most cases this is relatively lax. Where they have expenditure autonomy this can be a powerful role. This is perhaps the most important point rather than any discussion of "soft" powers. Put simply, regional functions, with the exception of planning (and perhaps environment), rely on significant expenditure freedom to give any real autonomy. Although the region may be free to pursue policy, its ability to do so will continue to be limited by financial considerations. For this reason, the autonomy of financial resources remains, in my opinion, the true marker of regional autonomy.

Overall, the comparative table gives evidence of an emerging division of authority between national and regional levels. The areas in which regions can exert most autonomy (Region only & Regional territory policies) are health, education and spatial planning. There is equally a division between regions that cuts across national borders. None of the French, Dutch, Italian ordinary or Spanish 147 regions exert authority in any area to the exclusion of the state. On the other hand the remaining regions are the only policy making level in health (with the exception of Germany) and Education (with the exception of the Italian special regions). Is this evidence of a "fast track" group of regions in the EU?

It is clear from the above that within several policy areas it is no longer correct to describe policies in national terms, alone. This has important repercussions for the understanding of policies within these member states, but more practically has a major bearing on the development of the Union itself. If regions are undertaking major policy initiatives in areas which the EU has

legislative authority, there are issues of democratic accountability to consider. The "open flank" of the *Länder* and the Italian regions' difficulties in this area (see chapter 5) expose how national governments may use the EU to intervene in areas over which they have no mandate. If the regional governments are elected to pursue a policy, is it right that the EU may alter it, without involving the relevant tier? It is undemocratic for national representatives to be discussing policies which in their own countries are largely undertaken by another tier of government. In administrative terms, this is a recipe for disaster, as the officials and politicians with most experience in these areas will be excluded from the discussions. In democratic terms, it denies the "affirmative" portion of democratic accountability (Harden, 1996).

The existence of regional policies in major swathes of government operation needs a parallel alteration in academic attitudes. It is may no longer enough to engage in national comparative studies in Europe. In many areas, these will be meaningless. If one wishes to study education in Europe, one must go beneath the nation-state myths and address the differences between regions (even non-democratic ones, such as Scotland). Equally, in health there are not fifteen health services in the EU but nearer twenty five. Even within those which remain nominally unitary (e.g. Denmark), the regions exercise innovations which can vary from area to area.

Nevertheless, the existence of these "extra" territorial authorities and their accompanying functions is viewed as a worrying development in some circles. If the goal is European integration, more levels of government and differences between regions must present further obstacles to integration. This is much too simple a view. In fact regional involvement in health and education (and indeed most areas) is couched in terms of co-operation. Although Catalonia, Euskadi and Andalucía operate their own health services, the co-operation between them and the national service is extensive. The Catalan government obviously wants its citizens to receive treatment when outside the state. Is it much greater a step, to extend this co-operation across the "hard-borders" of the nation-state?

As the regions have developed, they have constantly looked beyond their own borders (see chapter 5, above). The eagerness by which they enter into "international" links may be due to the lack of ideological baggage they carry. Can this not be utilised to create smaller and (in theory), more democratically accountable and efficient services operating within a co-operating framework that extends Europe-wide? Few people would wish for a centralised European state and the regional tradition of co-operation could offer an avenue for both closer co-operation and retention of "affirmative" democracy where the citizen most identifies with it. The difficulty is that to make this transition nation-states must reduce their own influence in the EU's decision making processes. Unless the member state turkeys start voting for Christmas, the situation is unlikely to improve.