

# **REGIONAL AUTONOMY IN THE EUROPEAN UNION**

**by**

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## **PART THREE**

### **8 - Regional Autonomy in the European Union**

The previous three chapters explored individual aspects of the ephemeral concept, “regional autonomy”. Individually, the structures of government, their financial situation and functional independence are important in their own right. This is as true of regions as it is of any other form of governmental system. Nevertheless, by themselves such analyses do not address the focus of this thesis, namely the power of regions within the EU. To discover how freely regional authorities are able to instigate policy these three aspects must therefore be synthesised. Only then can the policy power of regional governments be assessed.

The following chapter begins with such an analysis, categorising the regions of Europe according to their autonomy. This ordinal “league table”, though by nature subjective, acts as a basis for the latter sections of the chapter. In these, the effect of regions and regionalisation is examined. This begins with discussion of whether regions act primarily as independent policy units or in fact gain the power they possess through collective action. The consequences of a development of the latter trend are examined in the next section, in relation to the increasing power of regional executives, at the expense of the legislative arm.

Three final sections close this chapter. These examine the effect of regional government on local government, on approaches to government in general and on the European Union in particular. The latter two return us to the starting point of this thesis, namely the failure of the “hard-bordered” nation state as a form of governance. The question put, is whether the region offers us anything different and if it does in theory, can it deliver in practice? Put simply, is the “Europe of Regions”

as practical possibility and if it is, does it promise a change in the system of government or merely the vagaries of nation-statism on a smaller scale?

## **8.1 Ordinal Comparison**

Chapter five classified the regional systems of the European along traditional “constitutional” lines. By using these definitions, three clear models emerged. The most constitutionally independent of these were the federations (Germany and Belgium), followed by the constitutionally guaranteed regions of Italy, the Netherlands, Spain and Portugal. A final group of regions lacking constitutional status altogether (Denmark and France), operate under the weakest regional structure. This section uses these classifications as the basis for an ordinal comparison of regional autonomy. Starting from these legal structures, how extensive is regional independence when the variables of financial and functional autonomy are added to the equation. Do the “legal” structures reflect a hierarchy of “real” regional independence?

The federal status of both German and Belgian regions has acted as a secure shell within which substantial financial and functional autonomy has flourished. These regions remain the most influential within the European Union. Influence is not necessarily autonomy, however and much of the authority they possess is collective. In Germany, in particular, regions only have significant influence over certain policies when they act together. For this reason among others, (including the continuance of a national culture of unity) there is a tendency for regions in both countries to act collectively. This will, by definition, reduce the operation of regional policy independence, an effect that is more fully examine below. Despite this tendency to use their “freedom to conform”, regions in both Belgium and Germany have seen the constitutional protection afforded to them translated into a significant degree of potential and actual autonomy.

The Belgian Regions and Communities exhibit a higher degree of autonomy than their German cousins. They are well above all the other regions of Europe in terms of status within their national system. Unique within the European Union, Belgian regions have equal standing with the federal level both in theoretical and practical terms. This is due to the lack of a hierarchy of laws in Belgium at least between the regions and the federal level. Under no circumstances does the federation have the authority to overrule a regional decision, unless the region has acted *ultra vires*. Even then, this limitation also applies to the federal authorities. This legal equality between the two levels removes one of the prime opportunities for creeping centralisation evident even in such strongly decentralised systems as Germany (see chapter 7A.1 and Appendix I.4).

In combination with this constitutional protection, the Belgian regions also enjoy a vital stability of finance. With resources allocated according to established formula, there is no opportunity for the federal level to acquire indirect influence through control of the purse strings. A tax-raising power, though little used, also allows regions to increase their financial resources, without reference to the federation. This independence of finance seems unlikely to be used unless the need for finance is overriding. Nevertheless, the use of this power to establish environmental taxes and fund environmental protection displays regional autonomy in action, although it is notable that these taxes have been imposed as policy tools, rather than as methods of raising finance. In practice, this power remains weak and income taxes will not vary in the near future. Belgian regions thus have a stability of finance that is not, as yet, translated into financial autonomy.

The inability of the federal level to control Belgian regions through finance or claims of federal comity allows the functional autonomy of the regions to be taken at face value. Once again, the Belgian regions enjoy wide powers. As chapter seven demonstrated, Belgian Regions and Communities control policy across a wide range of spheres, covering so called "soft powers" such as education and health as well as powers perceived to be more meaningful, notably economic development and agriculture. With the exception of health these are all handled

exclusively by the Region or Community. The Belgian principle of dividing power into Regional/Community and Federal blocks of competences appears to have been remarkably successful. The lack of a hierarchy of laws certainly adds to this, forcing the two categories of government to negotiate when their competences clash. Nevertheless, even the highly autonomous Belgian regional structures must act within the macro-economic framework decided (or negotiated) by the nation-state. As yet, monetary and fiscal policy remains a national competence. The crisis for the Belgian nation-state may arise when the single currency elevates these decisions to the European arena (some of these functions are already handled supra-nationally in Benelux as it is). Until then, even the highly independent Belgian regions, are limited at least in economic terms, by the macro-economic decisions of the state.

The involvement of the Belgian regions in international relations is a major advance for regional authorities in the EU. Until recently, the right to enter into official treaties has been the exclusive preserve of nation-states, with few meaningful exceptions. Even in Germany and Switzerland, where regional international relations are permitted, such agreements must have the backing of the national government. The ability of the Belgian regions to enter into such negotiations independently is makes their status *sui generis* at present. The further involvement of the Communities and regions in the Council of Ministers, whatever the effectiveness of it, adds to this. Overall it is abundantly clear that, despite some limitations, the Belgian regions are the most autonomous in Europe.

The above conclusion would come as a surprise to most lay observers who would probably identify the older German federation as the most regionally independent in the European Union. In fact the fifty years since its inception has seen the federation move significantly, (but not decisively) towards a more centralist approach. The German regions have not become irrelevant, however. On the contrary, as Jeffrey has put it, they have in recent years “fought back” to regain a significant degree of the ground lost to the *Bund* in the post-war years (Jeffrey, 1994). The assessment of Bulmer that, “in terms of both the transfer of constitutional responsibilities and of the shift in financial power, West German



federalism has been characterised by a process of centralisation” is, I believe, overly pessimistic (Bulmer, 1990, p6).

The *Länder*, through their constitutional protection have retained much of the autonomy granted to them in 1948. Most notable in their constitutional armoury has been the *Bundesrat* veto which they exercise over much of national policy. This has been aided by the inability of the *Bund* to influence regional policy through financial means. The stability of their financial resources leaves them relatively free from *Bund* interference. Funding is largely obtained from shared taxation which although restricting the economic options open to the *Länder* does give them a secure financial base from which to operate. In addition, the grants they do receive are largely non-specific and tied to formula. This limits the ability of the national level to use them as a method of regulation and policy encouragement. Although, there are opportunities for “grants in aid”, the amounts involved hardly suggest this has a substantial effect on regional policy decisions (see chapter 6.5(d)).

The *Länder's* use of the *Bundesrat* has probably been the largest single factor in the defence of regional autonomy. Although the framers of the Basic Law did not envisage the second chamber as having a major legislative function, the *Bundesrat's* role in this area has in fact developed substantially. The broad interpretation of what comprises an interest of the *Länder* has given the regions the ability to veto a broad swathe of federal legislation. This need for *Bundesrat* support and therefore regional blessing has given the *Länder* a major influence over the *Bund*, especially in relation to European Union policy. This has forced the *Bund* to listen when the *Länder* have spoken. However, the regional voice is a collective one, not representative of individual regions. The serious drawbacks of this are explored below, but it has nevertheless ensured *Länder* participation in areas which otherwise might have been exclusively managed by the *Bund*. One indicator of this regional participation, is manifested in the new encroachment of the *Länder* into the previously exclusive nation-state bastion of international affairs. Although the official involvement of German regions beyond their national borders is limited to

the EU and is far less than that of Belgium, that the *Länder* participate at all is a tribute to the success of their “fight back”.

Perhaps the weakest link in the autonomy of the German regions is in the functions they are able to undertake. Although the Basic Law gives them a general competence to undertake any power not explicitly granted to the *Bund*, chapter 7.4 exposed the relatively meaningless nature of this assertion. In fact the federation has, through the interpretation of concurrent powers, been give a long list of responsibilities. The regions by contrast retain exclusive competence for only the police, education and local government. Even in these areas, the “joint tasks” have eaten into their competences. This (often voluntary) removal of functional areas from the *Länder* is the most serious threat to regional autonomy in Germany. To compound this, the remaining areas of *Länder* involvement are increasingly undertaken by *Land* executives on behalf of the *Länder* as a whole. The bypassing of regional parliaments has worrying consequences for both accountability and openness.

Despite these limits, German regional autonomy remains extensive in many areas, notably economic development (where EU funds are distributed by the region) and the traditional areas of culture and education. The *Länder* thus remain formidable independent players in the European arena.

The high autonomy exhibited by the federal regions is not unexpected. In these cases, the constitutional status guaranteeing their independence is a true reflection of their power within (and outwith) their national borders. It is important to note at this point that although the federal regions possess a high degree of power and independence this is not synonymous with stating that such authority arises from their constitutional status.

Outwith the federations, the picture is less clear. Within the group of regions guaranteed by their domestic constitutions there are substantial differences in the “real” autonomy they possess. Indeed, the Danish *amter* and the French

*régions* (which lack constitutional protection) exhibit the potential for more independence than some of their constitutionally protected counterparts. With the exception of the federal structures, constitutional status is therefore not a good indicator of overall autonomy. Even in these cases I suspect that the application of the federal tag represents the recognition of the independence granted to the regions, rather than being the generating force behind such autonomy. The autonomy of a regional government therefore depends on more than the constitutional safeguards it enjoys.

The diversity of policy independence amongst the constitutionally guaranteed regions could hardly be wider. At one extreme are the Portuguese island regions which exercise a degree of policy independence far in excess of the other non-federal regions. It is clear, for example, that the autonomy they may exercise covers a wide range of broad policy spheres. In most of these, the region is free to exercise policy decisions within its territory, within national interference. In this they actually bear a closer similarity to the federal regions of Belgium (and in some cases Germany), than to their constitutionally similar cousins.

As in Germany and Belgium, the Portuguese regions are explicitly guaranteed by the national constitution. Unlike the federations, however, the islands have no power to veto any amendments (in Germany, of course, the federal nature of the state is an “eternity” clause of the Basic Law). Their individual statutes grant a wide range of, largely exclusive, legislative functions which they perform free from national involvement. These include health policy, transport, energy and education, all areas of prime importance to the electorate. Other areas of regional competence span economic, social and cultural spheres. In all of these, the regional parliaments can legislate free from all but the most minimal national restraints. These are concerned only with ensuring the equal status of all Portuguese citizens and the internal market of the country (something enshrined in the EU treaties anyway). These legislative (and their accompanying executive) freedoms make the statutes of Madeira and Açores unique in the extent of their coverage. Indeed they

represent the most complete example of regional “home rule” within the European Union.

The financial situation of the Portuguese islands is relatively stable and offers only limited scope for national control of regional policy, however, it does not give regions much autonomy in itself. The principle source of finance for the island regions is through revenue raised on the islands of which they receive 100% of receipts. However, the regions have no control over the alteration of these rates. Significantly, V.A.T. (a regional tax) does differ on the islands in relation to the mainland and the regional government will be involved lobbying the national government for the rates it wishes. At present these are lower than the national rate.

A further significant source of revenue in the Açores is gained from the leasing of military establishments to the United States, which though free from national interference is an unstable and diminishing source of finance. Despite these resources, the islands still depend on a significant block grant from the mainland. This is due to the relative under-development of the island economies. This is the one area where the national government could influence regional policies. However, their allocation on a formulaic basis limits the opportunity for this. Nevertheless, the formula itself remains an intermittent area of conflict between the national and regional governments.

The islands also have a (minimal) role in international affairs, having the right to be informed of treaties concerned with their interests, although any opinion they express is not binding. Overall, the Açores and Madeira rank almost as highly as the Belgian regional organs in terms of their autonomy. Despite their small size, they legislate for areas even the Belgian Regions are not competent for (e.g. transport). Their lack of tax raising powers, reduces their competence slightly, but this is partially off-set in the Açores by the money raised from the American military establishments established on their soil. Their main weakness lies in their distinct lack of influence on the national government. The small and isolated nature of the archipelagos ensures they are marginalised in national and international

affairs. Ironically, this is almost certainly also the reason they are given such autonomy by the Portuguese constitution. The evidence of this is that although guaranteed by the constitution, the mainland regions have never been established.

The wide ranging autonomy enjoyed by the Portuguese island regions contrasts sharply with that of the Dutch Provinces and the Italian *regioni*. These regions, although guaranteed by their respective constitutions, have not prospered under such protection. In practice, their protection has been irrelevant to the overall autonomy they enjoy. A few exceptions to this rule may be found amongst the Italian special regions, some of which have exhibited a degree of autonomy commensurate with that of their more independent cousins (Valle d'Aosta for example).

In the Netherlands, the Provinces are relatively anonymous and are concerned primarily with the implementation of national decisions. The largest proportion of regional resources are grants received from the central authorities, which the Provinces dispense as government agents. Opportunity for independent policy making is therefore limited, despite their general competence. This is further hampered by the retention of a national *tutelle*, enforced at the discretion of the national government. If this were not enough to undermine the independence of the province, they are also subject to tight financial constraints. Independent forms of finance are so small as to be insignificant and block grants are dwarfed by the specific finances allocated by government. The latter are by far the largest source of income, leaving Provinces as conduits through which national funds flow, rather than independent policy actors.

There are signs, however, that the Dutch regions may be in the process of resurrection. The Dutch concept of the decentralised unitary state has undergone something of a renaissance in recent years. National ministries have delegated increased administrative responsibilities to the regional tier (hence the dominance of specific finances in the Provincial budget). However, the expansion of non-democratic regional bodies, larger than the province, to administer services deemed

more suited to such territorial organisation has also seen an increase. Until the Dutch democratic structure develops to take account of the non-democratic regions, the Provinces are liable to remain rather irrelevant. Too small to control the policies the national government wishes to decentralise (such as police and water) yet too large to handle many activities better suited to the municipalities. That said, the Danish *Amter* which are of a similar size, seem to cope admirably with the competences assigned to them. This would suggest that the question of territorial size is unimportant.

The Italian regions fare little better, though their role also seems to have increased in recent years. Despite their constitutional guarantees, Italian regions have consistently suffered at the hands of the government's ability to exercise wide discretionary power to limit their competences. This was primarily due to the requirement that secondary legislation be instituted before the regions could be established. As a corollary of this, the powers granted to regions under the constitution needed national legislative implementation and due to legal interpretation of the article, a framework to act within. This gave central government the opportunity to restrict regional competences, through such frameworks, at a later date. The decision of the Constitutional Court thus rendered the list of regional powers (Italian Constitution, Article 117) relatively meaningless. Instead of listing the powers the regions exercise it has actually become a vague list of areas in which they may operate. This, in effect, outlines the limits of regional power in Italy, rather than actually defining its extent.

The high degree of national influence over regional competences brought about by the above situation has led to few areas of policy being devolved to the regions, without accompanying restrictions. This is compounded by the extremely tight financial control placed upon the regions by the national authorities. With around 80% of "ordinary region" resources allocated for specific areas by the central government, (see chapter 6.5(e)) regions have very limited control over the policy choices still open to them. This is not helped by the discretionary nature of many grants as failure of a region to undertake the desired national project could

result in further financial limitations. In effect this means the regions can be forced to follow a centrally sponsored policy even where some discretion is legally open to them.

The legal frameworks imposed on the *regioni* can be severely limiting. With powers having to be delegated from the national parliament, there are no areas of “exclusive” regional authority. Furthermore, in some cases, the limited authority granted to the regions is a poison chalice, which the national government wishes to avoid direct responsibility for. The Italian Health service is a prime example of such a dubious privilege. The national funds granted to the regions are consistently below the level required to fulfil the standards of service laid down by the national level. This shortfall must be made up by regions (as the responsible authorities), not the national level. The legal requirement placed upon Italian regions to deliver such service further erodes the minimal financial resources they have available to undertake independent policy.

The impotence of the Italian regions to enter into agreements beyond their borders is further evidence of their structural weakness. They are officially barred from undertaking any “international” activities, though in practice, the national authorities have allowed limited contacts. This has led recently to complications in European Union relations, since the abolition of the Italian ministries of agriculture and tourism. How these are resolved may have a major impact on regional operations in this area in the future, but for now they remain sidelined.

The “special regions” should not be seen quite in the same light as the low autonomy “ordinary” ones. The main difference is in financial resources, where they are much less reliant on national grants in general and specific ones in particular. This will obviously make them less open to financial blackmail. Equally, they do possess some areas of exclusive competence, although this varies from region to region. However, a combination of corruption\*, incompetence and

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\* At one stage there were so many Sicilian government ministers in prison that the cabinet was not quorate.

obstruction on the part of the national government has limited even some of these regions' effectiveness.

Overall, this may paint a too gloomy picture of Italian Regions' ability to operate independently. There can be no doubt that the *regioni* operate under conditions hardly conducive to policy autonomy. Financial constraints, a hostile Constitutional Court and a national government concerned chiefly with retaining as many powers as possible at the highest level have not aided their development. Indeed, the national government seems to have treated them as an inconvenience rather than a policy making body. Nevertheless, the regions have been instrumental in several policy spheres, notably the environment. Equally, the achievements in the field of economic development especially, that of Emilia-Romagna have been impressive. The ability of the Italian regions to make any policy impact whatsoever in the Italian political system must be regarded as something of an achievement.

The failure of the Dutch and Italian constitutions to ensure independent regional government is contrasted with the example of Denmark. Here, although lacking constitutional protection, the *Amter* have developed into remarkably autonomous regional authorities. Although small in size they are funded entirely by own taxes and block grants. The majority of resources being secured from income tax which they control (in conjunction with the local and national tiers). They are thus free to raise funds relatively freely, although "agreements" limiting tax rises are frequently struck between the national and regional tiers (acting collectively). Functionally, they also enjoy a wide sphere of competences, most notably over a health service which is widely regarded as the most efficient in the world. In most cases, the national authorities will be involved to some degree, but the culture of governance dictates that such intervention is of a framework nature. This is not to say that a political sea change could not alter this.

France too, displays a high degree of financial autonomy in its regional structure despite the lack of constitutional protection. Again, the majority of funding is raised by regional taxation of one sort or another, though in some cases it



can be quite bizarre in nature. Functionally, their sphere of competence is quite limited, but the “general competence” afforded them has allowed scope for expansion, especially when interpreted broadly (e.g. involvement in universities). In France, the situation of the regions contrasts starkly with that of the *départements*. Although spending a far higher budget than the regions, much of it is actually only administered by the local authority. The converse is true for regions where around 80% is disposed of independently. Although barred from international affairs *per se*, the regions are allowed to enter into cross-border federations (something that occurred anyway, before this was legalised), thus allowing a degree of involvement in issues beyond the nation-state boundaries.

Lack of constitutional protection seems to have done little harm to the regions of France and Denmark. In both cases, the autonomy they enjoy is relatively wide and they are more able to act as independent policy makers than the regions of the Netherlands and Italy. The important factor in Denmark and France has been financial stability and the level of financial autonomy they enjoy. Unique amongst European regions, they have control over the bulk of their own resources. By controlling the tax rates, they are able to raise finance without reference to the national level. More importantly, the national level is unable to use financial incentives to influence regional policy (though in France, the *contrats du plan* may have a similar effect, see chapter 6.5(c)). This, allied with a general competence has allowed regions to operate in fields not originally assigned to them and given them greater flexibility in those which they were allocated. The development of distinctly regional policies in France and Denmark, despite their lack of constitutional protection suggests the latter is therefore far less important than financial independence. It should be remembered, nevertheless, that although the financial resources they possess are relatively free from national interference, they spend a very small proportion of the national budget.

Finally, we come to Spain, a constitutionally guaranteed regional system which has prospered, though perhaps not with quite the degree of independence enjoyed by the Portuguese islands. The Spanish *autonomías* can have a wide range

of functional powers and those which have acquired the most (Article 151 and transitory disposition regions), now operate in a wide range of important policy areas. In six regions, health care and education are now entirely a matter for the regional legislative process (seven regions operate education policy alone). National involvement in these regions is limited to basic standards in health care, and the compatibility of educational certificates.

In the areas of transport policy and economic development all regions exercise a substantial degree of authority. In these cases, the national responsibilities are greater, through their control of “national” routes and enterprises, but the regions can still pursue policy independent of the prevailing national one. In the cases of Catalonia and Euskadi, regional responsibility even extends to the police force.

Constitutional restrictions have not proved limiting for the Spanish regions. For example, although international relations remain a nation competence, many have indulged in cross-border affairs (despite the opposition of Madrid). If Spanish regions do have an obvious weakness then it is in the sphere of finance. Although all regions have the ability to raise tax rates no region has successfully done so on a long term basis. In addition to this, around half of the finance received by the *autonomías* is loosely allocated by the national government. This lack of independent financial means has led to a reliance of deficit spending which cannot continue in the long term (indeed it has been reduced recently). However, the formulaic nature of the block grants does give a degree of stability. This is not enough however, as finance continues to be a constant bone of contention between the national and regional tiers. The “mystic” variable of need, as explored in chapter 6.3(h), is too open to interpretation to allow the current system to give the calm needed. More importantly there needs to be increased autonomy for the regions to receive tax proceeds, if financial autonomy is to be complete. This would ensure not only regions possessing the ability to exercise policies free from the financial constraints inherent in a system reliant on central grants, but perhaps equally important, make them more accountable for the spending they undertake. The

recent deal struck by the incoming Popular Party government and the Catalan CiU, granting a higher portion of tax receipts to the regions may go some way to resolving this issue.

A summary of the above observations is given below. The regions are presented in terms of autonomy, from most to least, according to the indicators discussed above.

Table 8-1: The Autonomy of European regions

Member-State	Constitution Guarantee?	Internat. Relations	Financial Autonomy	Functional Autonomy
<b>1. Belgium</b>	Federal	Full	High	High
<b>2. Portugal</b>	Yes	Some	High	High
<b>3. Germany</b>	Federal	Some	High	Medium
<b>4. Spain (Art. 151)</b>	Yes	Informal	Medium	High
<b>5. Denmark</b>	No	None	V. High	Medium
<b>6. Spain (Art. 147)</b>	Yes	Informal/ None	Medium	Medium
<b>6. Italy (Special)</b>	Yes	Some Inf.	Medium	Medium
<b>7. France</b>	No	Some	V. High	Low
<b>8. Italy (Ordinary)</b>	Yes	Some Inf.	Low	Low
<b>9. Netherlands</b>	Yes	None	Low	Low

It is clear from the above (rather subjective) analysis that traditional markers such as constitutional status do not in themselves indicate the overall autonomy of a particular region. Of more importance are the financial and functional independence open to the regional tier. However, it should not be forgotten that the constitutional status of the region can play an important role. It is unlikely that the Belgian and Germany regions could operate without the substantial constitutional protection they enjoy. More importantly, the ability of the German *Länder* to defend their autonomy has relied heavily on the constitutional protection they were afforded in 1948 and perhaps as important, the support of the Constitutional Court.

The most obvious conclusion evident from the above table is that no region enjoys high autonomy in both financial and constitutional terms. It seems that nation-states are willing to tolerate regions possessing independent powers of taxation, etc. or a high constitutional status within the national system, but not both. Belgium, Portugal and Germany have all prospered from the later foundation but are notably lacking in tax-raising powers or the ability to raise truly regional finance, without the involvement of the nation-state. Those regions without any constitutional status whatsoever, (i.e. France and Denmark) are notable both for the high degree of spending autonomy and their heavy reliance on “regional resources”, resources which they control. Around 80% of French regional expenditure is free to be spent as the region decides, while there are no restrictions placed on *Amter* spending (aside from the maintenance of schooling and hospital standards).

Why are regions granted either high constitutional status or a high degree of financial independence but never both? The answer must be hypothesis but there seems to be a clear reason why such powers never accompany each other. If the regional government was given both the ability to raise and lower taxes freely and the ability to do so without even the possibility of national intervention, the central state would have no legal means of controlling a region. Within the paradigm of the nation-state, such a situation is inconceivable. As the primary source of power, the nation-state must have the ability to enforce at least a measure of solidarity between itself and the regional level. This can only be ensured if finances remain largely a national concern, especially if in constitutional terms the region is given wide ranging freedoms. To remove both avenues of control would leave the central state powerless, should a region indulge in policies directly contrary to its wishes. The central government therefore retains the role of ultimate “protector” of the nation.

## **8.2 Collective Influence or Regional Autonomy?**

For many analysts of the regional dimension, the above comparison would be enough to confirm that a degree of regional autonomy exists in the EU. Regions

have a powerful voice in several EU member-states and there is some evidence of their influence on policy making at the European tier. The “third level”<sup>\*</sup> is thus a political reality. This is certainly the case, but it does not necessarily equate with regional autonomy.

The rationale of the region, as explored in part I, is primarily concerned with increasing democratic choice and accountability in the field of territorial government. In all fifteen member states of the EU, the need for some form of regional tier is accepted. A strong argument for democratic regions is therefore already made. If such a tier of government already exists, it is democratic that these policy makers should be accountable to their electorate. There can be little quarrel with such an argument. By linking the regional tier to its electorate, the policies pursued by the region should more closely approximate the wishes of its population, assuming a fair electoral system is used. Regional autonomy will thus lead, if not to a content population, then at least to a more content one than if a deconcentrated regional tier or non at all was used. The policy preferences of more of the electorate will be followed, more of the time.

The rise of regional government within the European Union, does not always reflect this rationale. In fact, increasing regional influence has often been coupled with an actual reduction in regional autonomy. This is due to the simple truth that for regional autonomy to exist, individual regions must be able to exercise it. Increasingly, however this is not the case. Regional involvement, especially in European affairs, but in many cases also with reference to national policy, relies on regions working collectively. This trend not only reduces regional autonomy, but questions a region's democratic credentials. When regions work in a collective capacity, it is invariably informal (and secret) and always concerns the executive rather than the legislative branch. We therefore see not only a reduction in

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\* Phrase coined by the *Länder* to describe regional involvement in the EU. Europe and the member-states make up the first two levels, but the *Länder* have campaigned for a “third level” of involvement, ie. the regions.

individual regional policies but also the removal of much decision making from the regional legislative organs. By definition this places a further step between the decision-makers and their electorate. In no cases are the regional executives directly elected.

The defence of German regional autonomy has been focused on the *Bundesrat*. However, although this has been very successful in achieving increased *Länder* involvement, especially in European affairs, it has encouraged a collective approach. If the German regions wish to challenge *Bund* decisions affecting their autonomy, they must agree a common position to challenge the legislation in the Federal Council. Even more obviously, the Conferences of *Länder* ministers agree more and more policy between themselves without the involvement of their *Landtag*. The *Länder* controlled second television channel is an example of this. Although this is a regionally controlled station, the decisions are taken by a board consisting of members nominated from each of the *Länder*. Thus the station is not actually regional at all but rather a national one controlled by regional representatives.

The steady flow of powers away from *Landtage* has long been documented as worrying development of increasing co-operative federalism in Germany (Scharpf, 1988). However, the experience of other regional states suggests this is a more widespread phenomenon occurring far beyond the borders of Germany. In Italy, for example much has been made of the Italian regional Presidents' conference as a means of putting pressure on the national level. However, once again this is not necessarily regional autonomy. The opinions agreed by this body are reached through the collective agreement of regional executives, necessitating compromise and the exclusion of the regional council. Equally, in Denmark, many agreements are now made between the *Amtter* collective body and the state, especially as regards taxation limits. This means that individual regional preferences may be swamped by the majority decision.

On European issues the trend is even more striking. All regional involvement in the Council of Ministers (i.e. regional representatives from Germany, Belgium and now Spain) merely represent regions from a single nation-state as a whole. This again necessitates a collective decision of the regions within one member state being accepted as the “regional” position. Even on the Committee of the Regions, the regional representatives are, in most cases, just delegates of the regional tier in a nation-state. They do not represent their own region.

The problems with the continuation of this trend are two-fold. Firstly, it questions the need for democratic regions. The whole purpose of the democratic region is to allow policy decisions to reflect the preferences of the electorate. If this is not the case there is no argument for them to be democratically elected. They could be just as easily be administrative bodies made accountable to nationally elected representatives. More importantly one must question whether regional representatives are the right people to make decisions which are in effect national.

When the regional Presidents of a member-state meet, they do so as a national, not a regional body. The decisions that they agree to implement in their regions are no longer examples of regional policy making but become expressions of national sentiment. The only difference is, unlike in the national parliament, the representatives agreeing these “national” decisions are indirectly elected from regional legislatures, not directly elected by the electorate. The question must be asked whether, if it is deemed necessary to agree a “national” policy in an area of regional competence this is not better handled at the “national” level, designed for such decision-making?

Secondly, and this is examined below, does this growth of inter-governmental decision-making create a democratic deficit rather like that within the EU, whereby the executives by dint of their “inter-governmental relations” competences are excluding the legislatures to the detriment of accountability and democracy?

The “rise of the executives” is a common feature of most modern government and it seems that the regional tier is not immune. In fact I would suggest that it is particularly susceptible. However, alliances and the collective activities of regional governments do not necessarily have to reduce regional autonomy and accountability. Such links can be used to create a “regional front” to protect the autonomy of regions to pursue their own policies. Such regional coalitions have been evident in the EU since the early 1990's. As long as they restrict their activities to defending regional autonomy in structural terms, accountability and democracy will not be affected. If, however, policies are decided by such methods, the democratic legitimacy of the region must be reduced.

### **8.3 The Rise of Executives**

The dominance of the executive level in the activities of European regions is a worrying development for democratic accountability. This trend towards a “democratic deficit” at the regional level is evident across Europe but it is more marked in some regions than others. By looking at the systems where such a trend is most noticeable, perhaps the reasons behind it can be identified.

Germany and Italy certainly display a high degree of executive involvement, to the detriment of the legislative branch. In contrast, France and Spain show less indication of following this tendency. Why should they differ? I contend that there are four main reasons why this executive dominance has taken hold, which also explain why the regional level seems to be especially susceptible to it.

Firstly, the nature of the competences given to the regional tier, encourages action by executive rather than the legislative organs. In Germany and Italy, the vast majority of competences are classed as administrative. Under this classic definition, the need for legislative involvement is perceived as minimal. However, the definition of what constitutes an “administrative” duty is vague to say the least. Many “administrative” tasks handed to regions, (as chapter seven demonstrated),



can give substantial policy autonomy to the devolved tier. The classification of a task as “administrative” gives the executive the ability to bypass the legislative branch. The decisions taken under the name of “administration” are presumed unsuitable for their open discussion in the directly elected chamber. It is thought appropriate for such measures to be left to the private discussion of the indirectly elected executive body.

The problem is exacerbated by the piecemeal development of the regional tier. As the regions have expanded their tasks through informal means, legislatures have been generally excluded. The reason is that since such competences are not granted specifically to the region, the executive has not been forced to act through the parliamentary body. Once again, the “administrative” nature of many of these actions has allowed the avoidance of legislative involvement. However, one of the most active proponents of this method of regional expansion has been France, yet the French regions do not suffer from as high a degree of executive power as the Germany or the Italians. The reason is found in the French regional structure, which actually excludes the existence of an official regional executive except in the person of the Regional President. Although, in practice an executive actually does exist *de facto*, (the *bureau*) it has no authority of its own and thus must pass even “administrative” decisions through the Regional Council. In practice, these will go through sub-committees which can pass the matter on to the plenary if they wish.

The third factor in executive dominance has been the nature of region/nation-state relations. The often adversarial nature of relations between the regions and their own nation-state has not aided open government. Inter-governmental discussions are conducted as a bartering process behind closed doors. In this, they are not dissimilar to the activities of the Council of Ministers in Brussels. This secrecy leaves no opportunity for scrutiny by either legislature or the electorate itself. The increasing use of regional conferences to offer a “united front” to the national government, especially in Italy and Germany further encourages this development.

A final example of executive dominance at the regional tier can be found in the EU. The informal nature of most regional contacts means they are again classed as “administrative” in nature and therefore outwith the influence of the legislative branch. The minimal “official” involvement of the regions in the European tier, means that the regional executives may operate in their “unofficial” capacity, unencumbered by legislative restraints. In the field of international relations, the situation is worse, if anything. The lack of full treaty making competence in all but the Belgian Regions/Communities means the majority of international involvement is achieved through executive competences and private law, neither of which requires legislative approval.

It seems inevitable therefore, that regional executive power will play a large role in regional activities. However, this should be limited to the minimum necessary to avoid creating a dangerous democratic deficit at the regional tier and defeating much of the purpose of regional democracy. To achieve this it must be recognised that regions are not mini nation-states and thus should not be run along the same lines. Firstly, the artificial distinction between legislation and administration needs to be examined. If the traditional distinction is applied to regions then scrutiny of large sections of regional activity will be minimal or non-existent. There thus needs to be structural changes to allow more involvement by the legislative branch.

This in itself is not enough however, as the plethora of informal executive contacts which take place at the moment cannot be scrutinised by these means. There needs to be formalisation of these, at present, unofficial links. This must insist on a high degree of openness, with the proceedings of meetings being available for public inspection. This applies especially in the case of Europe. There must be general acceptance of the region as a partner in the European policy process. As such the regions must be given official access to the European level, thus allowing a greater accountability in European matters and the chance for individual regional opinions to be heard. Once again, these forums would have to be open, though this would involve a major shift in EU policy. Unfortunately, far

too many member states enjoy the opaque nature of the European decision making process.

Finally, there must be a full debate on the meaning of subsidiarity and a clear division between national and regional competencies. The cross over between them must be limited to the absolute minimum. Furthermore, discussions concerning matters which are of joint competence must take place in an open forum. The development of the Belgian senate to manage debates between the different arms of the multi-layer federal state, is perhaps an object lesson in how this can be achieved. Overall, if we accept the need for a democratic regional tier, we must also accept the existence of a high degree of executive power within them. However, by accepting this the regional structure can be designed to reduce this to a minimum. The key concept in an accountable democratic regional system is therefore, openness.

#### **8.4 Recentralisation and Local Autonomy**

It is often assumed that a process of regionalisation is, by definition, a process of decentralisation. This is not necessarily the case. Indeed, it could be evidence of quite the opposite, with power actually being moved upwards, to the region, and away from local authorities. Such a reorganisation would be contrary to the subsidiarity principle which underpins the regional tier's legitimacy.

This phenomenon, which I refer to as "recentralisation", can occur in two distinct variants. "Active" recentralisation, is when regional governments fail to devolve authority downwards to local government units within their territories. This results in a concentration of power at the regional level and often a degree of control in excess of that previously performed by the nation-state. This is possible since although the nation-state may have a plethora of legal controls to supervise local government it may not use them as effectively as the region. The number of local authorities a nation-state control may be huge and many will be physically

remote from the centre. This does not aid central control over local decisions. Such regulation may therefore be less than effective. The French example, pre-1982 was a prime example of theoretical state control being less than totally efficient in practice.\*

The region, in contrast, is rarely overburdened in its supervisory role and is generally in close proximity to its units of local governance. Furthermore, any interest networks established by local government in the apparatus of the nation-state prior to regionalisation are useless in a new regional order. The influence built up by local government long before the arrival of the regions may be one reason for local government's involvement in the second model of recentralisation.

This second strain can be referred to as, "passive" recentralisation. In this form, regions are bypassed by the central state in favour of the local level. This will often be the case when central and regional governments are of differing political colours. If the local government is of a similar view to that of the central government then direct links (if constitutionally allowed) are even more likely to result. However, even local governments which do not agree with the policies of the centre may be tempted by promises of extra funds. The catch, of course, is that such grants are either conditional or at best, voluntary block grants. Either way, financial reliance on the centre and a resultant loss of independence are a likely consequence. It should be noted that financial control is often far more successful lever on local government than legal sanctions. Far from such recentralisation being an isolated phenomenon, it is endemic in the regional systems of the EU. In five of the six devolved systems there is evidence of such a trend as a result of regionalisation.

The evidence for recentralisation on such a grand scale is not conclusive. Indeed, it is fragmentary and comes from a variety of, often incompatible, sources. This section does not, therefore prove the existence of such a trend beyond doubt, but rather exposes an apparent Europe-wide drift which needs further investigation.

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\* See Appendix I.3(c).

It seems unlikely to be coincidental that several scholars of individual systems have noted similar trends in their country of study. The two variants of recentralisation mentioned above are not mutually exclusive and can and do occur side by side, to the general detriment of independent local government.

It is possible to divide the regional EU states into two distinct groups. In the federal states there is evidence of a high concentration of power at the regional level and an "active" failure of the respective regional bodies to empower their local levels. In the other member-states a mixture of "active" and "passive" recentralisation is evident, although in Italy, the latter is predominant.

The German federal system is the oldest regional system in the EU, (with the possible exception of the Netherlands) and the most stable. It is therefore a good place to start an examination of regional government's influence on local autonomy. With the longest period to develop one would expect the effects to be accentuated in the Federal Republic

At first glance, local government seems well provided for in the Basic Law. Under Article 28(2) G.G., the local autonomy of the municipalities is guaranteed as is the limited autonomy of the counties and municipal associations. Local issues therefore remain with the municipalities under the subsidiarity principle, a right enforceable before the Federal Constitutional Court. Furthermore, the F.C.C. has interpreted a right to local financial autonomy implicit in Article 28(2).<sup>\*</sup> However, despite these guarantees, *Länder* control of local government is tight.

This is most obviously the case in its structural organisation. Of the three tiers of local governance, only the municipalities are truly autonomous units in every *Land*. The Counties, of which there were approximately 500 in 1992, are generally autonomous political units but in at least two *Länder* (Saarland and Rhineland-Pfalz) the head of the executive council is still a *Land* appointee. In

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\* BVerfGE 26,228,244

contrast, the districts are entirely *Länder* controlled units of administrative deconcentration. These exist in the six larger West German *Länder*, though the two city states have no local government at all.

Strict *Länder* control of local government is further emphasised by the allocation of functional powers to the lower level. The example of N. Rhine Westphalia, where all teachers are appointed from a single office in Düsseldorf is often cited as an extreme manifestation of this (Paterson & Southern, 1991, p161). Direct control is further exercised, by the *Länder*, over the police, schools inspectorate, audit commission and industry supervision, all through its organ, the District. The District also administers the funding of *Land* projects in the areas of education, roads and housing either through local authorities' or directly to contractors, thus bypassing the lower democratic layers.

Functional autonomy does still exist at the *Kreis* (County) and municipal levels, though only of a limited character. Savings banks, hospitals, secondary education, vocational training and public utilities provision are all administered by the *Kreis* autonomously, though in areas such as housing and roads it merely acts as the agent of the *Land*. These functions are generally those which a municipality is too small to cope with, while "local" functions, still capable of being exercised at the lowest level, are left in their hands. In areas such as planning, these are still subject to regional plans established by the *Land* authorities. However, those areas deemed to be beyond the capacity of the *Kreis* may be transferred to *Länder* controlled administrative units between the Counties and the *Land*, thus further enhancing regional power at the expense of local autonomy.

Despite direct *Länder* control over areas such as police, roads and housing there obviously exists scope for limited autonomy on the part of the municipalities and *Kreis*. This is further reduced by their reliance on state and federal funding. *Kreis* receive a levy from their participating municipalities who are themselves in an extremely weak financial position (Schweitzer et al, 1984, p131). Although providing most public services, they receive around only 13% of tax revenues

which has fallen from 14% in 1980 (a peak of 14.1% in 1976 & 77). This compares with around 34.5% for the *Länder*, which has steadily increased, (reaching peaks of 35% in 1978 & 79). This has led to a resultant reliance on grants from the *Land* and *Bund*. (27% in 1988). Despite these being partly as a result of the equalisation procedure, the individual *Land* may decide where the money will be used. All *Bund* grants must be earmarked for specific projects. This compares unfavourably with the situation in France where the *Départements* received under 8% of their revenue from conditional grants (Schmidt, 1990 & Mazey, 1993). The situation is further worsened by the 17% shortfall experienced by the municipalities in 1988 between expenditure and finance (Schweitzer, 1993, p185). The gap is filled by communal business profits, assets and increasingly loans, leaving most municipalities in serious debt.

Subsidiarity in Germany seems not to have permeated local government in the F.R.G. with evidence pointing to a concentration of power at the regional tier. This "active" recentralisation is complemented by municipalities resorting to federal conditional grants thus bringing a small element of "passive" recentralisation into the equation. But, is this trend repeated in the newer regional systems, or is the evidence of a concentration of power at regional rather than local level limited to the example of Germany?

"Active" recentralisation has certainly been a process evident in the Belgian moves towards federalism. The main victims in this re-organisation have been the provinces. From 1830 up until the reforms of the 1970s the province was the "regional" unit operating between the communes and the central authorities. These units have, however, suffered a serious reversal of fortunes. From the 1968 policy which proposed a modernisation and transfer of competences to the provinces, to the 1977 Egrmont agreement which proposed their abolition, their fall has been dramatic.

This rapid decline in importance was caused by the provinces and language regions being seen as competing for the Belgian meso level and thus being mutually

exclusive. The provinces emphatically lost this argument in the late 1960's. This defeat was so complete that Delmartino remarked that "as an independent policy body, their role is over" (Delmartino, 1993, p45). The main beneficiaries of the provincial fall from grace have undoubtedly been the Regions and Communities.

The role of the province had been to co-ordinate areas such as emergency services; the oversight of communal legality and economic planning. Of these, only the former remains a provincial competence, the other two roles being usurped by the regional authorities, although informal consultation on economic planning does still occur in Flanders.

The provinces have thus been reduced to a tier of administrative deconcentration despite still being a directly elected authority. Most remaining functions are of an executive nature, which is reflected in provincial finances. By 1990 almost 46% of the Provincial budget was spent on education (a rise of 2% since '88), an area mandated by the Communities, while a further 10% was spent on administration. In its sources of funding, educational grants again take up a large and steadily increasing proportion (33% by 1990).

There is, therefore, a shift upwards in policy making within the Belgian system post-regionalisation. In both the established F.R.G. and the fledgling Belgian federation there is therefore evidence of a reconcentration of power at the regional tier. The process of decentralisation at the Meso level has not extend to local government which, in contrast, has seen a reduction of autonomy and influence, both functionally and financially.

In the cases of Spain and Italy the trend towards regional recentralisation is somewhat confused by the appearance of a sizeable amount of recentralisation by the central state. In both these systems, resentment between regional and provincial tiers has again been the main area of conflict. In Spain, this is accentuated by the provinces' links with the previous regime, (and their indirectly elected nature) under which they were a means of central control over the local populace. Such a dubious



past led to their attempted abolition during the post-fascist reorganisation, only narrowly avoided by a right wing alliance in favour of them. However, due to the regional reforms, only ten of the seventeen regions now contain provinces. The other seven are uni-provincial with the regional and provincial apparatus being merged.

The retaining of the provinces was by no means the end of the issue. Regional/Provincial relations are extremely strained in at least three regions (Cantabria, Catalonia and Valencia). This reached such a peak in Catalonia that the *Generalitat* attempted to abolish them altogether. Though this attempt was quashed by the Constitutional Court in 1980, the Catalans have persisted in creating a system of thirty six "comarcas".\* These traditional Catalan local government units deliver regional facilities and deal with the regional government. The provinces in contrast, are ignored. This extreme example has been repeated elsewhere, with regions dealing directly with the municipalities, to the exclusion of the provinces.

The transfer of authority from provinces to regions has encouraged a fresh approach from the provincial governments themselves. Especially in cases where the provincial and central governments are of the same political hue, direct national-provincial links have been established. This has become possible since the 1985 L.B.R.L. (Local Government Act) relaxed restrictions on such contacts. By 1991 this had led to a series of state executive functions going to the province rather than the region. These have included public works, road maintenance and public health schemes. This is state centralisation by the back door, since monies thus transferred can be allocated to specific projects by the national authorities.

Regional government has not been blameless in this process. The tight nature of its control over local government caused general resentment amongst local government units towards the region. This is so great that regional governments are

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\* The *Generalitat* was successful in disbanding the Barcelona City Corporation for similar reasons as advanced by the UK government for its removal of the G.L.C. Cuchillo nt.19

often viewed with more distaste than the centre (Cuchillo, 1993, p24). There are exceptions to this rule, (Valencia and Andalucía restrict their *tutelles*) the greatest of which is Euskadi. Here the provinces have actually taken power from the region. However, this is not an example of rapprochement, but rather evidence of the importance of the province (the traditional basis of Basque government), amongst much of the Basque populace. The dispute was so acrimonious that the P.N.V. (the Basque nationalist party) split on the issue and the President was forced to resign.\*

This conflict between regional and local government is also evident in the Italian system, with the greatest tensions again evident between province and region. This has partly arisen due to the ambiguity of the role each tier of government is to perform and partly to the marked reluctance of the regional authorities to devolve authority.

When the region was finally born as a political unit in the late 1960s and early 1970s it was seen according to some commentators as a "giant municipality, but also endowed with legislative power" (Giannini, 1963, pp.42-43). This ambiguous role has led to an overcrowding of local government and a resultant clash of competences. The situation has been worsened by regional reticence in the delegation of power to local authorities, especially the province, though also city municipalities. Recently, regions have introduced the *comprensori*. These bodies have power delegated from the region and act as co-ordinating bodies for the communes. The similarity with the situation in Catalonia is evident with the regional governments attempting to by-pass the province by creating a new tier, perceived as more favourable to the region.

This general trend of Italian regional recentralisation is seemingly evident in the public expenditure figures shown below:

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\* Somewhat bizarrely, it has also led to the formation of a "provincialist" party in Alava which claims this province is discriminated against by the regional authority. It gained a number of seats in the regional elections of 1995.

Table 8-2: Share of public expenditure - Italy (%)

	State	Regions	Provinces	Communes
<b>1970</b>	70%	3%	5%	23%
<b>1975</b>	64%	12%	4%	21%
<b>1981</b>	64%	19%	2%	14%

In the 1970's and early eighties, the regional level enjoyed an increasing share of public expenditure at the expense of all other levels of government but most notably the lower tiers. These figures do not, however, tell the whole story. There is no doubt that the provincial and communal tiers have been the main losers during this period, but it has been the state and not the region that has had the most gain. This is due to most of regional revenue being spent on mandated areas such as health over which it has little, if any, policy control (see chapter seven, above). What has actually occurred is a "passive" recentralisation to the national level despite the evidence of "active" regional recentralisation listed above.

As regions have not devolved power, the central government has increasingly bypassed them and dealt directly with the provincial and municipal authorities. The 1977 transfer of functions gave significant powers to local authorities under the principle of "organically linked" sectors and in doing so bypassed the regional tier (Sanantonio, 1987, p112). This principle, gave local control over local issues directly to local authorities, in effect subsidiarity. However, such generosity by the central state was accompanied by an increasing reliance on state funding by the local authorities. Although legal controls rest with regional committees these were really designed for use by a prefect and are unwieldy in their modern form especially as the committee itself is over burdened. Instead, control is exercised using financial means. Increasingly this is in the hands of national government.

This reliance on national finance (and therefore potential national control) has been increased by the reluctance of regions to devolve. In looking for ways to

increase their responsibilities the provinces especially, have looked to the centre for support. This trend has allowed the Italian government to claw back powers lost during decentralisation to a much greater extent than has been the case in Spain. The opportunity for national recentralisation in Italy in contrast with Spain would appear to be a consequence of the weakness of the Italian regions in comparison with their Spanish counterparts.

The Danish experience has also been one of "passive" recentralisation, though to a lesser degree. This has generally manifested itself in an increasing reliance on state funding by the municipalities. This is also evidence of a shift from block grants to specified funding. Block grants to municipalities fell by 50% between the years 1982 - 1985 (DKr.3 Billion was cut in 1986) in contrast to the modest increase to the Counties. Nearly 50% of municipality income is in reimbursements from central government, for duties they carry out on behalf of the state. These functions are mandated and offer no policy options for the local authority itself (e.g. payment of social security). Local taxes account for 35% of the municipal budget but this compares with a figure of 54% of County budgets. The remainder of the County budget is raised through a state block grant, (excluding service charges) which compares with less than 10% of municipal budgets (Bogason, 1987, p60).

The increased reliance on state funds by the municipal tier is caused by the transfer of certain mandated functions to the lowest level (e.g. Social Security) while policy powers have been granted to the Counties (e.g. Health Service). Although the 1970 reforms have given greater autonomy to sub-level governments in the form of the newly democratic Counties there has been a prima-facie loss of independence by the municipal tier. This has been reflected in the attitudes of those involved in local government. In a 1983 survey, 50% of Danish local government leaders felt that distance between the citizen and government had increased since the 1970 reforms (Bogason, 1987, p56).

The most obvious manifestation of this is in the reduction in the number of lowest level territorial units. In Denmark this has fallen from 1,257 parishes and 85 towns to 275 municipalities post 1970. This trend is not unique to Denmark however, with both Germany (24,300 in 1967 to 8,503 in 1989) and Belgium (2,663 to 589 since 1977) experiencing similar "rationalisation" of local government. The most notable exception has been France, where despite the huge number of communes, no rationalisation has occurred. It is also true that France is the only state where introduction of a new tier of regional government has not reduced the powers of the lower tiers.

These two instances are not coincidental. France, with its system of notables (and especially their power in the Senate see chapter 5.5 and Appendix I.3), has not experienced a significant a loss of powers from communes or *départements* to the region or the nation-state. Indeed they have benefited from the decentralisation policy. The downside, has of course been a weak regional system and the charge that France is over governed by a non-democratic system of notables.

There is, therefore evidence for a recentralising trend throughout the regionalised states of the EU with the exception of France, where the entrenched nature of the notable system offers a satisfactory explanation.

In at least five other states, there is a prima-facie shift in power either to regional or national authorities, at the expense of local government. This may be evident through a structural rationalisation or a loss of financial or functional autonomy generally manifesting itself in the form of a *tutelle*, over the local government unit.

The evidence of recentralisation is not conclusive. The above brief analysis does, however, refute any assumption that devolution by definition leads to decentralisation. Regional government can be just as prone to the centralisation of power as can the national tier. The lesson to be drawn from this is that local government still requires strong protection under a regionalised systems. Indeed, the

closer supervision made possible by the regional tier, may mean that the protection of local autonomy must actually be stronger than under a unitary structure.

### **8.5 A Regional Alternative to the Nation-State?**

The starting premise for this work was the nation state's sorry record in delivering democratic, peaceful and successful government. In addition, the mythical nature of its "organic" legitimacy, made it no more a "natural" method of governance, than any other. With this in mind, the development of the region was posited as an alternative, under the umbrella of the European Union. This region, by replacing the concepts of sovereignty and "hard borders" with subsidiarity and "soft borders" could, perhaps, be the vanguard of a new structure of European governance. This section aims to assess whether the evidence of the last three chapters reveals the region as an innovative method of governance or merely promises more of the same.

Superficially, the evidence overwhelmingly suggests that regions do not offer a real alternative to the concept of the hard bordered state. This is immediately obvious from the fact that all regions (with one exception, examined below) are hard bordered themselves. They continue the tradition of neat boxes of territory within which all the responsibilities of the region are handled. Regions do not even dissect local government boundaries, never mind national borders. A "hard bordered" culture also exists at least within the most powerful regions which operate as mini nation-states with much of the trappings this implies. Any suggestion to alter their territorial coverage would be met with intense resistance. The best example of this is in Germany, where the *Länder*, created less than fifty years ago have achieved an air of permanence, that makes their alteration practically impossible. Even in France, where the democratic regions are only just ten years old, plans to re-organise their boundaries met with such opposition, that progress proved impossible. A further law, to grant more powers to regions that shared competences with their neighbours in specific areas, proved ineffective. The regions

resented national interference in their co-operative arrangements (Mazey, 1994, p140).

Although first impressions suggest that the region has not radically altered the territorial organisation of power, more subtle changes have been brought about. First, although territorial “soft borders” are uncommon, they are not unknown. Second, the development of policy by more than one tier is certainly evidence of a weakening of national sovereignty (if policy is being undertaken at several levels, it can no longer be said to be national). Finally, and perhaps most important for the future, the development of regional government has brought about a significant change in the attitudes of certain regional populations, notably the demise of nationalist parties. The following section examines these changes in turn.

The most obvious example of “soft borders” has, of course, been the Belgian “experiment” in dividing governance between three sphere specific territorial units, two of which (the Regions and the Communities), have overlapping territorial responsibilities while the third (the federation) has a more traditional, all encompassing role. Interestingly, much of the territorial novelty of this plan has been lost over time. The Flemish Region and Community are now effectively one body, with distinct borders and a defined territorial limitation on its competences. Only in Brussels does the Flemish authority continue to encounter “soft border” ideas.

The two territories where “soft borders” continue to operate to a substantial degree are Brussels and the German speaking cantons of Eastern Belgium. In these cases, the Flemish & French Communities (in the case of Brussels) and the Walloon region (in the case of the German areas) have responsibilities within the territories of other regional units. In the case of Brussels, the Communities handle “personalised” affairs, while in the German Community, the Walloon Region is the body responsible for economic matters.

The reason for the “retreat” from the radical territorial innovations as proposed early on in the process of Belgian federalisation can be summed up in one word, convenience. Where it has been possible to retain distinct regional “hard borders” this has been the mode of government. Where such divisions have not been possible, (i.e. the German Community and Brussels), soft borders have been used as a necessary alternative. “Soft bordered” units of governance are not neat or simple and this is their major drawback. In the territorial sense it has proved simpler to grant “minority” rights to those Flemish and French who live on the “wrong side” of the language border than to make governments responsible for cultural activities beyond a distinct territorial area (it would also have been politically unacceptable). Nevertheless, that some areas continue to be governed by overlapping units of governance, suggests that this option is at least possible within Western democracies.

Although within nation states, the chances of regions evolving into soft bordered entities is practically nil, their impact on reducing the emphasis on national borders is potentially significant. In France, for example, the ability of regions to engage in “federations” with regions across their borders is now actually encouraged by the national government. This development is a practical acceptance of the need to soften national borders within the European Union, while allowing the nation state to avoid the prickly issue of “national sovereignty”, which would be raised if it indulged in such activities. Even in less autonomous systems such as Italy, the regions engage in cross border co-operation agreements with the blessing of the nation-state. Ironically, in Spain, one of the most regionalised states, such encouragement is not be forthcoming. Indeed the national government has actively tried to limit them. Nevertheless, agreements between the border Spanish *autonomías*, other regions (especially their French counterparts) and even nation-states are common.

These links are in many cases quite minimal in content (see chapter 5, above), due to the limited competences granted to some of the regions involved. However, they often cover topics of great importance to the local populations. The



Alpine regions' conferences on economic development for instance allows an integrated approach to a problem that does not stop at national borders. Italian, Austrian and Swiss alpine regions have far more in common with each other than they do with other territories within their nation-states. Some (perhaps the majority) of agreements cover rather mundane issues such as emergency services or airport co-operation, but an independent region (or conceivably a local authority) is in a position to enter into such links far easier than a nation-state could.

Of more long term consequence are agreements concerning issues such as environmental protection and culture. These are especially amenable to regional involvement as the functions of most regions include these responsibilities. In both these areas, the resulting groupings will represent a more rational unit for dealing with the issues than the ubiquitous nation-state. The much-quoted lake Constance agreements are an excellent example of the former (see chapter 5.2(a)). The regions involved (Swiss and German) are both highly autonomous and are in a better position than their nation-states to monitor and address issues of pollution, should they arise. This agreement is all the more interesting as there is a standing conference to administer the agreements. This is a rare example of an international soft-bordered institution.

In the cultural sphere, the Basque speaking areas of France and Spain have entered into co-operation agreements in the field of education. This allows, the Euskadi government to support Basque speaking institutions in the French Basque territories. In addition, issues concerning the development of *Euskerra* can now be addressed throughout the *Euskerra* speaking areas, despite it spanning two nation-states. Interestingly, the French government has acquiesced in this and it has not led to increased nationalist fervour in French Euskadi. Further links in the field of culture have been established between the Flemish and the Dutch, the Belgian-German Community and German border regions and interestingly, Trento.\* The list

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\* With thanks to Jef Van Ginderachter, *Chargé de mission - Relations extérieures*, Brussels Government, Brussels

is extensive, but such supra-national developments require the regions to possess autonomy to actually control the policy area in question.

If regions are to develop soft border policies, they must therefore possess a significant degree of autonomy. It is clear that the EU regions which have engaged in activity of this kind have been those with the autonomy to make such contacts meaningful. Most noticeably, the *Länder*, the Belgian Communities/Regions and the Spanish *autonomías* (also now the Austrian *Länder*). However, limited inter-regional organisation has also been evident in France and Italy.

The regional enthusiasm to organise across national boundaries will evidently help address the huge anomalies the nation-state system leaves. Discussions can take place concerning more “real” economic or cultural areas rather than being constrained by the artificial boundaries of the “nation”. Although, these areas will obviously also be limited by regional boundaries the discrepancies will be much less than with the nation-state. Most importantly the agreements will be made between regionally accountable representatives, thus increasing the territorial accountability of such supra-national developments.

The most obvious difference seen in the growth of regional governance has been the necessary division of powers it entails. As will be explored more fully below, in several areas it is no longer correct to talk only of national policies across Europe. Instead, there are at least three policy levels to consider, the regional, the national and the European. This division of authority is not new; federalism has existed for as long as the nation state has, but it has certainly become more widespread in recent years. Equally, the language of subsidiarity is employed with increasing regularity and in many countries of the EU (though notably not England), the national level is having to justify why it needs power that could equally be resident at the regional (or local) level.\* For evidence of this, one need look only to the new “subsidiarity” clause in the German Basic Law.

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\* Though interestingly, a leaked UK Treasury document recently pointed out the efficiency gains to be achieved through decentralisation

There can be little doubt that nation states are no longer the “sovereign” entities they once were. In Belgium, Germany, Spain and Portugal the national level is no longer master in all of its house. In a significant amount of policy areas, policy cannot be undertaken nationally without at least the consent of the regional tier,. Even in Italy, the special regions are in a position to defend certain powers granted to them under their statutes. De facto this means the sovereignty of the nation state has cracked. The region in turn, has not assumed the failed mantle of a nation state because it does not have responsibility for “all” policies claimed by the nation state. Furthermore, and this is a very important break from the nation state dominated past, they do not claim such authority.

This leads neatly on to the final, and perhaps most intriguing result of regionalisation. Although this work is not a sociological study it would be foolish to ignore this final result. In those countries where regionalism has strong roots (i.e. the higher autonomy regions), the regions invariably do not talk of nationalist aims. Instead they see greater autonomy within the nation state and influence in Europe as their goals. This is most noticeable in areas where micro-nationalist sentiments have been strong. In Catalonia and Euskadi, the mainstream nationalist parties, no longer talk in terms of independence for their “homeland”, instead describing their goals in the terms outlined above. The success of these parties has been in direct contrast to those espousing a traditionally nationalist position, who have invariably fared badly (Hopkins, 1996).

In Germany, where micro-nationalist sentiment has been all but non-existent a similar division of identities has been recorded. The division of powers has been accompanied by a division of identities, with regional, national, local and European identities all existing in tandem. This seems to be as a direct result of the division of powers itself. Regionalism and the division of sovereignty it entails, far from encouraging micro-nationalism, actually encourages a weakening of the dangerous focus on the “nation”, Europe has been plagued with for the past two hundred years. Interestingly, the inability for certain countries to cope with the concept of European unity has much to do with this concept of national sovereignty.

In those areas where regionalism (whether cultural or political) has taken hold, the European Union holds far less fear. Adding another identity to an already multi faceted one is relatively simple, where the focus is on one all purpose “national” identity, European identity is perceived as replacing it. Notice the constant referral to the “loss” of identity and sovereignty, by those who oppose the EU. The development of regions has shown that sovereignty need not and indeed should not operate in this exclusive and divisive manner. The success of this division of sovereignty and the accompanying weakening of the “national” focus of identity may prove to be the most enduring consequence of the development of regions within the EU.

The region therefore does offer a “new” approach to government, whether intended or not. This may be due to the non-sovereign nature of the region itself and the lack of regional hang ups about this issue which seems to dominate development at the national and European levels. Whatever the reason, the region has certainly increased the use of soft-bordered methods of governance, leading to the addressing of issues in more rational territorial areas. In addition, the division of sovereignty has allowed policy decisions to reflect the differences within national boundaries and consequentially weaken the focus on “national” sovereignty and “national” identity. This has occurred in those regions which are powerful enough to make a difference in their policy choices, but as mentioned above, this does not include all those regional units currently in existence. To what extent therefore, do the effects of the regionalisation process affect the European Union as a whole? Put in simple terms is the “Europe of Regions” a reality or even a possibility or will national borders continue to dominate, restricting regionalism only to individual nation states?

## **8.6 A Europe of Regions?**

This thesis began by mentioning the over used prediction that the European Union was developing into a “Europe of the Regions”. In recent years this claim has

been ridiculed by a succession of authors. Indeed one has suggested that nobody even knows what it actually means (Tindale, 1995). This I feel is overly harsh. A "Europe of the Regions" envisages a Europe where the dominant domestic tier of government will not be the nation-state. Instead the region will be dominant beneath a European umbrella. There can be little doubt that this has not happened, yet. However, I would contend that there are signs that a major change in the way we govern ourselves is certainly underway.

The fact that democratic regions now exist in eight of the original twelve member states (and in two of the three new members) is certainly evidence of the growth of the regional tier. Let us not forget that in 1939, there were no democratic regional governments (with the exception of the weak Dutch provinces) in the countries that now make up the EU. Yet in the fifty years since the end of hostilities, only Greece, Ireland, Finland\*, Luxembourg and the UK have no democratic regional level. Of these only the UK, Greece and perhaps Finland are definite candidates for regionalisation.

The structural building blocks for a regional Europe are therefore almost in place. It must be questioned how long the Greek and British governments will resist pressure for the democratisation of their regional levels. Functionally, the regions that do exist control wide areas of policy, to a greater or lesser degree. In all cases, these are increasing rather than decreasing. If there is a regional weakness, it is financial. The lack of independent finance open to regions has led to increased use of borrowing, something unacceptable in the current climate of restricted deficits in preparation for the single currency. There may therefore have to be a trade-off between the regions and the nation-states to ensure the deficit restrictions are met.

Assuming the opposition parties are successful (and keep their promises) at the next UK general election, the introduction of regional assemblies in England coupled with parliaments for Scotland and Wales may change the regional map of

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\* Although the Finnish Åland islands do exercise home rule.

Europe dramatically. If the Scottish parliament receives the powers designed for it, it will be a formidable region in autonomy terms. As such the current regional “axis” of the Belgian regions, *Länder* and *autonomías* may gain a powerful ally. In such a situation, the regions cannot fail to gain further power and authority and the argument for their formal involvement in the European policy process may become unanswerable. More importantly, their increased power and self-confidence is likely to create a situation where the nation-states have no choice.

The ability of regions to veto changes to the European Union treaty is certainly their strongest weapon. Their success in using this may depend on the extent of unity the regions can present to the Union. If the Belgian or German regions present their opinions as those of the regional tier generally, they are far likely to be accepted. If this is not achieved, it would be politically difficult for the regions with the power of veto, to hold up European unity for their own parochial needs. The result may not be a Europe of the Regions; however, both the national and European tiers are unlikely to be able to ignore them. The construction of a “Europe with Regions” will be a necessary part of the EU’s development.

## **9 - Regional Government and the UK**

While the rest of Europe has been involved in a radical reform of territorial government, the UK has been notably silent. It is as if the regional revolution, evident on the continent for the past fifty years has passed the UK by entirely. Yet the UK is a prime candidate for regional devolution. The mere geography of this island territory would make most neutrals see regionalism as a natural form of governance. The area ruled by the UK government covers an extensive and varied landmass as well as a population of nearly sixty million people. Furthermore, some parts of the UK are physically separated from the British "mainland" (N. Ireland being the largest of them). If this was not enough, there also exist strong "national" identities in Scotland, Wales and Northern Ireland as well as "regional" ones in parts of England (and parts of Scotland\*). Despite this, the UK remains the most centralised state in Western Europe.

Any observer of Scottish or Welsh politics in particular, will know that the lack of change in the UK system has not been for want of trying. In Scotland and Wales, there have been constant calls for regional parliaments/assemblies/senates (the title has changed with the times) since the Nineteenth Century. Such calls were notably quiet when the Celtic fringe was doing rather well out of the Empire but that is an issue of political history, something that has dominated the British debate for far too long.

As the Century nears its close, it seems that finally the unitary structure of the British state is beginning to creak. There have been too many false dawns to predict its immediate demise, but its illness certainly seems more serious now than ever before. The incumbent Conservative government is the only major political

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\* Shetland, for example.

party committed to the status quo. Thus, should it be defeated in the election of 1996/7, the British state should be revolutionised. However, as Andrew Marr has pointed out, parties are very good at promising constitutional change in opposition, but less than enthusiastic when in power (Marr, 1992). The power that a sovereign parliament affords to a majority party is a heady brew indeed.

Nevertheless, it seems inconceivable that constitutional change will not come soon. The future of the Scottish Labour party could suffer dramatically should it fail to honour its promises while in government (or suffer yet another UK defeat and Scottish victory) in an effort to construct a consensus on the issue. The time spent in opposition has not been wasted however. The establishment of the cross party Scottish Constitutional Convention was a landmark in the movement towards regional devolution in Scotland, by bring together groups and political parties (though not the Scottish Nationalists or the Conservatives). This body drafted a detailed scheme, approved by both the Labour and Liberal Democrat parties to establish a Scottish Parliament, should one or both parties enter government. This was expected to happen at the last general election, but the surprise electoral success of the Conservatives put it on hold.\* The intervening years have been used to detail the proposals still further.

During the writing of this thesis, the Labour party's policy on this issue has changed significantly. It will now institute a referendum on the question should it win the next general election. Importantly, however, the referendum will comprise two questions, one on the Scottish Parliament scheme in general and one on the issue of tax raising powers. This is little more than a political fix and has no precedent in Europe, or real rationale in the UK. The scheme, negotiated by the Convention partners was a single plan which all supported. If the tax-raising powers are removed, the intricacies of the scheme will be damaged. In fact, the Labour parties decision seems based on removing the question of tax-raising powers from

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\* Public demonstrations did not abate, however, climaxing in the 20,000 strong march during the European Council Summit in Edinburgh, 1992.



their manifesto and thus depriving the Conservatives of a campaign issue. Labour's referendum fever (they now propose them on the European Currency, a Scottish parliament, tax raising powers of that Parliament and electoral reform), is rather suspect considering their opposition to them on other issues. Notably, the Scottish referendum will not give independence as a option, hardly a fair situation. Unfortunately, these referendums are nothing more than a political fix and a worrying sign of Labour's fickle support for substantial constitutional reform.\*

The regional debate is no longer isolated to the Celtic fringe, however. Both the UK opposition parties propose regional assemblies for England, as well as for the Celtic "nations" (although this has long been Liberal policy). This has been less thoroughly discussed, as was evident when the Labour Party unveiled its policy on the matter. The proposals were vague, which the Conservative party were able to use to their advantage. This has led to a hurried policy review within the Labour Party, culminating in an equally imprecise discussion paper (Labour Party, 1995).

Despite the growth of regionalism as a political issue throughout the UK, there has been a remarkable lack of interest in the experience of our European partners, at least at the policy level. This final chapter hopes to change this by exploring what lessons can be learned from European experiences in this field. These are obviously varied and it would take a separate thesis to explore them in their entirety. For this reason, a few general areas, plus some of particular relevance to the development of a regional structure in the UK are examined. These are; the finance, structures and functions of such bodies, the role of local government, the question of boundaries and finally, the "West Lothian Question". These are chosen because such difficulties are often raised as reasons why regional government in the UK cannot be instituted. In fact all these "wrecking questions" have been answered,

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\* Another example of this is the emphasis the Labour party has now placed on the sovereignty of the UK parliament, despite all Scottish Labour M.P.'s signing the Claim of Right which recognised the traditional basis of Scottish government, namely the sovereignty of the people.

by different methods, and with varying degrees of success, in the regional systems of our European partners (Hopkins, 1996).

The second section of this chapter focuses on the present plans for regional reform proposed by the Constitutional Convention in Scotland and the Labour party in England. Although, the Liberal Democrats also have a long standing (and probably more rational!) commitment to a federal Britain, the unlikely prospect of it coming to fruition and lack of space means I shall bypass it.\* The plans that are proposed are briefly examined in the context of European experience and any difficulties and potential problems are identified. This critique also examine how the proposed bodies would operate within the UK and Europe.

The concluding section of this final chapter offers my own comments, based on the research collated above, on how the implementation and development of a regional structure in the UK could be achieved. This, I believe would not only revolutionise the governance of the UK, but offer a blueprint for government throughout Europe. As Hutton has recently pointed out, it is not just the policies of successive UK governments that have led to the mismanagement of Britain, but the structures themselves (Hutton, 1996). The regionalisation of the UK and the decentralisation that would accompany it, could break the centralising stranglehold that has handicapped the state for so long. The breaking of London's monopoly of power would be one small step towards a more democratic and more successful British Isles.

## **9.1 European Lessons**

The first and most important lesson to be learnt from European experience in the context of regional government, is that it is possible. Too often there have

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\* The Liberal policy envisages between nine and twelve regions of exclusive and current powers. All powers currently undertaken by regional quangos to be handled by the democratic regions (Liberal Party, 1993)

been predictions of dire consequences, should devolution/regionalism be introduced in the UK. Despite such equally pessimistic predictions from Spanish, Belgian, French and Italian centralists, the development of the region in these countries has not brought about the end of the world as we know it. Indeed, rather than causing the sky to fall on their heads, the region may have saved some nation states from disintegration.

Another important general point to note is that regionalism occurred in Europe for a variety of reasons. Chapter three explored this in detail, but here we can summarise the rationale behind regions into four areas:

- 1) Micro-Nationalism
- 2) Democratic Enhancement
- 3) General Functional Decentralisation
- 4) Economic Development

The initial reason for the creation of different regions led to the establishment of different regional systems. In Germany, for example, the second rationale was the prime mover behind regionalisation. As a consequence of this authority for police and education was granted exclusively to the regional bodies in an effort to reduce the possibility of a dictatorial nation state government assuming power. In contrast, education and police remain firmly national functions in France and Italy (with the exception of some special regions) as the “ordinary” regions in these countries were created to encourage regional economic development (type four), though they have now evolved into more general decentralised bodies (type 3).

In the UK, the rationales behind regionalism vary between the regions and “nations” themselves. In the Celtic fringe, the question is undoubtedly, one of micro-nationalism. Although many supporters of Scottish or Welsh devolution may not class themselves in these terms, their aim is to create regions with a wide range of functions, in an effort to create “home rule”. The reasons for wanting such autonomy may vary, but for the purposes of this thesis, the rationale is micro-nationalist. This is patently not the case in England. English regionalism is based on functional decentralisation or regional economic development alone (types 3 & 4). This leads to several factors which must be borne in mind.

Firstly, the question of regionalism in the UK is not a single issue. Depending on whether we are looking at England or the Celtic fringe, the rationale for regionalism (and thus the most suitable form of regional structure), will vary. This in itself causes difficulties, as any suitable form of regional government for the UK will entail a degree of variable geometry. Secondly, within England, the rationale for regionalism is not agreed. Although the Liberal Democrats have a relatively clear rationale for a decentralised state, the Labour Party’s proposals veer between regionalism as a method of economic development and regionalism for no good reason whatsoever. Furthermore, many within the party favour regionalism as part of a general decentralisation process (while some oppose it altogether). The difficulty is that, without a rationale for regionalism, there can be no rational discussion of the form it should take. Regionalism is a tool, to produce the desired political effect (e.g. increased accountability, weakening of the central state). It is not an end in itself. The creation of regional government is only worth the candle, when the purpose is one of decentralisation and democratisation. It is this rationale which is pursued in the following section, in relation to England

Regionalism is a possible form of government. It becomes more desirable if decentralisation; increased democratic accountability and the pursuance of policy closer to the wishes of the population are regarded as examples of “good” governance. The benefits of regionalisation were explored in chapter three and do

not need repeating here. If the UK wishes to enjoy these benefits, what can we learn from the practice of regionalism in Europe?

### **9.1(a) Structure**

In the UK and specifically England, the structure of a proposed regional tier has caused as much controversy as the functions it would undertake. In England, the question of boundaries, and where they should be, has been one which some have argued makes the democratisation of existing regional governance in England, impossible. Of less interest in England, but vital to the Scottish question, is whether constitutional protection can be afforded to a regional parliament, to prevent its abolition by the UK parliament at a later date. Finally, an issue aired less publicly concerns the power of such regions, should they be created. Is legislative power necessary or desirable for the operation of a regional government? These three questions are explored below.

The issue of where the boundaries of any regional units should be, is one further obstacle place in the way of any proposed regional reform. It is often pointed out, quite correctly, that there is no agreed division of the UK (aside from the boundaries of Wales and Scotland) and that any such division would be controversial (Tindale, 1995). Although, this is obviously the case, this does not mean that English regional government is impossible. Indeed, each of the regionalised states in the European Union has experienced similar difficulties.

The first principle to remember is that all political boundaries are artificial, to a greater or lesser extent. This applies to the nation state, as much as any other unit. This is not a reason for saying government by nation states is impossible. Regional boundaries must also have a degree of artificiality about them. What the policy maker must decide, is how best to limit such difficulties.

The first question to ask in such a situation is what is the purpose of the regional tier? If its primary role is to manage the health service (e.g. Denmark), then units commensurate with this task are suitable, if environmental protection is the

prime function, perhaps division along river basins would be desirable.\* Unfortunately governments are generally multi-purpose beasts. This is even the case in regions where their establishment was due to a specific factor (e.g. Denmark or Italy). The delineation of boundaries on grounds of health service (Denmark) provision or economic development criteria (Italy), soon became irrelevant as more responsibilities were added to the regional portfolio. The establishment of a regional entity seems to attract further responsibilities.

Bearing these principles in mind, how can regional boundaries be devised? The first, and most radical, approach is seen in Belgium. The regional system of the Belgian federation, examined in detail above, (see Chapter 8.5 and Appendix I.1) divides the territory of the country along cultural and economic grounds. Where these diverge, the regional units overlap (in Brussels and the German Community). This at least shows the possibility of using soft borders. The drawbacks with this method of constructing regional boundaries can be divided into two strands. First, confusion in the electorate between the various regional bodies and second, “over government” by too many politicians (the latter can also include a criticism of increased administrative costs). These can be overcome, and have been avoided in the Belgian example.

The first criticism can be discounted by the clear delineation between the roles of the different regional bodies. Indeed, the clear division between “personal issues” (health, education, culture, sport, etc.) and “economic issues” (industrial development, infrastructure, environmental protection, etc.) can actually increase democratic accountability. Instead of elections being made over a huge package of policy commitments, the division of authority allows the packages to be reduced. Thus the German Community government is elected on its policies for education and health, not economics. This applies in reverse to the Walloon elections for the regional chamber.

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\* This is the present situation for the national rivers authority - one of the few benefits of water privatisation (Tindale, 1995)

A more justified criticism concerns the plethora of regional politicians, such a soft bordered unit could spawn. Again, the Belgian example, gives some pointers to a solution of this issue. In Flanders, the two regional units are now amalgamated for administrative purposes. The membership of the body changes depending on the topic of discussion, however. When discussing “personal” issues, six delegates from the eleven Flemish representatives of the Brussels regional government, also vote. In other matters they can participate as observers. In Wallonia, the French Community Council comprises the Walloon Regional Council plus nineteen delegates from the sixty-four French representatives on the Brussels Regional Council. The upshot of this is that, with the exception of the German Community, only one regional election takes place in Belgium. The relevant Councils are filled through this. A soft bordered approach to regional government does not necessarily lead to a plethora of administration or elected representatives.

Another approach to the question of boundaries, accepts the political nature of all borders, merely setting such markers in the most convenient spot. In Germany, France (with the exception of Corsica) and the “ordinary” regions of Italy, this was the approach taken. The regional divisions in these countries are based on convenience and little else (with a few exceptions). In Germany, the desire was to divide Prussia (the traditionally largest Germany region), while in Italy and France, the regions followed existing local government boundaries. As their primary role was seen to be the development of regional industry, this was seen as convenient a delineage as any.

Despite the crude methods used in creating regional borders in these countries, the results have been surprisingly stable. As noted in the previous chapter, Germany and France both have difficulty in changing their regional borders, despite their predominantly artificial nature. Indeed, smaller “traditional” regions such as Velay in France, swallowed up by larger regions in 1982, now show allegiance to both (the flag of Auvergne is seen in Velay, alongside the traditional badge of identity). If the creation of regions was deemed desirable in England, the creation of a regional tier could therefore, probably be imposed, without too much

difficulty. A word of warning should be sounded alongside this solution, however. Where regional/micro-nationalist identities are strong (e.g. Brittany), the division of the territory may prove unpopular (e.g. Brittany, see Appendix I.3).

The final solution to the boundary question is that presented in Spain. The much quoted, and misunderstood, “organic” process, allowed the development of regions where the population wished their creation. Importantly, the borders of these units were not laid down. Although formally based on the local government structures, the boundaries of a region could be any area the population wished, if the central government approved. In practice, the regions follow provincial borders, in all but a few exceptional cases. The result was a regional structure with inbuilt support from the local populace and of equal importance, regional boundaries agreed by the population themselves.

In England, the problem of boundaries is not insurmountable and is no more or less difficult than decisions surrounding local government units. No one suggests that failure to agree on local government borders means that we should not have local government. One final point should be noted in relation to Belgium. The German Community does not even follow local government boundaries in its territorial coverage. This is a precedent that could be followed in the UK, should the desired regional territory fail to follow current local borders.

The borders of a proposed Scottish regional government would not be an issue. With, perhaps the exception of Berwick, the boundaries between Scotland and England have remained static since before the Union of the Crowns (1603). Of much more interest is the question of permanence. Once a Scottish Parliament has been established, will it withstand the wishes of a British Parliament to abolish it? Equally, will the ability of a British Parliament to unilaterally abolish or modify the Scottish Parliament’s powers weaken its operation? Both these questions will also apply to any English Regions or a Welsh Assembly, should they be established.



Under the present UK constitution, the sovereignty of Parliament ensures that no constitutional protection can be given to any regional tier. The ability of the Central Parliament to abolish the regional tier is incorporated in all but two of the regional systems of the EU. Only in Belgium and Germany are the regions involved in the constitutional amendment process (and in Germany, the federal principle is guaranteed in an eternity clause). In Spain, Italy and Portugal, the abolition of regional governments would require constitutional amendment, but the regions have little or no role in this process. In practice, this is immaterial. It is inconceivable that the regions in these countries will be abolished (though the Italian ordinary regions may be re-organised).

The guarantees for these regions come from two sources. Firstly, their support within the population. To abolish regional government would be such a political gamble that no party would be willing to take it. Secondly, and perhaps crucially, all parties have recognised the advantages to be gained from a regional tier. When one is in opposition at the national level, opportunities to gain power away from the centre are very tempting. The classic example of this is in France, where a “Jacobin” right was, by 1986, complaining about the lack of progress in decentralising the state. The reason was simple. They had been successful in capturing the regional governments (with only two exceptions).

The support of the population in “micro-nationalist” areas is a further source of protection for a regional authority. Abolition of the Catalan Generalitat or the Euskadi Parliament would only inflame the feelings of the regional population. This could only aid those in favour of a “nation state” for these areas. This is so obvious that no Spanish politician will propose it. All these discussions are rather fanciful, as the regional governments of all the EU member states have become institutionalised in a remarkably short time. This has the disadvantage of making alterations difficult (in the Netherlands for example), but it does ensure regional government’s entrenchment in the political system.

The weakness of Scottish, Welsh and English regions may not lie in the threat of abolition under a hostile Conservative government, but rather in incremental reductions of their powers unlikely to concern the electorate. In constitutionally protected systems, this has proved difficult for the central authority to achieve. This is the real advantage that constitutional protection affords to such regions. In France and especially Denmark, that the regions have continued to operate relatively freely is due primarily to the perception that they do a good job. In France, the fact that the vast majority are of the same political complexion as the national government is also likely to help them. In these cases it is the culture of decentralisation that is vital for the successful operation of the regional tier. In Denmark, the emphasis on agreement, traditional in Danish politics, means the *Amter*, despite the potential for tight control at the national level, remain highly autonomous. Whether such a culture would be forthcoming in the UK, is highly debatable.

In conclusion, Europe offers us several solutions to the question of regional boundaries and emphasises that constitutional safeguards are not prerequisites. Although they can aid regional defence of their specific functions, the institutionalisation of the regional tier can be as important. In the UK, where constitutional protection is not an option, political pressures may be all that limits the later emasculation of the regional level. Unless a method of constitutional protection can be found, regional government, especially in England will have to create the political climate that makes its abolition impossible.

### **9.1(b) Finance**

It has been a central tenet of this thesis that regional governments must have autonomy to operate as successful policy making units. Autonomy is therefore the key factor in the regionalisation of the UK. Put simply: no autonomy - no point. In chapters six and eight, the disproportionate importance of finance in the securing of such autonomy was examined. What does this tell us about the introduction of a regional system in the UK?

This question of finance has long vexed those in the UK, who wish to see the regionalisation of government. If government is to be devolved, then the devolved units must have financial autonomy. Without this, they will become the lackeys of the central state. This premise, at least in the UK, is based on a misconception. When observers in the UK talk about financial autonomy, they invariably mean tax raising powers, i.e. the ability to alter a tax rate (and perhaps the base itself) as a means to raise extra finance. The reason for this assumption is that successful regional governments in other countries (Germany is most often mentioned) are presumed to have such powers. In fact, as chapter five demonstrates, quite the opposite is the case.

With the exception of France and Denmark, European regional governments are devoid of any significant tax raising powers. Only the optional surcharge powers of the Spanish regions and their Belgian counterparts, which are rarely used due to political restraints, offer any financial independence to these regions. What matters, in terms of autonomy at least, is not financial independence (in the sense of tax raising powers), but financial security and adequate funding. The latter can be ensured by a variety of means, block grants, a fixed share of taxes, etc. but the central state must not have the ability to reduce regional budgets unilaterally. If such a power does exist, then regional financial autonomy will be impaired.

Methods to restrict national control over regional budgets vary. The most common is the funding of regions through a division of the tax yield (Belgium, Portugal and Germany). The formula used for such a division is either agreed between the parties or constitutional entrenched. When the tax in question is income tax, however, the regions can be vulnerable to a tax cutting national government reducing their budgets. The German regions are unique in their ability to collectively veto such changes in the *Bundesrat*.

Other methods of securing financial autonomy include, block grants based on formula (Spain and the Portuguese islands) and yearly negotiation. In the former case, the formulas do not remove the controversy surrounding regional finance.

Instead, the focus of political argument becomes the formula itself. Nevertheless, it does give security to the region and allow a degree of stability between the region and the central state on financial matters. Negotiation on a yearly basis, is practised only in the *forales* regions of northern Spain (Navarre & Euskadi). These regions pay a set fee to the national government, from the taxes they collect within their territories. This purports to pay for national “facilities” such as defence, foreign affairs and solidarity funds for poorer regions. In fact the regions do rather well out of this system and the negotiations can be very protracted (on at least one occasion, the next year’s round has begun before the previous year’s had finished).\* This can hardly be described as a satisfactory state of affairs.

For regions to have autonomy, they must have sufficient security of finance to undertake the task assigned to them. Having the ability to raise extra finance aids financial accountability and independence, but it is not vital. What is vital, is the inability of the central state to reduce regional budgets unilaterally. If this is possible, a situation such as that in Italy can develop. Here, the specific nature of regional funding (and the underfunding of certain services), means regional freedom in undertaking policy is severely limited. If the UK is to have a meaningful regional tier (and any other type, would be a waste of public money), financial stability, through tax division or formulaic (and guaranteed) block grant is a minimal requirement.

### **9.1(c) Functions**

The evidence of chapter nine made it abundantly clear that there is very little that cannot be devolved from central to regional government. The only functions, which all regions are excluded from are defence, monetary and fiscal policies. Even foreign affairs are conducted by an increasing number of regions, in

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\* This is not dissimilar to the situation with regard to the Isle of Man and the UK, though as a sovereign territory the I.O.M. has tax raising powers (Isle of Man Government, 1987).

both an official and unofficial capacity. There is thus no mileage in the argument that certain sectors cannot be devolved.

All those services that are currently administered regionally in the UK can be easily transferred to a democratic tier. This has been the experience of all the European examples. Where national control through administrative deconcentration has remained, this has been due to political expediency, not practical difficulty. Regionalising functions is therefore not a problem. Once the purpose of the region is established, all relevant functions can be devolved.

The method used by regions to deliver the functions they are assigned varies. All the constitutionally guaranteed regions exercise some form of legislative power, but this is not a guarantee of independence. As we have seen, Italian regions, through the financial restrictions placed upon them and the tight functional controls they operate within, are not highly independent. This is true, despite their legislative power. The French and Danish regions exhibit a higher degree of autonomy, but have no such legislative power. It stands to reason therefore, that if the tasks allocated to the region do not require legislative action, then there is no need for such a power to rest with the regional authority. In the UK, this would place regional acts within the realms of judicial review, which may restrict their activities. The courts have been far more active in restricting the actions of local government than in limiting government ministers (with a few recent exceptions). This may need some analysis, if the region is to be seen as a policy making body with its own remit, rather than being only an administrative unit, as it may be perceived under current English Law.

In Scotland, the extent of powers which will be devolved to the region undoubtedly requires legislative authority to be transferred. The micro nationalist basis for the regional parliament means that home rule is the aim. This cannot be achieved without legislative power lying in Edinburgh (notably in relation to Scots Civil & Criminal Law). In Wales, the issue is slightly more ambiguous and is examined fully later. I am unconvinced, however, that a Welsh Assembly will be

able to operate successfully without such a power. If either the Welsh Assembly or the Scottish Parliament gain such an authority, they will be unique legislative regions because of their lack of constitutional protection.

In both England and the Celtic fringe, an issue of great importance is likely to be the division of powers between the regional and national levels. Experience from the continent (and elsewhere), is that clear divisions of such powers are almost impossible, yet paradoxically, they are vitally important for successful regional government. In France, the principle of “blocks” was used to divide issues between levels. The regional level was granted control over the regional “blocks” of a particular issue (e.g. *lycées* in education). In the event, such divisions proved messy and co-operation between levels is the norm. In Belgium, where a division between sectors was attempted, there have also proved to be large areas where co-operation is the keyword. Although this is not in itself a bad thing, it can have a variety of undesirable side effects. First, when responsibility over an area is blurred, the state is likely to be the stronger party. Especially in financial terms, this means the regions are open to restriction of their policy discretion. Second, such co-operation that occurs will be between executives and generally secret. The consequences of this were explored more fully in the last chapter (see page 378). The efforts of the Belgian and French systems to delineate clearly have been important. In Belgium, the constitutional equality of the regional and federal levels means that the state cannot railroad the region in the name of the national interest (as was the case in Germany), but such constitutional equality is impossible in the UK. In France, however, the delineation, though far from perfect, does restrict the central executive from interfering overly. Although making delineations between policy areas cannot be neatly achieved, it must be attempted, to ensure co-operative regionalism is minimised. Where co-operation is necessary, the mechanisms for it must be formal, open and accountable. Under the present UK political culture this seems unlikely.

### **9.1(d) Local Government**

The delineation of power between local and regional tiers is as important as that between the centre and the region. The evidence of “recentralisation”, examined above, certainly suggests that without such clear limitations on the region, it can become an agent for centralisation, rather than having the decentralising role, expected.

In the event of the establishment of regional government in the UK, it is imperative that a re-assessment of local government is undertaken at the same time. This is clear from the region/local conflicts that have occurred in Europe where such reforms have not been undertaken in tandem. The conflicts between local and regional governments seem to have emerged from three primary sources:

- 1) The retention of a tier of government that challenges the region
- 2) Failure of regional governments to decentralise locally
- 3) Regional governments without a clear rationale, inventing one by taking powers from the local level

With the exception of Denmark and the Netherlands (where the region is all but irrelevant), every regional system has encountered difficulties with local government, usually through a combination of the above. In the UK, the difficulties will be subtly different, but must still be addressed.

In the first case, the establishment of the region is unlikely to make a current level of government irrelevant. With the exception of a few English anomalies, single tier local authorities will remove the region/province conflicts evident in Spain, Belgium, France and Italy. However, the attitude of local government to the regional tier in the UK, seems to suggest other difficulties. Although many councillors support the introduction of a regional tier, there seems to be a large

weight of opinion, that wishes control of it to remain with the local councils. This is impractical, if the region is to have any real purpose.

The overall lesson to learn from local/regional conflicts in other European countries is that they must be avoided through a structure that makes them unlikely. In practice, this means constitutional guarantees for the local level and a clear delineation of authority between it and the region. Ideally this should give local authorities the right to appeal to a court, in the event of regional usurpation of a policy suitable for the local level (subsidiarity). However, as even the interventionist German Constitutional Court has avoided this issue, it is unlikely the more reticent UK courts would entertain this political issue. Without constitutional protection of the type introduced in Spain, it seems the French solution of limiting functions to specific levels is the only option in England. In Scotland, the legislation for the Scottish Parliament could have some right of autonomy for the local level enshrined within it. Nevertheless, without a court willing to involve itself in a question brimming with value judgements, the usefulness of such a clause could be limited. The fate of German local government supports this view.

### **9.1(e) The "West Lothian" Question**

Since its formulation by the Labour M.P. Tam Dayell, in the late 1970s, this conundrum has been perhaps the most discussed of all the issues surrounding devolution. Dayell referred to the specific problem caused by the creation of a Scottish Parliament, without commensurate bodies in England or its regions. If a Scottish (or Welsh) Parliament has authority for health care, why should Scottish (or Welsh) representatives vote on matters of health in the British Parliament? Laws passed at Westminster will not apply to Scotland. Therefore, Scottish M.P.s will have a say in something that has no bearing on their own constituents. If all the peripheral "nations" achieve home rule (a distinct possibility) then effectively, English laws will be subject to the approval of the British population, while Scots, Northern Irish and Welsh Laws will be the concern only of the people which they apply to. Although this is once again presented as an intractable problem, it has



been faced in almost all regionalised states. Despite this, it has not stopped the creation of regions and in some cases, where the issue would be expected to cause friction, it is ignored. The following section examines the solutions used in Europe and offers some explanation for this issue being conspicuous by its absence in European politics.

The first approach, used in Belgium, France, Portugal and Italy, is simply to ignore it. In each of the countries, some regions have responsibility for functions, which are denied to others, yet their representatives still vote in the national parliament, when these issues are discussed. In Belgium and France, this is perhaps easily explained by the small areas affected by the “West Lothian” issue. In Belgium, it only applies to the German Community, (in relation to the French Region) which has a population of around 70,000 (out of 4 million). It is thus possible to ignore the issue, without much difficulty. In France, the only anomalies are Corsica and the overseas territories. In these cases, the population affected also remains small, while their geographical distances, (and the peripheral nature of Corsica) mean such issues are again, conveniently sidelined.

Portugal falls into this category, to a degree, but the island regions do make up around six percent of the populace (in comparison with 8.9% for Scotland in the UK). This is significant, but their peripheral nature is such that once again the “West Lothian” implications are not in the public eye. However, of perhaps equal importance is the fact that without “home rule”, the islands would be unlikely to support Portuguese governance. The “West Lothian” question is therefore a necessary price for the unity of Portugal and it is this factor which I believe holds the key to the situation in Italy.

Although the Italian “special regions” are all peripheral, a significant proportion of the population lives within their collective borders. Around 15% of the Italian population are citizens of these regions (about the same proportion of people who live in Scotland and Wales, in comparison with the UK). The lack of concern with the legislative power these regions possess cannot therefore be

explained away by their irrelevance. Indeed, if Tam Dalzell's analysis is correct then the fact that two of these "special regions" are amongst the poorest in Italy should enhance the issue. In fact this is not the case and in Italian politics the issue is never mentioned. Although this has never been examined, two hypotheses can be made.

Firstly, until recently, the Italian regions had a very low profile. This applied to the "special regions" as well as their weaker counterparts. Secondly, the Italian state had little choice in the matter immediately after the war. The success of regional resistance movements in the peripheral regions meant secession, federalism or regional autonomy, were the only options open to the Italian government. In the event, the latter proved the lesser evil. Even today federalism remains an emotive issue in Italy and perhaps the "West Sardinian" question is accepted as the price for Italian stability. As the unofficial motto of the Italian constitution states, "...but it works!".

A second and more rational approach for regional systems, to avoid the complexities of "West Lothian" is to create a uniform structure. This approach was adopted in Germany and mainland France, but is a practical impossibility in the UK. In Germany, the artificial structure could be imposed on a territory in violent political upheaval. Even then, the Bavarian representatives voted against the Basic Law of 1948, claiming it did not grant enough powers to the regions and specifically, their historic "nation". In France the uniform imposition of a single structure which failed to recognise the traditional provinces and "nations" of France was undertaken in 1982. This left the regionalist movements of Occitania and Brittany, with much less than they desired, but these movements were and continue to be weak and fractious. This is not the case in Scotland and Wales. A "lowest common denominator" regionalism as imposed in France, would not be acceptable to the Celtic fringe.

A final option for the resolution of the "West Lothian" question can be observed in Spain. The unique development of Spanish regionalisation relied on an

“organic” growth of regions, with no specified plan being laid out in the constitution. This meant that regions could be created when the population wished it. Had the Spanish government not panicked in 1981, it is debatable whether the whole of the Spanish peninsular would ever have been regionalised (see Appendix I.8). However, all regions in Spain are far from equal and despite the Catalan nationalist involvement in the present and previous Spanish governments, the “West Lothian” question has failed to become a political issue.

In fact this is not surprising. The Spanish equivalent of the “West Lothian” question has been part of Spanish politics since the first Socialist government of the mid-eighties. The heartland of the PSOE is Andalucia, a high autonomy and heavily subsidised region. This meant that the Spanish socialist government relied heavily on representatives in this region to pass laws which did not apply in their own constituencies. This is the expected manifestation of West Lothian in the UK in relation to the Labour Party (Scotland being the UK’s Andalucia!). However, it was never raised as a political issue, why?

The reasons are complex, but a few pointers can be made. Firstly, the regions with high autonomy account for a majority of the population (around 60%) so it is the minority that get the raw deal. Secondly, the regions of high autonomy cover rich and poor as well as left and right, leaving no natural political base for opposition to the status quo. Thirdly, as in Italy, regionalism is still the preferred option of the majority of the population (as against federalism, centralisation or the break-up of Spain), and the “West Lothian” type consequences of it are a necessary evil. Finally, and most importantly in the Spanish example, the elimination of the “West Catalanian” question is within the ambit of those affected by it. All regions can move to the higher status of autonomy if they wish. The only exception is in the area of health, where the central state will not devolve, where it has not already done so. In practice, the remaining low autonomy regions do not desire this “poisoned chalice” anyway, so it is of little relevance. A few regions may take up the offer of higher autonomy (Asturias is currently considering such a proposal), but in the main they are likely to remain as they are.

The obsession with the “West Lothian” question in the UK’s constitutional debates is something unique to these islands. It is important to note that although the three options for addressing the “West Lothian” question presented above are available in Britain, I am slightly dishonest in presenting them as such. Although they do offer practical solutions to the difficulties of “variable geometry”, they were not presented as such in their domestic systems. In fact the “West Lothian” question is notable by its complete absence in any discussion of regionalism in Europe. Importantly, the Spanish system, was not established to solve such a problem, though it is often presented as such in the UK. The plain truth is that regional government (as opposed to federalism), will by its very nature bring with it, the “West Lothian” problem. There is no solution as such and the question that should be raised is why is this issue so important in the UK?

I would contend that this may be due to the overcentralisation of government in the UK at present. A few Scottish M.P.s could have a decisive effect on a centralised sovereign parliament, dominated by adversarial politics. This is not the case in European politics where government is generally by coalition and consensus. The importance of a “West Lothian” question is therefore diminished. Ironically, although English regionalisation cannot solve the West Lothian Question, it may address the fundamental cause of it. Namely, the overcentralisation of power in Westminster and Whitehall.

## **9.2 Scotland**

On 1st May 1707, the independent Kingdoms of Scotland and England (including Wales) ceased to exist. In their place, Great Britain was born and has survived, remarkably intact, to this day. However, if the majority of Scots have their way, the Union in its present form will not make its three hundredth birthday. Instead it is proposed to re-establish the Scottish parliament in a building, converted for the purpose, on the slopes of Calton Hill, high above the city of Edinburgh. The romance of such a notion, to many Scots, has been tempered by hard-nosed realism

that past attempts have failed. Equally, if and when the Scottish parliament re-opens its doors it will not run on dreams alone. The assembly scheme must be well constructed in advance. There will be no second chance.

For this reason, the Constitutional Convention has spent a considerable amount of time constructing a scheme broadly supported by the majority. The emphasis has always been on consensus. Despite the time and effort spent on such a scheme, how does it compare with events in Europe? Will it be a powerful regional voice or not? In this sense will it add significantly to the "Europe of the Regions"?

There can be little doubt that the Convention intends the Scottish Parliament and its accompanying bodies to have a formidable degree of policy independence. This is clear from the first few lines on the section concerned with the powers and responsibilities of Scotland's Parliament, contained in the Convention's proposals:

"The power base of the Parliament - its essential reason for existence - will be its wide ranging legislative powers. These will touch every aspect of Scottish life.....The Scottish Parliament will be responsible for all areas of policy presently within the remit of the Scottish Office. It will have the *exclusive right to legislate* on these matters unchallenged by Westminster."  
[emphasis added]

The intention is therefore to give the Scottish legislature control over practically all domestic issues (a full list is given in Appendix III). In practice, these will extend considerably beyond those which are currently the responsibility of Scottish Office but how will these powers actually be separated from those of Westminster? Moreover, in the light of national encroachments into regional policy in Germany through claims of the "national interest" how safe would these distinctions be?

The functional division of powers is not dissimilar to the methods used principally in the recent Belgian constitution and the Portuguese islands (though in

some policy areas, Germany exhibits similar concepts). The underlying principle is to grant authority for entire policy areas exclusively to the region. Thus within Scotland, transport, health, education, police, local government and law (both civil and criminal) will all be transferred entirely to the new regional legislature. This will obviously be a huge transfer of functional autonomy, even greater than that seen in Belgium. The closest comparison would be with the Portuguese island regions, but even here, law and order remain predominantly at the national level. The ability for such sectors to be transferred, stems from the current situation pertaining to Scotland. The distinct nature of Scottish society (protected at least theoretically by the Union Treaty) means all these institutions have developed separately and are covered by separate Scottish legislation (or Scottish sections in UK Acts) passed in Westminster. The education and legal systems were distinct prior to the union, and have remained so (English law does not apply to Scotland) while deconcentration and the legal situation has led to Scottish institutions developing in most areas, including Health (Scottish Health Service) and the Police (there is no hierarchical structure amongst the Scottish police forces).

In these areas the transfer of power should be relatively smooth and uncontroversial, leading to a high degree of functional autonomy being granted to the new regional authority. The problems may arise in areas where the divisions are not so clear cut. Much of the Convention's proposals concern economic powers, but they are still vague in their delineation between the powers of the region and the national tiers. In strategic planning, for instance, the recommendations call for Scottish legislature to control areas, "not inextricably integrated in the structure of the UK industry" (Scottish Constitutional Convention, 1990, p15). This begs the question what can be classed as "inextricably integrated"? The document goes on to recommend regional co-ordination of the Scottish component of national industrial sectors. Once again this is likely to cause controversy as to what constitutes the regional element.

The above weaknesses in functional distinction are not the fault of the drafters in the Convention rather, as has been seen in the European examples above,

it is almost impossible to delineate between the functions of regions and nation-states in a conclusive manner. In fact, the Portuguese regions and their Belgian counterparts have coped relatively well with such clauses in their statutes of autonomy. Apparently, confrontation has been minimal. The Scottish experience could follow this course due to the relative isolation of the country and, in practical terms, its irrelevance to the rest of the UK (except for oil revenue, of course!). Does anyone really care about Scottish railways, or whisky or ship-building apart from the Scots themselves? As with the Portuguese archipelagos (although their isolation is rather more extreme), it is relatively simple to ascertain Scottish industries and sectors. There is one major difference, however, between any Scottish structure of regional autonomy and their Portuguese or Belgian cousins, which would always leave the Scots open to attack from a centrist UK government.

Unlike Portugal or Belgium, the Scottish statute will not be entrenched. In other words, in constitutional theory at least, the Westminster parliament could ride roughshod over its Scottish namesake, at any time. The present constitutional regime would offer no protection. This would make the ambiguous nature of any powers granted to the Scots, open to exploitation by an aggressive British government.

The Constitution Unit advocates a general clause to avoid this (Constitution Unit, 1996c). However, without constitutional protection this would prove dangerous. All regions (with the exception of Germany) rely on specified functions for the bedrock of their authority. Although general competences are important for the development of the regional tier (as is clear from France), without constitutional protection, they are likely to be a hostage to fortune, especially for a region wishing to exercise significant legislative powers. Should the principle of "occupying the field" be applied as in Germany, huge swathes of authority could be out of bounds to the regional parliament. Even if this concept was not used, how would a dispute between the two Parliaments be resolved? There seems little doubt that under current UK Public Law the "sovereign" UK Parliament legislation would triumph. Without the legal protection afforded to the German regions in such situations, a

general competence would be a disaster for regional autonomy. For this reason, if the Constitution Unit recommendation is implemented, the long term prospects for the Scottish Parliament would be bleak.

In Belgium at least, the state is forced to negotiate with the regions. The British government would be unlikely to blatantly overrule a Scottish government (such an action would probably be the surest way of guaranteeing Scottish independence) but the UK parliament could erode Scottish regional competences by exploiting ambiguities in the regional statute. Such a trend was certainly evident in Germany and was used to devastating effect by the Italian government to emasculate its regional level.

The Constitutional Convention certainly recognised this danger and has called for the entrenchment of the Scottish parliament's statute. How this could be achieved is debatable. There may be a precedent in the Irish parliament's abolition in 1803 (the British parliament required its approval despite its non-sovereign nature) or the Union itself which stipulates only one parliament for Great Britain (Article ). Breaking the later clause could be argued to break the Union, thus giving the Scottish parliament sovereign powers of its own (a Union by consent rather than coercion). Unless, some method of entrenchment can be found, the Scottish Parliament may have an "open flank" not unlike the *Länder* in relation to the *Bund* transferring power to the EU (see chapter 5.2 above).

Assuming the Scottish Parliament is able to overcome its constitutional weaknesses, as the French and Danish regions have done, it should have very wide functional competences (probably the widest in Europe). As the above discussions have emphasised, however, functional autonomy can be worthless unless accompanied by a degree of financial freedom. The financial autonomy enjoyed by the French and Danish regions has allowed them to operate effectively, without constitutional safeguard. Would a Scottish regional authority be in a similar position?



The Convention proposals originally envisaged a regional tier with extensive financial freedom. The proceeds of income tax raised in Scotland were to be the main source of finance. This in effect would amount to a block grant, as the rates would be set by the UK government. Unlike in Germany, no regional veto over the tax legislation affecting them was proposed. However, the scheme proposed by the Labour Party, and thus the most likely to be implemented, will finance the Scottish Parliament entirely from a block grant, negotiated on the current "Barnett Formula" basis. This could be a dangerous prospect for the autonomy of the Scottish authority.

Although the Barnett formula was originally constructed to reduce financial disagreements between the British and Scottish governments (for the abortive devolution proposals of 1979), its application is unlikely to achieve this. The financing of the Scottish government will be entirely within the control of its British counterpart. Although mention is made of negotiating any alteration to the financial arrangements, in practice, the lack of constitutional protection means such consensual politics could be bypassed. While the two parliaments remain of a similar political shade, problems could be avoided, but should a cost cutting administration be elected in London, the large Scottish budget is likely to be a prime target for trimming. To undertake such a project, would be a simple case of altering the formula. Unless this is regulated by legislation, such a decision could be taken entirely at the executive level, without reference even to the Westminster parliament. At best, protection for the Scottish Parliament's budget will be wholly political.

Nevertheless, a formulaic system, however flawed is certainly the most desirable method of assessing the Scottish block grant. Although formula's are themselves often a thin disguise for politically based considerations (see the example of Spain (6.4(h), above), they do have some important advantages. Firstly, if they are reviewed once every few years this leads to less negotiations and thus fewer opportunities for conflict . Secondly, they are perceived as being more fair. This could be very important in the case of Scotland as the English electorate may

not take kindly to a large sum of money being handed over to the Scottish Parliament, so publicly. The perception of Scotland being a "subsidy junky" might put the system under strain from the English electorate.\* To combat this, Heald and Geaughan have suggested the retention of the current, formula based needs assessment with modifications (Heald & Geaughan, 1995). The formula currently in use, grants the Scottish Office a £10.66 increase in block grant for every £100 increase in comparable English expenditure. The figure of £10.66 was obtained from the Treasury needs assessment exercise of 1979. Ironically, this formula, in use over the last sixteen years, was designed to allocate the budget for the failed Assembly of 1979. Heald and Geaughan propose such assessments to be conducted every few years by a Territorial Exchequer Board, comprising representatives of the devolved governments, their UK counterparts and independent "experts". Overall this would oversee the transfer of the block grant to the relevant authorities.

This concept has several similarities with systems at present operating in continental Europe. Such a board operates in the Belgian federal structure in relation to financial matters and has been remarkably successful, though much of this may be due to the stipulation that its members are predominantly independent without ties to any government (see chapter 6.3(b)). A formula system, would certainly be preferable to straight negotiations (see the problems experienced amongst the foral regions of Spain, chapter 6.3(h)), though the present Barnett structure may not be desirable. By linking the Scottish block grant to English expenditure it does not guarantee financial independence for the new Parliament. Instead, the Scottish authority will be hindered in its expenditure by the activities of the UK government in England. In practice, this means the budget of the Scottish Parliament will be limited by decisions at Westminster on English expenditure. Such a situation hardly encourages autonomous operation.

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\* The Germans recognised this problem in their equalisation procedure and thus use subtle methods to disguise the equalisation effect. The official amount of equalisation is therefore less and thus more tolerable for the electorate.

Other formulaic examples from Europe include the Belgium system of costing the services transferred to the regional authority at the time of their devolution and increasing the amounts according to an agreed increment, each year. Such a procedure is used by the Spanish in regard of their specific grant allocation (e.g. health services) but block funding is handled through the complex formula explored in chapter 6.1(g). Despite the problems this formulaic approach raises in Spain it has the benefit of recognising that the amount of block grant depends on the needs of the regions amongst other factors, in relation to the tax yield of the nation-state as a whole. Such a situation would seem preferable to one relating to relative expenditure, at least in terms of autonomy.

The equalisation argument has been invoked forcefully by the UK government in recent years. They have claimed that should the Scottish Parliament be established, the principle of equalisation will soon cease. Heald has noted that while such claims have been made in relation to Scotland, in Northern Ireland, the prospect of increased equalisation has been made in regard to a devolved assembly. Furthermore, such an action would not be likely to enhance the Union. As those making these claims are professed Unionists it would surely be against their interests to drive a wedge between Scotland and England (the Exchequer in particular might not be too pleased at the prospect of losing a large chunk of oil and gas revenue!).

The Labour and Liberal proposals also plan giving a limited power to vary the basic rate of income tax. In this regard, the opposition parties (and the Convention) has followed the example of Belgium and Spain. In these countries income tax surcharges are an option open to the regions (though one which is never actually used - see chapter 6.1). Unusually, the Scottish Parliament will also have the power to lower income tax within specified limits. These have been set at +/- 3p in the pound. This will allow a Scottish Parliament the ability to use taxation as an economic tool as well as merely to raise finance. It is this power which has attracted most controversy. Opponents claim it will lead to a highly taxed Scottish electorate and an exodus to England.

This claim is simply not substantiated by examples in Europe. Firstly, there is no evidence that income tax differences make much difference as far as population movements are concerned. If we look to Denmark, where the income tax differences occur in much smaller areas, there is no instability within the Danish state or mass migration to the low tax regions. Secondly, if the taxation policy of a regional administration was flawed, the politicians would have to answer for it at the ballot box. It would be up to the regional population to decide whether it felt higher tax rates were desirable. This was the situation in France, where the regions raised (admittedly peripheral) taxes to pay for educational improvements. In this case, the expense was deemed reasonable in most cases and the policy continued. Perhaps, most telling of all is the fact that the people putting forward this argument today are also those who in 1979 claimed the Assembly proposals were unworkable as the body would have no tax raising powers. This, it was correctly argued, would leave the Assembly unaccountable for its spending. Those opposing the tax raising power are thus hoist on their own petard.

In both financial and functional terms, the Scottish Parliament has the potential to be an extremely autonomous institution, although it may have an Achilles' heel through the block grant allocation and its constitutional position. Notwithstanding this, what impact would such a Parliament have on European regions as a whole?

The most obvious effect would be a further regional representative on the Council of Ministers. The right of Scottish representatives (from Parliament and/or the Executive) to sit as part of the British delegation to the Council is part of the opposition platform. The role they would perform is not made clear, but one suspects it would be close to that of the Secretary of State at present. He or his representative has the right to sit on the British delegation at present when Scottish interests are discussed. When these are dominant in the UK (e.g. in fisheries policy), the Secretary of State leads the entire delegation, (though at present this rarely happens). If such a practice were followed by the Scottish government, the effect would be a regional minister leading the delegation in certain cases, while

being part of the delegation in many others. This would be similar to the situation in Belgium, though the Scottish representative will not possess the strong veto powers held by the Belgian regions.

Aside from this minimal participation at the European level, the Scots may suffer from an “open flank” not unlike that of the German *Länder*. Although given “home rule”, Scottish policy decisions could be threatened by European decisions taken without Scottish participation. For this reason I feel the European arena will become vital for the development of the Scottish Parliament. As in the case of the Spanish, Belgian and German regions, the Scottish government must press hard to ensure its voice is heard in Europe, if it is to retain its autonomy. For this reason, Scotland is likely to become another “third level” regions in alliance with the German, Belgian and Spanish counterparts, at least for matters of European constitutional reform. With access to the Council of Ministers and substantial policy and financial autonomy, the Scottish region could certainly be a vociferous ally of the regional cause. One suspects the Belgian, German and Spanish regions would be quite happy to admit another powerful ally to the increasingly influential “third level” axis.

### **9.3 England**

The situation in England is much less clear cut than that in the Celtic fringe and this is reflected in the vague policies of the opposition parties. Serious debate on the English regions only really started in 1995 and in a short time the ambiguous nature of the concept was exposed. The problem, I believe, is that there is no consensus as to what purpose English regions should fulfil (Hopkins, 1996b). As explored in Chapter three above, all European regions, were created for a reason, be it decentralisation, economic development, democratic enhancement or micro-nationalism. In Scotland and Wales the reason is obviously “micro-nationalist” at its root but in England, arguments vary. Without such a view as to what the region

should achieve, it is impossible to come to a rational structure suitable for delivering it.

The first question that arises is whether England needs regional authorities at all. I would suggest the answer to this is emphatically, yes. As Appendix I.12 explains, England is already covered by a multitude of regional bodies, unaccountable to the electorate. Most worrying is that regional offices have a combined budget of several billion pounds,\* but no elected body to control them. Some have argued that the variety of regional boundaries used by these Quangos make any democratisation of them extremely difficult (Tindale, 1995). In fact, as explored in the previous chapter this is not the major problem it is made out to be. Certain regional authority boundaries could be easily be re-organised to reflect a regional economic area, as has been achieved with the new Regional Offices. If certain services cannot be brought within these areas, perhaps it is time to consider an overlapping regional structure as explored in Belgium. In any case it is not a reason to discard the concept altogether.

The current proposals of the Labour Party are somewhat difficult to comment upon. The proposals, as announced in 1995, were withdrawn for review in response to the barrage of attacks that were mounted by the Conservative government. The product of this review, undertaken by Jack Straw, has been less than satisfactory, however. The result was a discussion document, which posed as many questions as it answered. Principally, there remains no clear rationale for regions in England and even less consensus on their powers, finances or structure. This must be addressed quickly if the opposition are to present a regional policy that will enhance democracy and encourage decentralisation, rather than creating pointless white elephants.

The Labour Party discussion document, "A choice for England" (Labour Party, 1995), makes it clear that there are no immediate plans to create directly

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\* £1.19 Billion in European structural funds alone.

elected regional governments for England. Instead, a two stage process is envisaged. This plan, which obviously owes much to the Spanish example, would see the establishment of Regional Chambers during the first term of a Labour administration. These chambers will be indirectly elected bodies, made up of local government delegates. Further moves towards directly elected Regional Assemblies would be possible at a later date, if certain criteria are met.

The establishment of Regional Chambers would leave the English regional structure not unlike that evident in France, pre-1982. It might also encounter similar problems. The first issue must be one of legitimacy. Being composed of local government delegates is unlikely to endear them to the local population and more importantly, they will lack accountability to the electorate.\* As noted in Appendix I, this was the experience of the French regions, pre-1982. Nevertheless, the French regions did have a defined role. Principally, they were to act as a regional advisory body for the drawing up of the national plan. In contrast, the proposed English regions seem to have no clear function to perform.

The Regional Chambers proposed by the Labour party would in effect officially recognise the already existent regional associations of local authorities. These bodies, indirectly elected from local authorities, co-ordinate local government activities in many areas, notably regional planning, environment, transport, waste and economic development. This co-ordinating role would continue to be the principle activity of the Regional Chambers. Importantly, they are to have no control over the activities of the government's Integrated Regional Offices. This is despite the Labour party's statement that, "regional government has effectively become the creature of Whitehall and the Conservative Party" (Labour party, 1995). The rationale, that the I.R.O.'s should be democratised is not fulfilled by the proposals. In fact the only concession to this principal is that the Regional

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\* The recently re-constituted Yorkshire Assembly received vociferous criticism from local Conservative M.P.s despite Conservative local Councillors taking their seats in it.

Chambers will enjoy consultation rights in some areas. This hardly amounts to regional autonomy.

The only areas where the Regional Chambers are proposed to have any policy role is in regional planning (admittedly over a wide range of issues). This in addition to the other proposed co-ordinating functions are already local government functions and all the Regional Chambers will do is enforce such decisions previously agreed by local councils, voluntarily. This is emphatically not decentralisation and could be seen as recentralisation of the type examine in chapter eight. The Regional Chambers, proposed by the Labour Party are thus not regional government, as understood in Europe. Their purpose is unclear and their potential for decentralisation minimal. Regional Chambers will not decentralise government in England to any degree and are as likely to harm democracy as enhance it.

The second phase of regional government development, proposed by the "Choice for England" document is slightly more adventurous than that summarised above but is still far short of the structure of regional government seen in Europe.

To move towards the directly elected Regional Assembly, the proposed region must pass the "triple lock" outlined by Jack Straw. First, the Regional Chamber must approve the creation of the Regional Assembly, second Parliament must also agree and finally, some form of local consent must be forthcoming (in practice, probably a referendum). Although this is obviously influenced by the Spanish system of consent, it is a far higher test than that seen in Spain. It will also lead to a far lower degree of regional autonomy.

It is unclear from the Labour Party's discussion document what the role of this Assembly would be. Indeed, the document is only clear on what it shall not do. Principally, it will have no legislative power and no taxation authority. It is suggested that some functions of the I.R.O.s could be granted to the Assemblies or shared between the two bodies. This, once again does not bode well for decentralisation. If a policy needs to be exercised at the regional level, it should be



the job of the democratically elected Assembly to undertake it. If these proposals are followed the short term future for regional government in England cannot be good.

In practice, however, the Straw proposals are unlikely to be accepted in full by the Labour Party as a whole. The North, in particular, is keen for a directly elected regional assembly to compete with a Scottish Parliament. The North feels that the enhanced status of Scotland will give it increased ability to attract investment. If the North is to compete, it too will need a regional authority, at least in the sphere of economic development. The Labour Party will not forget that it was primarily Northern M.P.s which opposed the constitutional reform of 1978 and it has been suggested that such a concession will be forthcoming. In addition, a competing review of regional government (The Regional Policy Commission), chaired by Bruce Millan and supported by John Prescott is due to publish its findings soon. This is mooted to favour regional economic development policies, which should be undertaken by a regional council. Whether this will effect the final shape of Labour regional policy is unclear, but the support of John Prescott is likely to ensure it alters the policy originally proposed by Jack Straw.

#### **9.4 Wales**

The proposals for regional government in Wales are slightly clearer than those proposed for England, though they are far from the detailed agreements reached in relation to Scotland. Unlike Scotland there has been no Constitutional Convention to create a degree of consensus and each party has its own proposals. With Labour being the only realistic alternative to the Conservatives in the foreseeable future, I have once again focused on their policy.

As with Scotland, the Labour party is committed to the establishment of regional government in Wales in the first year of their term of office. The type of government proposed, however, falls far short of that envisaged for Scotland. Its

main functions will be those currently undertaken by the Welsh Office. These are less extensive than those deconcentrated to the Scottish Office, but are nevertheless quite substantial.\* They are not legislative, however and it is clear from the Labour policy document “shaping the vision” (Labour Party, 1995c) that the Welsh regional body will be primarily administrative in nature. Legislative authority is to be secondary and defined within strict limits. Specifically mentioned in the document are “necessary” secondary legislative powers in the fields of Welsh language, local government and the structure of quangos.

The latter power seems to be the most important with regards to the Welsh Assembly and much of the rationale for the body rests on the “Quangocracy” within Wales. The existence of a huge level of unelected bodies, responsible for public activities in Wales (there are more Quango appointees than local councillors in the principality) has been a source of discontent. For this reason the proposed Assembly will control all Welsh Quangos. How such control is exercised will be the decision of the Assembly. Some may be abolished entirely, the Assembly assuming their functions directly.

The functions of the Welsh Assembly will therefore be relatively broad, but limited to non-legislative actions. It is not clear what these actions would be and some have suggested that without legislative power the Welsh Assembly will be powerless. It is certainly true that the limitations likely to be placed on the Welsh legislation will not benefit the Assembly, but as has been shown in several regional systems in Europe, policy independence does not entirely depend on legislative autonomy. If financial autonomy is forthcoming, the Welsh Assembly will still be able to undertake significant policy initiatives, as are the French regions. This is, nevertheless, far short of the policy autonomy enjoyed by the Spanish, Belgian, German and Portuguese regions.

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\* The Welsh Office has responsibilities in: education, training, economic development, employment & training, agriculture, Welsh language, arts & recreation, transport, local government, housing, health and environment.

It is unclear whether such financial autonomy will be enjoyed by the Welsh Assembly. As in Scotland, the Welsh budget will continue to be based on the Barnett formula. This will bring with it all the problems discussed above, notably the ease by which the UK government could alter it. In addition, cuts in expenditure by the UK government (in relation to England) will affect the Welsh budget, but unlike the Scottish Parliament it will not have powers of regional taxation to offset such UK policies.

The financial problems which could limit the activities of a Welsh Assembly are a consequence of the current constitutional regime in the UK. As with Scotland, the lack of a written constitution will limit protection from UK interference. To resolve this will either take a constitutional crisis or the development of a culture of negotiation. Neither of these can be manufactured by one political party. The Labour Party has nevertheless managed to manufacture a far greater threat to the Welsh Assembly plan itself.

Under Labour's current proposals for a Welsh Assembly, the voting system will be first past the post. This will deliver a substantial overall majority for the Labour Party, even though their share of the vote is unlikely to be so overwhelming. This is in direct contrast to Scotland, where the Convention agreed to a system of proportional representation (the Labour and Liberal parties did a deal, resulting in a form of Additional Member voting). This is unlikely to give one party overall control and is likely to revive the fortunes of the Scottish Conservative party while giving the nationalists a haul of seats closer to their voting strength. This should entrench support for the Parliament with all the parties, ensuring political support for the new body in any quarrels with Westminster. In Wales, there is a grave danger that the Welsh Assembly will be seen as a Labour Party talking shop and thus lose the legitimacy it will need. Weakened by legislative restraints and financial insecurity, its lack of legitimacy could be the final nail in the coffin of the Welsh Assembly.\*

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\* This may be reversed by a current Labour Party policy review

## **9.5 A Blueprint for Britain?**

This short concluding section brings together some of the experiences of European regions in an attempt to formulate a workable regional structure for the UK. The first point to make when rationalising regionalism is that it is already accepted as a “good thing”. The UK government, through the Scottish, Welsh and Northern Irish Offices, plus the English I.R.O.s accepts the benefits of deconcentrating decision making. As decisions are already taken regionally, it will enhance democracy and efficiency to have these under the control of representatives of the population they will affect.

In Scotland the situation is relatively clear and broadly speaking the Convention proposals have taken into account the experiences of European regions. As such, I would make little alteration to this plan. However, three problems must be resolved. First is the, as yet, intractable problem of constitutional protection. There is no answer to this under the present system, aside from an explicit reference in parliament to not changing the Scottish statute without explicitly doing so. This is the solution used in New Zealand to “entrench” the Bill of Rights. Of more immediate difficulty is the financial question. The reliance on block grants is unworkable. It will be far too easy for UK governments to alter the formula, without reference to the Scottish Parliament. Instead, the transfer of tax raised in Scotland (plus or minus an equalisation grant), would ensure a reliable source of income for the Scottish legislature. To reduce any controversy in such an arrangement, the equalisation mechanisms could be included as part of the tax sharing process (for example, using V.A.T., as in Germany).

The Scottish Parliament must also have meaningful representation on the Council of Ministers. As a legislative body it must be able to participate in discussions affecting its powers. In practice, this will be difficult to ensure. Until the Council of Ministers develops to allow more than the “national” opinion to be represented, Scotland can only hope for a participatory, but not decision making capacity.

Policies for Welsh regional government are less well developed than those for Scotland and therefore need greater modification to operate successfully. As has been shown in Italy, a combination of legislative restriction and financial insecurity is fatal for the independent operation of regional government. For this reason, the Welsh Assembly must be granted legislative power and, perhaps more importantly, financial security. The latter can only be given through some form of tax base, as originally suggested for Scotland. It is no accident that the Catalan regionalists have demanded the transfer of taxation rather than block grants, as their price for taking part in the Spanish Popular Party government. If Wales is to operate a meaningful regional government the entire operation of the Welsh Office must be put under democratic control, with the accompanying financial resources.

In both Scotland and Wales, the post of Secretary of State cannot stay in its present form. There are two solutions to this. The Secretary of State can operate as the UK's man in Scotland (a necessary post in any event), retaining the role of Cabinet Minister when issues of Scottish interest are discussed. This is the Portuguese solution. The alternative is for the Scottish and Welsh Prime Ministers to have audience and voting rights in cabinet, as intended under the Italian system. The latter would be difficult due to the British system of collective responsibility and Cabinet secrecy. The unpopularity of Secretary of States in Wales and Scotland at the moment make the former solution equally unsatisfactory. When the government in London is contrary to that in Edinburgh or Cardiff, the appointment of a Scottish representative to the Cabinet by the UK government will never be popular. The only solution to this conundrum would be to see the appointment of Secretary of State as more administrative than political. An agreed appointment between London and Edinburgh/Cardiff would ensure an advocate of the Scottish and Welsh positions in Cabinet, while avoiding the collective responsibilities and secrecy problems associated with the Scottish/Welsh Prime Ministers being present. This would follow Portuguese practice, although adding the ingredient of agreement between the governments on the appointment itself, to aid consensus.

Finally, I shall make some points on the democratic regionalisation of England. The policy on English regions presented by the Labour Party at present is so vague and flawed it is I feel best to discard it. Instead, the reason for regionalisation should be addressed. The Labour Party itself accepts that the creation of democratic regions as an aid to decentralisation. This should be recognised as the primary reason behind their creation.

To this end, the Integrated Regional Offices should be placed entirely under the control of a regional council. All the decisions taken by these bodies should be taken by the council. If the council wishes to devolve them to committees etc., that will be its decision. The present situation where billions of pounds of taxpayers money is spent by bodies with minimal accountability is unacceptable. These "Prefects" as the Chief Executives have been described by the C.B.I. must be replaced or controlled by an elected body, accountable to the people who are affected by their decisions.

This minimal democratic regionalism could be complemented by the democratisation of other regionally administered services, e.g. health and many utilities. The difficulty with this, as already noted above, is the variety of boundaries used. For this reason I would advocate a solution based on the principles found in the Belgian regional structure. Regional representatives could be elected from constituencies (single or multi member) to represent these localities on Water Councils, Health Councils, etc.. These councils need not have the same boundaries. This would allow a soft-bordered approach to issues, while retaining a degree of simplicity in election. The basic "regional councils" could retain the I.R.O. boundaries but single or multi issue councils can be established along different lines when boundaries differ. This would require the regional councils to be directly elected and full time.

A second stage for increased decentralisation needs to be recognised in the initial legislation. Based on the I.R.O. boundaries (but with facilities for amendment), regional councils should be given the opportunity to develop into true

regional governments. This must be placed in the original legislation to remove the central government, as much as is practically possible, from the regionalisation issue. Regions must be the prime trigger for this development. This would have the effect of depoliticising regionalisation (as happened in Spain, until 1983) and allow the regions an inbuilt power base, should they develop. As in Spain, the extent of this second stage should be limited only by areas which the state will retain (i.e. defence, national standards, etc.).

The national government should operate in the caretaker capacity it claims to want. National standards in the areas of regionalisation could be set, but the delivery of them must be a regional/local issue. This, coupled with a formulaic and legislated finance package, borrowing powers and perhaps limited powers of taxation would lead to the loosening of the overcentralised English state and perhaps the revitalisation of democracy. There has been the experience of all the states where regionalisation has occurred and in none has it been seen as a negative development, except by the "nation-statist" few.

Finally, the method of implementation must be fast and forceful. The experience of other countries, especially France, suggests delay means failure. Defferre's method, by which the French regional reforms were rushed through soon after the Socialist electoral success, guaranteed the development of a French regional system. As in the UK previous attempts had all failed due to concerted opposition (often from the extremes of the political spectrum), defending the status quo. Vested interests in a system as old as the UK's (and the French) take much to overcome. By ensuring the framework for regional government is established, these criticisms will fade in time. The system can then be developed to iron out the inevitable glitches caused by such a speedy transition. However, if such a policy is not adopted, the issue is likely to die once again, leaving the UK governed by a centralised, inefficient, un-representative system, which serves no-one save those who remain part of it.

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# **APPENDICES**

## **I - Regional Structures In The European Union**

The following appendix gives Twelve country analyses of the regional systems within the European Union, prior to 1995. A further Appendix covers the “new” states in less detail. The purpose of this is to draw together a wide sphere of literature into a coherent reference guide. This is therefore integral to the whole work and should be consulted in conjunction with the comparative discussions in the main text.

### **I.1 Belgium**

#### **I.1(a) Development**

On the 23rd April 1994, the Belgian parliament finally agreed the third phase of Luc Dehaene's structural reorganization and created a federal Belgium. Dehaene, the Belgian prime minister, had guided a compromise proposal through the Belgian parliament to complete the Belgian constitutional reforms. The reforms had been ongoing since the 1970's, but the final phase, of the process proved difficult to achieve.

Dehaene's success marked the culmination of years of difficulties over territorial government in the area we now call Belgium. For centuries, this section of continental Europe has marked the boundary between the Romance and Germanic languages. It also encompassed an area of widely differing traditions and economic development. Yet in 1840, this territory became a unitary state. The new

Belgian state was constructed in the French mould based around Brussels and its French speaking elite. However, the majority of the population was, and continues to be, Flemish (speaking a dialect of Dutch). This was obviously a recipe for conflict. It was made even more so by the addition of German speaking areas to the modern Belgian state, after the Versailles treaty of 1919.

The Belgian state was finally forced to address these problems, as resentment within the country grew between the wars. With the establishment universal suffrage after World War one, the Flemish majority soon began to exercise its numerical superiority in government. This led to the end of discrimination against the Flemish language and the establishment of a language border in 1963 (Delmartino, 1993, p44). However, at the same time the Walloons (the French speaking community of Belgium) began to see themselves as being disadvantaged by their minority status within Belgium. This was seemingly demonstrated by the decline of Wallonian industry which the left-wing Walloons blamed on the liberal government's failure to support it.

Slowly, through a three stage process, culminating in the new constitution of 1993, the Belgian unitary state underwent a transformation. It became a federation, and arguably the most decentralised state in the European Union. However, it should not be thought that this process of decentralisation will lead to separate nation-states being created from Belgium's ashes. Once the new constitution had been ratified, Brussels experienced its biggest demonstration for years, much larger than the Flemish separatist marches of 1990 & 91. Surprisingly, it was mounted in support of the continuation of Belgium and against outright seperatism (Leonard, 1993, p18). The reasons for the continued existence of Belgium, despite the minimal functions of the federal government are four-fold. First, neither the Walloons\* nor the Flemish wish to be united with their language

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\* The Walloons actually speak one of three Wallonian dialects (Wallon, Picard or Gaumais), which differ markedly from standard French. The Flemish, ironically, speak a series of dialects which are very close to standard Dutch. However, non-Walloon French integrate easily with the Wallonian culture due to the language similarities (Elazar (Ed.), 1991, p42)

brothers across the Belgian border, fearing domination by their larger neighbours. It is a widespread fear that two small “independent” states would be vulnerable to Dutch and French dominance. Second, the area of social-security policy gives a financial incentive against outright separation. This sphere of policy is still handled by the national authority. This guarantees equal payments across the Belgian territory. Any change to this would be liable to cause friction amongst the population which loses out.

In cultural terms, the continuation of the Belgian state is also supported by two unlikely factors. Firstly, the universal popularity of the Belgian monarchy (especially the recently deceased king) and secondly, football! In footballing terms Walloons and Flemish are all Belgians. To split the national squad would lead to a drop in the success they have achieved. When the Flemish minister of sport recently proposed such an idea, the ensuing outcry nearly cost him his job. It seems that as long as Belgian football continues to be successful, the Belgian state will continue to exist!

### **I.1(b) Structure**

The organisation of territorial government within Belgium is complex. There are six types of governmental organisation, but it would be wrong to refer to them as tiers, as will become apparent below. At the lowest level there exist the municipalities (589 in total), as the general unit of local governance. In parallel to these, there are the C.P.A.S. (*Centres Publics d'Aide Sociale*) which are functionally limited authorities concerned with social-security payments. They are under the supervision of the municipalities (Council of Europe, 1993b, p14). Above this lowest level there are nine provinces, which until recently had been the “regional” tier. Their continued existence has been questioned as a consequence of the recent constitutional reforms (Van Ginderachter, 1993b, p27 & Delmartino, 1993).

It is at this point that Belgian practice differs from the norm. Unlike most other regional systems, the highest level of authority in Belgium is not the national tier. Instead the upper level comprises three types of democratic governmental unit. These are, the national (or federal) authority, the Regions and the Communities. The theoretical equality of federal and regional units is not that unusual (see Germany, below, for example) but there are two major differences in the Belgian model. Firstly, the equality of the units is a practical reality and not merely a constitutional fiction. Secondly, the existence of more than one type of constituent unit in the federation, covering the same territory, is a structural distinction unique to Belgium. The Regions and Communities are constitutionally separate units which function in different spheres of policy. Most importantly, their territorial boundaries are not coterminous.

The Region is a territorially defined entity which deals with economic and social policies. There are three in Belgium, Flanders (or Vlaanderland), Wallonia and Brussels (the latter did not become fully operational until 1994). Each possesses a directly elected uni-cameral parliament, (consisting of 75 members in Wallonia, 75 in Brussels and 118 in Flanders), and an executive elected from it.

The Community is a legally separate entity empowered to make decrees concerning cultural or “personalised matters”.\* Most important of these is education. The Community is not a territorial entity. Instead, it consists of the respective language speakers within the areas delineated. As with the Regions there are also three Communities within the Belgian territory, but their boundaries do not coincide. Instead there is a Flemish community, (consisting of the Flemish speaking population of Flanders, plus the Flemish of Brussels) a French community, (consisting of the French speakers of Wallonia and Brussels) and finally a German

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\* The French phrase is literally *les matières personnalisables*. This does not easily translate into English. In practice, it refers to matters concerning the individual. These are Health, Education, Culture and exclude economic decisions. For this reason, the literal interpretation is used, alongside its meaning in Belgian constitutional law.

speaking community, (comprising the Germanic areas in the east of the country). In theory this means that French speakers living in Flanders or Dutch speakers living in Wallonia are not represented by a community. Each of these authorities consists of a directly elected council and an executive appointed from it (see table).

Table I-1: Composition of Belgian Community Authorities

Community	Council Members	Executive Members (Max.)
Flemish	124	11
French	94	4
German	25	3

In the case of the Flemish and French Communities, the Councils comprise the elected members of the Regional parliaments plus a number of representatives from the Brussels parliament (6 on the Flemish Council and 19 on the French).<sup>\*</sup> The German Community Council is directly elected by the population of the German Community. The Flemish and French Communities, though theoretically separate are becoming closer to their regional counterpart. The Flemish Region and Community have in fact been merged, though the Brussels members may not vote on Regional issues. In Wallonia the legislatures and executives are still separate, though the members of the deliberative bodies are one and the same, with the exception of the nineteen Brussels members. In both cases the Communities and Regions remain legally distinct.

The National authority consists of both a legislative and executive branch. The government is limited to fifteen ministers, with equal representation from each language group (not including the prime minister) (Fitzmaurice, 1984, p422). This is responsible to the newly streamlined Chamber of Representatives (150 members reduced from 212). This is a directly elected chamber and will now be the principle

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\* Thus all voters living in the Regional territory participate in the Community electoral process.

legislative body in the national arena. It previously shared this role with the senate (or upper house) but the position of this body has changed markedly since the reforms.

The Senate is now an assembly of Communities and Regions (Council of Europe, 1993b, p48), in practice if not in name. It has been reduced in size from 184 members to a mere 75. Its powers have similarly been reduced. Its main purpose is to act as a revision chamber, though it is still able to initiate legislation (Leonard, 1992, p24). Its greatest power is one of delay, which it can institute at the request of 15 members. During the 60 day suspension, amendments may be proposed, but the power of approval lies entirely with the lower house. There are four exceptions where Senate approval is required. These are:

- 1) Constitutional changes
- 2) Linguistic Laws
- 3) Giving powers to international/supra-national organisations
- 4) The Organisation of the Judiciary

In its role, amending bills from the House of the Representatives, it acts as a constitutional watchdog on the government. In doing so, it represents the interests of the Communities and Regions at national level. This is clear from its composition as shown overleaf.



Table I-2: Composition of Belgian Senate

Method of Appointment	Senators
Directly elected Flanders Regional electorate	25
Directly elected from Walloon Regional electorate	15
Elected by and from Flemish Council*	10
Elected by and from French Community Council*	10
Elected by and from German Community Council*	1
Co-opted by Dutch speaking directly-elected members	6
Co-opted by French speaking directly-elected members	4

From the table above it is clear that the Belgian Senate is a chamber of territorial representation, with more in common with the German *Bundesrat* than with the Spanish upper house. Its role is somewhat wider than its German counterpart however. As well as acting in a negative capacity to delay national laws, affecting the Regions and Communities, it is further endowed with exclusive authority to intercede in disputes between the territorial authorities. However, the power of the Senate is actually less than the *Bundesrat* even though its scope is broader.

Unlike the German upper house, its ability to block legislation is actually quite limited, though it is allowed to initiate legislation. Overall, it gives the Belgian

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\* Dual Mandate

regions a voice in the national framework. Furthermore, it gives a formal structure for the discussion of disputes. The lack of power to stop national legislation completely is in tune with the Belgian attempt to segregate federal and regional powers. It allows the federal level to conduct its affairs without the political bartering with the regional level common in Germany. Nevertheless, the regional view can still be heard. Most importantly, the lack of a legal hierarchy gives the Belgian Regions and Communities less need for collective power in the Senate, to protect their interests.

The Chamber of Representatives still possesses the so-called alarm-bell procedure whereby a three quarters majority of either major language block's representatives may delay a bill for up to thirty days (Art. 38, Belgian Constitution) (Swam, 1988, pp376-377).

### **I.1(c) Constitutional Position**

Article one of the new Belgian constitution states "Belgium is a Federal State, composed of Communities and Regions". There can be little debate therefore that the unitary Belgian state is dead. Each Region and Community is guaranteed by the Constitution.\* As mentioned above, this cannot be altered without the agreement of the senate, representing the Regions and Communities. The Flemish and Walloon/French Regions and Communities have the ability to organise their institutions as they wish, providing the legislative branch approves the proposals by a two-thirds majority. This constitutional autonomy is not granted to the German Community or the Brussels Region.

As mentioned above, all Communities, Regions and the Federal Government are constitutionally equal. There is no equivalent of *Bundesrecht bricht Landesrecht* (Federal law above national law) in Belgium (Van Ginderachter,

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\* French and Flemish Communities - Art.59(b). German Community - Art.59(c). Regions - Art.107(d). General financial provision - Art.s 110, 111 & 115

1993b). Some commentators have seen this as a flaw in the Belgian system (Cullen, 1990, p356), but I am not convinced of this argument. I do not see why such a principle must be incorporated in a regionalised structure. Previous experience suggests that such a clause leads to creeping centralisation.\* The only minor exception to this rule is the Brussels region where certain competences are open to veto by the national authority, due to its importance as Europe's capital.†

Any disputes that do arise are addressed with the emphasis being placed on negotiation. Disputes between the Regional or Community institutions are dealt with in the Senate, while disputes involving the federal authorities are referred to a Conciliation Committee. This consists of the prime minister, the Regional and Community presidents and a selection of national and regional ministers. It is not a court and relies on co-operation between the parties thus, its decisions are taken unanimously and not by majority. The problem with this system is that it may reduce the autonomy of the regional and community authorities by relying on political horse-trading to achieve a solution (Fitzmaurice, 1984). This does little for open democracy.

If negotiations fail, then a final decision can be taken by the Court of Arbitration. This court is somewhat unusual, in that only half its members are jurists, the other half being retired politicians. As with everything else Belgian the language composition is fifty-fifty. The name of this court is somewhat misleading, however. It is in essence a constitutional court despite Belgian sensitivity over naming it thus (this was felt to imply judicial supremacy over the legislature) (Cullen, 1990, p355). The court obviously can not decide whether one law is superior over another, but it can address whether a decree or law is ultra-vires. As such it is the final arbitrator in disputes over constitutional competences. The delicate nature of this task means that no reasons are given for the judgements

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\* In the examples of Germany and the U.S.A., areas of joint competence became solely federal responsibilities through the use of such a principle.

† This is mainly in the areas of town planning.

arrived at. It may also adjudicate on certain parts of the the Belgian Bill of Rights, something that until now was not a judicial function. Any one with an interest, including the governmental authorities, may bring an action before the court. A reference procedure, not unlike that of the E.C.J., operates between the Court of Arbitration and lower courts (Fitzmaurice, 1984, p427).

Legal restraint may also be imposed on the Region or Community in the field of finances through the *Conseil Supérieur des Finances*. This is discussed more fully in the chapter six.

### **I.1(d) Brussels**

There are a few differences in the organisation of the Brussels-Capital region that merit special mention. Semantic distinctions of the institutions within Brussels include laws of the Council being referred to as Ordinances.

There are no provinces in Brussels. The old Brussels municipal federation is in the process of being dismantled and its powers (which were minimal) are being transferred to the Region (Council of Europe, 1993b, p16). As mentioned in the previous sections, the Community authorities have jurisdiction over the relevant language speakers in the Brussels-Capital Region. In practice, the authority of the Communities in the Brussels area is delegated to the Community Committees. These consist of the relevant language groups' representatives in the Brussels Regional parliament.

However, this structure only applies to institutions (in practice basically schools), "personalised" matters are administered differently. These are handled by the Brussels United Assembly, though in practice this is the Brussels Council by another name. The executive of this body is referred to as the Brussels United College but it too is merely the Brussels Regional Government in a different hat, the only difference being that the the Chairman may not vote. Decisions taken in both Brussels executive bodies are reached by consensus, so the Chairman's lack of a vote is relatively unimportant. The only major difference in the United Assembly is

that any Ordinances approved, must achieve a “double majority”. This is a majority of both language groups, though only eleven of the seventy five members are Flemish.

The reason for the over-representation of the Flemish within Brussels is simple. The Flemish allowed a 50/50 split of the national government in exchange for a similar split in Brussel. The Flemish represent 60% of the national population but only 20% in Brussels, thus a negotiated bargain between the language groups was possible (Van Ginderachter, 1993b).

Further special treatment has been granted to municipalities in the Brussels suburbs which are in the Flemish Region despite being predominantly francophone. They are able to vote for French-speaking senators (Leonard, 1992) and are granted special privileges as regards use of their language in schooling, documents, etc..

## **I.2 Denmark**

Denmark, with a population of just over five million\*, is the third smallest member of the European Union. This makes it smaller than some Regional governments in the EU. However, Denmark has deemed it desirable to create a second tier of authority between the national and local authority levels. These are the *Amter*. Although small as regional authorities go, (the largest has a population of 606,689 and the smallest a mere 45,554), the Danish *Amter* possess a degree of autonomy unusual amongst many larger authorities. For this reason they are of great interest to this study.

The Danish governmental system consists of two sub-national levels. At the lowest tier there are 275 *kommuner* (municipalities or communes) which lie beneath 14 *Amter* (counties or regions). In addition, the cities of Fredriksborg and

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\* 5.1 Million, in 1992.(Services of the European Commission)

Copenhagen have unitary authorities exercising the powers of both levels. Special home-rule arrangements exist between the Danish national government and those of Greenland and the Faroe islands.<sup>#</sup>

### 1.2(a) Development

The County tier in Denmark has existed since 1662, but it was not until 1841 that these authorities acquired a measure of democracy through an elected Council (Anderson, 1993, p5). It was not until 1970, however, that a major reform of the whole local government structure in Denmark granted increased powers to the *Amt* level. In conjunction with this, the numbers of local government units were reduced. Pressure for these reforms came neither from cultural or economic arguments, but rather focussed on fears of over-centralisation. Although regional development was an issue that was raised at the time of the reorganisation, the main concern was with the control of state services by the national government.

The history of Danish local self-governance, based on the *kommune*, goes back to the thirteenth century. However, as the Danish concept of the welfare state expanded so did the government's implementation of it. By the 1960's it was becoming increasingly obvious that many rural local authorities were unable to cope with the new burdens being placed upon them. This was leading to three problems; firstly a centralisation of authority as the central government undertook the new responsibilities that local authorities could not address; secondly quality variations between service provision in town and country and finally inter-*kommuner* executive agreements which were perceived to reduce the accountability of the local level.

The solution was to introduce a newly empowered County or Regional tier (the *Amt*) and reduce the number of *kommuner* to allow them to undertake their

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<sup>#</sup> Neither of these territories are in the EU and as such fall outside this study.

duties without relying on either the national or regional tier for support (Bogason, 1987, pp47-48).

### I.2(b) Structure

The legislative body of each *Amt* is a directly elected assembly of between seven and thirty-one members. The national legislation also requires the council to consist of an odd number of members but within these limits the council is free to organise its procedures internally. The chairman of the Council is the *Amt* mayor, elected from within its ranks. He or she represents the *Amt* in its dealings outside its boundaries and is regarded as its head. As such he or she is responsible for executive duties concerning the administration of the *Amt* authority (Bogason, 1987, p53 & for post 1989 changes; Anderson, 1993).

The executive body of the *Amt* is appointed from the Council itself. It consists of a financial committee and one or more standing committees responsible for specific policy areas. The role of the former encompasses more than just financial matters. It administers the County's staff and acts as the regional planning authority as well as preparing the budget. Its chairman is the mayor of the *Amt*.

The other committees implement policies decided in the Council as well as preparing policies for approval in the deliberative chamber. In Denmark there are no restrictions on delegation of powers. For this reason the standing committees may make decisions themselves, if the power to do so has been delegated by the Council. The Council, in theory, can make decisions on any matter concerning the County (it has general competence) but in practice few decisions are undertaken in the assembly. Instead, powers are delegated to the relevant committee which acts on the Council's behalf. As a safeguard to this system, any member of a committee may demand a decision is taken in the full chamber (Council of Europe, 1993c, p7). All parties are represented in the committees proportionate to their power the full chamber. This consociational structure avoids abuse of the system by the majority party.

A few restrictions are placed upon the *Amt* in its decision-making. Some decisions must be taken in the full council chamber (taxation, approval of the budget, committee structures and membership, agreements with other authorities) while the finance committees' duties are set out in statute.

In parallel with the *Amt* level of sub-national government, a deconcentrated tier also operates. The prefect (or *statsAmtmand*) was previously the head of the regional tier, but since the reforms of 1970 the post has changed dramatically. The main function of this level today is to supervise the *kommuner's* activities in conjunction with the *Amt* and unusually, take decisions concerning family law (Council of Europe, 1993c, p6 and Andersen, 1993, p6).

### I.2(c) Constitutional Provisions

The regional and local levels of government enjoy no constitutional protection per se, but the existence of local self-governing authorities is guaranteed by Article eighty two of the Danish constitution (Fitzmaurice, 1981, p76).

The *Amt* are legally defined by acts of the national government but supervision of the regional tier is limited to questions of legality. This role of watchdog is not held by the Prefect over the *Amt* but lies with the national Ministry of the Interior. Decisions about the legality of regional decisions are taken by the ordinary courts. They are the highest authority in these matters. By law the *Amt* must also have their accounts audited professionally but this is generally undertaken by the Local Government Auditing Department set up by the sub-national units themselves.

The lack of constitutional protection could leave the *Amt* vulnerable to control by national government and indeed the national authorities have in the past imposed restrictions on regional financial dealings. However, as the regional tier acquires more powers, and greater political authority, as it has done since 1970, it becomes politically harder for the national government to impose restrictions on the *Amt* themselves. It is convention in Denmark today that any such restrictions that



the national government wishes to impose, will be preceded by a voluntary agreement between the local and regional authorities Council of Europe, 1993c, p22). This is the case with income tax limits. This would seem to confirm the regional authorities' increasing political importance and their practical ability to retain their autonomy.

### **I.3 France**

The French system of regionalisation, introduced by the Socialists in 1982 on the back of a huge success in the polls, was the most dramatic change in French sub-national government since the beginning of the Third Republic. The reform itself was concerned with the whole system of local governance rather than just the regional tier. However, a large proportion of the “decentralisation” legislation was concerned with regions. This was at least in part due to the grand alliance the socialists had constructed in their search for power. This encompassed “autogestionnaires”<sup>\*</sup> and regionalists. To gain their support, it was necessary to press for decentralisation in the highly centralised French state. The Socialists were further encouraged task by the successes in the periphery they had achieved during their long march to power in Paris.

#### **I.3(a) Development**

Many myths surround the pre-1982 French system of territorial government. The most common is that of the “one and indivisible republic” first proclaimed by the Jacobins in the 1790s. This centralisation of France had long been the goal of rulers in Paris and the Jacobins were merely more successful than the preceding

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\* Literally, running oneself, basically those who favoured local self-government in the Girondin tradition.

monarchy. Although at first glance this centralising tendency continued almost unbroken up to the 1980s, closer inspection exposes the inaccuracy of this view.

In fact within France a large proportion of local power was exercised in an informal manner, and wielded by the “notables”. A notable was described by Grémion as:

“a man who disposes of a certain power to act on the apparatus of the state at certain privileged levels and who, by a reverse effect, sees his power reinforced by the privileges which these contacts confer, in so far as they are sanctioned by results”\*

In French politics, these were (and continue to be) politicians who hold a collection of elected posts under the “cumul des mandats” system. Under this concept an individual can acquire several elected posts at once. The influence of these “local” politicians was presented as evidence that local government was actually strong and the high degree of control exercised by the Prefect in his role as executive of the local council and simultaneous representative of the state was illusory. The relationship was described as mutually dependent between the elected representatives and the prefects, rather than one of control by the latter over the former. Though, in an effort to avoid this, prefects and sub-prefects were transferred every two years to avoid them “going native”! (Keating & Hainsworth, 1986, p9)

However, Theonig (Keating & Hainsworth, 1986, p12) casts doubt on the idea that any local power existed within this system. Rather, the power lay with the notables, who through a complex series of networks controlled the periphery. This “Honeycomb” system, it was argued, removed power from the local electorate and led in Laménai's nineteenth century words to “apoplexy at the centre and paralysis at the periphery” (Hayward, 1983, p24). Altogether, this led to a *société bloquée*

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\* Translation given in Keating, 1983, pp237-251

with inefficient local government, the most obvious example of which was the time taken to construct a French motorway system, the last in W. Europe (Keating & Hainsworth, 1986, p13).

The lack of electoral control existed at all levels of the periphery but was most evident at the level of the region. The need for a regional tier of planning had been recognised since the beginning of the Gaullist republic with the creation of the C.O.D.E.R. (*commission de développement économique régional*). These bodies, and the *Conseils Régionaux* which followed them in 1972 were deconcentrated administrative bodies and enjoyed little autonomy (Rousseau, 1987, pp172-3). Most importantly they were not directly elected and thus could not be regarded as true representatives of their regional constituencies. This situation was obviously not conducive to the autonomous operation of a regional tier. However, it did place regional reform on the agenda and central government's recognition of the need for a regional level, meant questions about its democratic credentials were inevitable.

### **I.3(b) Structure**

The French system of sub-national government consists of three tiers of authority. These are Communes (36,551 in metropolitan France), Départements (96) and finally Régions (22, including Corsica) (Council of Europe, 1993e, p6). Each level is a democratic authority, with a deliberative council and an executive drawn from it. In the case of the Départements and Régions there exists a parallel tier of deconcentrated authority under the control of the relevant prefect or ministry appointed official.

The 22 French regions each have two "chambers", the Economic and Social Committee and the Regional Council. The former body is merely advisory and consists of indirectly elected representatives of the business community (35%), trade unions (35%), welfare, cultural & consumer associations (25%) and regional

“experts” (5%)\*. This Committee gives an advisory opinion on all policies proposed by the Regional Council. Its procedures and President are decided upon by the Committee itself. The President of the Committee may also call extraordinary meetings if a specific issue affecting the Region needs to be discussed.

The *Conseil Régional* (Regional Council) is a directly elected assembly with the Regional President at its head. In the case of Corsica, the council is referred to as the “Corsican Assembly”. The Council is the main deliberative organ of the *Région*. It is this body which decides the regional policy, although use is made of sub-committees to scrutinize legislation prior to its discussion in the full Council (the advisory committee itself also makes use of such sub-committees in its work). The agenda for discussion, as well as the dates of full Council assemblies, are set by the Regional executive body (Mazey, 1993, p71).

The President of the Council (henceforth the Regional President) holds the executive power of the region and not the regional prefect as had been the case prior to 1982. According to the French government, no cabinet system exists at the regional level, instead all executive authority rests with the President,\* personally. In practice however, the Regional Councils also appoint several vice-Presidents and a “standing committee” to carry on the day to day business of the Region. Unusually for France, the appointments to this body are made under a consociational system, with the committee members representing the political division of seats within the council itself. The authority of this committee is gained from either the Council's decision to empower it or the President's discretion to delegate. Mazey's reference to this as an executive bureau, seems to be accurate, notwithstanding French assertions to the contrary (Mazey, 1993, p68).

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\* The Regional “experts” are Prime Ministerial appointees.

\* The French government material translates this title as “chairman” but the Regional leaders themselves use the term President in English as well as French.

In parallel to the Regional and Departemental democratic tiers, there operate levels of deconcentrated administration. In addition, below the Departement, exist the *arrondissements*, administered by a sub-prefect without any analogous democratic authority. At the Regional level the Prefect is the representative of the state and as such, administers all deconcentrated functions delegated by the ministers in Paris. Although this represented an increased role for the Regional Prefect, few responsibilities have actually been handed over by the national ministries. By 1985, three hundred deconcentration reforms had been put forward, with 75% being approved. Of these, only 12% had been implemented (Schmidt, 1990, p323).<sup>\*</sup> In areas such as the administration of justice, (which is not under executive control at the national level) and education, (which has its own hierarchical structure), the prefect exerts no authority (Council of Europe, 1993e, p10).

The power of the Prefect has seriously diminished since the reforms of 1982. Prior to the socialist programme of reforms, the Prefect, at all levels, was the executive of the relevant local authority. In addition to this, the Prefect exercised an a priori control over decisions taken by the Democratic Councils. Debate continues over how this power actually affected the independence of the Regional or Departemental level. Keating gives the apocryphal example of a mayor, who when forced to take an unpoular decision, took the popular one instead. Privately, however, the Mayor asked his Prefect to veto the decision. When the Prefect duly obliged, the Mayor then publicly criticised him for obstructing local democracy, thus saving his own political skin, while still taking the unpopular decision (Keating, 1983, p239). Although this particular tale may be an urban myth, it does illustrate the symbiotic relationship that existed between the government's representative and the locally elected delegates. Clauzel (himself a Prefect) argued that in practice the *tutelle* was rarely used, the Prefect and Regional or

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<sup>\*</sup> The Act of 6th February 1992 on the Territorial Administration of the Republic should, in theory, have improved the situation, vis-à-vis Prefectoral authority.

Departemental President acting in the pursuit of common interests for the good of the territory they were responsible for. Laignel, on the other hand suggests that such an interpretation is fundamentally wrong. The tutelle gave the Prefect an almost total veto over the Departemental and Regional decisions and as such he or she was the dominant partner in such relationships (Rousseau, 1987, p185).

The fate of the Prefects since the 1982 reforms may add credence to Laignel's comments. Since this time, the involvement of the Prefect in Regional affairs has been limited. In many cases Prefects have been shut out of regional discussions altogether (Scmidt, 1990, p321).

### **I.3(c) Constitutional Position**

Regions have have no protection under the French Constitution. One of the unique features of French sub-national government, is its lack of a hierarchical structure. Beneath the national tier of authority (President of the Republic, Chamber of Deputies, etc.) the authorities are all treated as equal under the law. In other words, although the Region is territorially larger than the Département they are still regarded as a type of local administration. The Region therefore has no authority over the Département, which in turn has none over the Commune. All are classed as *collectivités territoriales* giving them equal status as "local authorities" under the national umbrella. The Régions however, are relatively fortunate to have even equal status with the other sub-national democratic tiers. Until 1986 they were referred to as *établissements publics* and as such were inferior to the Départemental and Communal tiers. The practical effect was to deny them the general competence afforded to the Départemental and Communal levels and instead limit their functions to specific duties (Keating, 1983, p237).

In respect of the Regions' abolition or alteration they do possess limited rights in law but these are not constitutionally protected. They have the right to be consulted before any changes are made to their titles or territorial limits. Regions may also ask to be amalgamated after their Councils have voted to do so. This only

covers the amalgamation of Regions and not their reorganisation. The latter is something that many would find desirable, in traditional regions/nations such as Brittany. The current Bretagne Region does not include Loire Atlantique, a Departement that was part of the traditional Breton state. Some regions have tackled the artificial nature of certain boundaries themselves. In the Langued'oc and Roussillon region, for example, the regional authorities have created separate offices and institutions to deal with the differences in the two areas. The geography of Langued'oc and that of Roussillon has created two separate economies, leading the new region to indulge in "administrative decentralisation" within its borders (The Economist 13/4/85, p56).

The decisions of the Regions are obviously subject to the legislative acts that constrain them.\* To ensure that the Regional authorities obey these limitations, the Prefect has post-facto authority to refer any acts to the local tribunal administratif (Schwarze, 1992, p108), if he or she suspects them to be illegal (Mazey, 1993, p66). However, the Region may also bring an action for unwarranted interference against the Prefect, if it feels it is being improperly controlled, or impeded, in its duties (Council of Europe, 1993e, p38).

The Prefect also oversees the Regional budget. Once again, if the Prefect feels that the Regional Council has not fulfilled its budgetary obligation, he may refer the matter to the *Chambre Régionale des Comptes* (Regional Accounting Court<sup>#</sup>). A reference can be made to the court only in the specific circumstances laid out below:

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\* Most important amongst these are the Act of 2nd March 1982 and the acts of 7th January 1983, 22nd July 1983 & 24th February 1984 concerning the transfer of powers.

# This is translated by the French government as "Regional Audit Office", but as the body has the final say in the legality of the Regional Budget the translation I have given seems more appropriate. This seems to be confirmed by French authors who refer to these bodies as *Cours des Comptes*.

- 1) The Region fails to meet the budgetary deadlines set out in the relevant national *lois*.
- 2) The Region fails to balance the accounts.
- 3) The Deficit of the Region is over 5% of operating income.
- 4) The Region has failed to include items of expenditure that are obligatory.

In the final example, there is an appeal from the *Chambre des Comptes* to the *Conseil d'Etat*. This is because the decision as to whether or not expenditure is obligatory, is deemed to be an administrative one.\*

The sanctions that are imposed on the erring Region are similar whatever the transgression. In all cases the Prefect can impose a budget on the Region if his or her complaint is upheld in the court. The only exception is in the second case, where the Region itself is given thirty days to implement the measures handed to it by the court. Unless the Prefect has good reason, he must also implement the budget given to him by the court itself. The court may also alter specific parts of the budget if they violate the rules governing the Region (Council of Europe, 1993e, pp33-37).

In effect, the French Regions operate under a distinct administrative and economic sub-constitution within the French Republic. Although the Prefect remains the representative of the state in the Region, in or she acts as an ombudsman or constitutional watchdog rather than actively being involved in Regional decision making. It seems to have become practice for the Regional

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\* Conseil d'Etat 23rd March 1982, Catholic Schools Management Board Case, Couëron



President to consult with the Regional Prefect prior to Regional legislation being approved, to assess its administrative and financial legality (Mazey, 1993, p71). The restrictions on the Region are based on legal rules that it may not transgress. The national authorities have no right to interfere in the Region's chosen policy choices. Instead, the Region must work within defined legal limits. It is thus limited government, something that is a common concept amongst national authorities. The only difference in the system applying to France is that the legal framework within which the French Regions must work is substantially tighter than that in which most national authorities operate. It is certainly much more restrictive than the French constitution's limits on the government in Paris. More importantly, the restrictions placed upon the Regions may be altered by another tier of government, namely the national level, at any time. Whether political realities would allow such control to be exercised is another matter.

### I.3(d) Corsica

#### I.3(d)i Development of Corsican "Special Status"

The Corsican situation demanded urgent attention in the early 1980's. A small scale guerilla movement had continued to inflict damage in the island and was acquiring increased support. For this reason, the Socialists in their manifesto of 1982 gave priority for the creation of a Corsican "assembly" in advance of the larger Regional plan for mainland France.\* The regional structures for Corsica were also perceived as a "test case" for the wider application of regional government in France. However, Corsica posed several problems that did not exist on the mainland. The cultural differences and the ethnic unrest that has occurred sporadically since the 1970's obviously set the Corsican experience apart from that of the mainland, but less well known, at least outside France, is the political control

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\* This also applied to overseas Departements of Martinique, Réunion, Guadeloupe and Guyane. Although officially part of the EU, these territories are not included in this study, due to their territorial isolation from Europe.

exercised by the Corsican “clan” system. The two clans have controlled Corsica through patronage and electoral fraud for decades and although they compete vehemently against each other, they have co-operated frequently to ensure that they continue their hegemony (Boisvert, 1988, pp208-209).

### I.3(d)ii Corsican Regional Structures

The Corsican regional authority consists primarily of a deliberative Assembly. Unlike those in existence in the French Regions it is referred to by this grander title and not as a Regional Council. It also differs from the mainland example in that there exist two advisory councils to the Assembly. In addition to the Economic & Social Committee, a parallel Council of Culture, Education & Quality of Life (*Conseil de la culture de l'education et du cadre de vie en Corse*) operates. The appointments to both these bodies are made by the French President to avoid domination by any one group (this was obviously done with the Clans in mind) (Boisvert, 1988, pp358-360). A third advisory group also exists to advise the Assembly on matters of Corsican broadcasting. This was originally intended to have greater authority but the Socialist government reduced its importance in the final plan of 1982.

The executive body of the Corsican Region is officially the President, as in the rest of France, he or she again heads a bureau which is in essence a Corsican cabinet. Unlike the mainland, two agencies were formed in the statute to implement Assembly policy in two key areas of the Regional Plan. These are the Offices of Hydraulic Equipment (O.E.H.C.) and Agricultural & Rural Development (O.D.A.R.C.). A third “agency” operates the Assembly's transport policy in consultation with the Economic and Social Committee (O.T.R.C.). The Assembly itself may also create further agencies but these must be funded by the Corsican Region itself.\* Those mentioned in the statute are paid for by the French government.

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\* Loi 82-659, Art.102 (Corsican Special Statute)

### I.3(d)iii Constitutional Provisions

Although the Corsican Special Statute places it apart from the French mainland Regions, in practice this affords the Corsican Region no more independence or protection than is afforded to the “ordinary” regions. As with Regions in mainland France, the Corsican Region's statute is actually a *loi* (82-659) which can be amended, rewritten, etc. by the national government, without any reference to the Corsican Assembly. However, as with the other French Regions, the only controls exercised over the assembly are post-facto and limited to legal challenges. This at least allows the Corsican Region to act independently within its Statute which is, in effect, a Constitution for the island. In addition, political factors make it unlikely that any French Government will substantially alter the Statute unilaterally. This “constitutional convention”, does not alter the fact that the French government could legally dissolve the Corsican Region totally, while no such authority can be exercised legally over the nation-state itself. A new Corsican statute, introduced in 1992 has increased these powers. Officially, it is no longer a *Région*, rather having a *sui generis* status within the French state.

## I.4 Germany

### I.4(a) Development

Germany came into existence as a unified nation-state in 1864. Prior to this date there existed several states in the German language area of central Europe. 1864 saw the culmination of Bismark's efforts to exert Prussian domination over these states, in the place of his Austrian rivals. The “unification” of Germany was thus in reality a Prussian takeover (Gildea, 1987).

Since this date the German state has had some sort of regional structure, with a brief interlude during the period 1933-48. However, the present Federal Republic is somewhat different from the regionalised structures that went before, as

the large Prussian landmass has been divided into smaller regional units. These units also possess a higher degree of independence than their earlier counterparts. The reasons for this are to be found not in Germany itself, but in the perceived advantages such a system was felt to have, by the victorious allies. Devolving power to regional units and dividing up the dominant, (and commonly seen as militaristic), Prussian power base was seen as giving more fertile ground in which democracy could grow.\*

#### 1.4(b) Structure

The sub-national structure of Germany is probably the most studied of all those within the European Union. There is good reason for this. The sub-national units within the German territory have had a significant effect on German and European politics, due to the federal nature of the German Republic. In addition, up until 1993, the Federal Republic of Germany was the Communities' only constitutional federation. This made it the obvious model for other European countries which, for the variety of reasons outlined in chapter three, began to move towards a regionalised structure. Ironically, however, Germany does not officially possess a regional tier of authority! The federal states are officially part of the higher level of government which includes the national structures. However, for the purposes of this study, and most others, the constituent states of the German federation are the regional tier. As will be shown below, unlike in the Belgian example it is correct to refer to these regional units as a level of authority. There is an implicit hierarchical structure in the German system that is lacking in Belgium.

There are four tiers of authority that exist throughout Germany. In some federal states there are several other levels of "local" authority, but only the four basic levels exist Germany-wide. At the national level, there is the Federal authority or *Bund* consisting of two deliberative chambers, a federal government (including

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\* See chapter three

the Chancellor) and a federal President (*Bundespraesident*). The latter post is mainly symbolic and the office holder is the German head of state. He is entrusted with guarding the constitution, but this power is much less than that afforded to the President in the Weimar republic (which lead to such disastrous consequences) (Finn, 1989, pp16-17).

The real executive power is vested in the Chancellor (*Bundeskanzeler*) and his cabinet of ministers (*Bundesministers*). The latter are appointed by the President at the Chancellor's request. The Chancellor's appointment is made by the *Bundestag*, the lower house of the federal parliament. The 645 members are elected by proportional representation from the whole of the German territory and together represent the primary legislative body of the federation.

The upper house of the *Bund* parliament is the *Bundesrat* (federal council). This chamber represents the territorial interests of the federal states (*Länder*). Each *Land* government appoints a minimum of three representatives to the *Bundesrat*, which must give its approval to constitutional amendments and laws affecting the powers of the *Länder*. The territorial nature of the *Bundesrat's* composition is seen in the table below:

Table I-3: Länder representation in the Bündestag (bold denotes new Länder)

<i>Land</i>	<i>Seats in Bundesrat</i>	<i>Population (million)</i>
N. Rhine-Westfalia	6	16.7
Bavaria	6	10.9
Baden-Württemberg	6	9.3
Lower Saxony	6	7.2
Hessen	4	5.5
Rhineland-Pfalz	4	3.6
<b>Berlin</b>	4	3.3
<b>Saxony</b>	4	5.0
Schleswig-Holstein	4	2.6
<b>Mecklenburg-Lower Pommerania</b>	4	2.1
<b>Thuringia</b>	4	2.5
<b>Saxon-Anhalt</b>	4	3.0
<b>Brandenburg</b>	4	2.7
Saarland	3	1.1
Hamburg	3	
Bremen	3	

The federal council is therefore divided loosely along population lines, but the main emphasis is on the representation of *Länder* interests. This means the larger states are under-represented while the small states, especially Bremen, enjoy influence proportionally greater than their size.

Beneath the federal level there exist the sixteen *Länder*, listed above. These are divided into two distinct types; *Staatstaaten* (city states) and *Flächenstaaten* (area states). The former, include only Hamburg, Bremen and Berlin, while the latter title applies to the other thirteen. Each has both an executive and at least one legislative assembly.\*

The *Flächenstaaten* executives comprise a cabinet of between nine and fifteen ministers, headed by a minister president. Executive power in the *Staatstaaten* is vested in a similar body, termed the senate which is headed by either a mayor (*Burgomeister*) in Berlin and Hamburg, or a Senate President in Bremen. The members of these executives head ministries with the aid of State Secretaries (*Flächenstaaten*) or State Councillors (*Staatstaaten*) who administer the civil service. The ministries which are common to all *Länder* are interior<sup>†</sup>, finance, economy, transport, labour, social security and education. The ministries within each *Land* vary according to custom or the specific needs of the *land* (eg. Bremen has a minister for ports and harbours) (Elazar, 1991, p105). The importance of these ministries becomes apparent when one realises that the federal government only administers defence, foreign policy and finance. All other administration is given to the *Länder* although special national agencies exist for the control of the post office, *bundeswehr* (federal army), and *bundesbahn* (federal railways). Apart from these specific exceptions, the *Land* ministries are, by default, the administrators of almost all domestic policy. This is discussed fully in chapter seven.

In all the *länder*, the executive bodies are responsible to the legislative assembly or *landtag*. This elects the head of the executive from among its members, and may dismiss this body with a vote of no confidence. However, the limited legislative autonomy held by the *länder* and increasing emphasis on executive functions means the individual *landtag* have lost power.

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\* Bavaria has two

† This is the premier ministerial post. It is responsible for all police and judicial matters, but more importantly, any authority not specifically granted to another ministry.

Local government structure is under the authority of the *länder* it thus varies from region to region. In all the *länder* there are several layers of local government and administration. Most important amongst them, is the municipality which exists in fourteen of the sixteen states.\*\* In the city-states of Hamburg and Berlin, the only sub-regional unit is the *Bezirke*. In Bremen, the unusual territorial coverage of the *Land* (it is divided into two isolated territories) has made the creation of two “autonomous municipalities”, (Bremen & Bremerhaven), expedient. In the *Flächenstaaten*, many intermediate levels exist between the municipal and *Land* levels.

Overseeing the Federal Republic and its constitution is the Federal Constitutional Court (*Bundesverfassungsgericht*), or F.C.C.. This body is elected by two electorate colleges consisting of the *Bundesrat* and a committee of *Bundestag* members. Its members are appointed for non-renewable terms of twelve years. Each *Land* also possesses its own legal structure within the confines of the G.G.. The federal courts can be used as appeal courts from the *Länder* court decisions.

#### I.4(c) Constitutional Position

The constitution of the Federal Republic of Germany is the *Grundgesetz* (G.G.) or Basic Law. This document lays out the basic framework of the federal structure. In theory this places the *länder* on an equal footing with the *Bund*, however article 31(G.G.) states “*Bundesrecht bricht Landesrecht*” (federal law overrides land law). Thus a hierarchy of laws (as the Belgian jurists describe it) obviously does exist. In theory this would apply only rarely. The German system was established as a dual federation and as such, the competences of the *Bund* and *Länder* should be exercised in separate spheres. This was the concept of *Dreigliedrig*, whereby the German state consisted of three tiers of authority. Under this view of the German federation, espoused by Kelsen and Nawiasky among

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\* There were a total of 8,503 in 1989



others, the *Bundesstaat* existed as the highest authority and consisted of two equal constituent parts, the *Bund* and the *Länder* (Blair, 1981, p159). Under this view, the *Bund* was not a superior authority, but rather an equal partner in the German federation, responsible for the functions allocated to it in the G.G.. However, after flirting with this concept in the South West State case of 1951, the federal constitutional court explicitly recognised the predominant two tier concept of *Zweiggliedrig* in the Territorial Reorganisation case of 1958 (Davis & Burnham, 1989). This equated the *Bund* with the *Bundesstaat* and recognised the *Länder* as inferior constituent units. The impact of this is discussed functionally in chapter seven.

The *Länder* are established in the G.G., and as such cannot be abolished. This is enshrined in the so-called “eternity” clause of the G.G. (Art.79(3)) which states that:

“Amendments of this basic law affecting the division of the Federation into *Länder*, the participation on principle of the *Länder* in legislation, or the basic principles laid down in Articles 1 and 20, shall be inadmissible.” (German Basic Law)

This therefore guarantees the existence of *Länder* within the Federal Republic. It does not, however, ensure the present *Länder* will continue to exist. Indeed, Article 29 G.G. stated, until 1976, that:

“[t]he federal territory must be reorganised to ensure that the *Länder* by their size and capacity are able to fulfil the functions incumbent upon them. Due regard shall be given to regional, historical and cultural ties, economic expediency, regional policy, and the requirements of town and country planning.” (emphasis added)

This obligation on the Federal government to re-organise the sub-national units of the German state was removed in 1976, when the crucial phrase, “must be”, was replaced by “may be” (Schwietzer, 1984, pp162-163). With this slight change, the boundaries of the *Länder* are now regarded as all but permanent, the present organisation being so entrenched. Nevertheless, the power to initiate the boundary changes lies with the *Bund*, not the *Länder*, though any decisions are subject to a referendum.

Organisation of the *Länder* institutions is left to the regional authorities. Each *Land* has a constitution which may organise the structure of government within the *Land* as it wishes, though it must be compatible with the *Grundgesetz* (Art.28(1)) (Paterson & Southern, 1991, p147). The constitution of each *Land* is therefore the sole responsibility of the regional institutions. These include regional constitutional courts in all *Länder*, with the exception of Schleswig-Holstein which refers all its constitutional cases to the BVerfG. A high degree of constitutional autonomy is thus granted to the regional authorities. However, as has been shown in the descriptions above, despite a freedom to establish *länder* institutions, they have in general followed the federal model.

The German *Länder* enjoy a relatively secure constitutional position. They cannot be abolished en masse, neither can their boundaries be altered without the consent of the population. In addition, they have almost complete constitutional autonomy within the general constraints of the G.G. and can block any attempts to reduce their powers through their representatives in the *Bundesrat*. Perhaps even more importantly than this, however, the *Länder* have power to force concessions from the federal government through their control of the upper house. The ability of the *Länder* to use such powers was emphasised in the recent bill to approve the Maastricht treaty (see chapter five).

## **I.5 Greece**

### **I.5(a) Development**

Greece is a centralised unitary republic. The Greek state's approach to sub-national levels of government has been minimalist. The role of local and regional units is seen mainly as one of implementing national policy rather than initiating policy themselves. The Greek state has traditionally been hostile to any ideas of democratic decentralisation. It even refuses to recognise cultural differences within the Greek state (none of the eight minority languages are recognised by the Greek authorities).

The nationalist position of Greek governments (and large sections of the population) has recently been evident in their attitude to their new neighbours, the Republic of Macedonia. The distrust shown by the Greek authorities to the new state having the same name as a Greek region seems to be based upon the fear that the new republic is encouraging the disintegration of Greece by its choice of title (European Commission, 1994). This seems symptomatic of the Greek government's anxiety about challenges to the primacy of the Greek state. This fear is reflected in the Greek system of sub-national governance which is very weak. The recent consequence of this attitude has been a perceived overloading of the central state apparatus, leading to inefficiency. The response to this has been to deconcentrate power to a nationally appointed regional tier (Greek Government, 1993).

### **I.5(b) Structure**

Government in Greece is divided into four levels. The basic tier is the commune (306 municipalities, or Dimos and 5,693 rural communes, or Kinotita). Above these are the Nomos (51 in all, though the Nomos of Athens is divided into

four authorities<sup>\*</sup>), the regions (13) and the national government. In 1993, only the communal level had a democratically elected council. Both the Nomos and the Region existed only as a level of national administration (Council of Europe, 1993e, pp6-9). Neither were legal entities in Greek public law nor did they enjoy any right to “autonomy” as is afforded to the communal tier. However, the Greek government is in the process of creating a democratic tier, parallel to the deconcentrated Nomos (or prefectural) level (Greek Government, 1992, pp11-12). No analogous reforms are planned for the Region.

Each Greek region possesses, in theory, a deliberative body and an executive. The executive power is held by a Secretary-General appointed by the central government as the state's representative in the region. The Secretary-General is a civil servant and is charged with carrying out national policy at the regional level. A democratic element is provided by the Regional Council which advises the Secretary General. The Regional Council comprises the prefects of the region's Nomos (between two and six); representatives of the locally elected authorities (including the Nomos when it is finally established) and the Secretary-General as chairman (Council of Europe, 1993g, p12).

### **1.5(c) Constitutional Provisions**

The Regional level enjoys no constitutional protection and is seen as an enabling body of the state, rather than a tier of government in itself. The Regional Council's role is merely advisory and the power rests squarely with the nationally appointed Secretary-General. For this reason it is hard to describe the Greek region as having any structural autonomy.

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\* This may be increased to five under the 1993-1995 Modernisation programme. Greater Thessalonika may also acquire a second prefecture.

The Greek regional and Prefectural system is at present undergoing a period of re-structuring. This is due to be completed in 1995, but is concerned solely with further deconcentration rather than any increased democratic control.\*

## **I.6 Ireland**

Ireland has the second smallest population of any member state within the European Union (3,500,000). As with Luxembourg it has only one tier of local authorities below the national government. However, the Commission has divided Ireland along provincial grounds due to the relatively large area that the country occupies (69,000 km<sup>2</sup>). Despite this the Irish government still insists on being treated as one region by the European Union.

## **I.7 Italy**

### **I.7(a) Development**

Italy is a relative newcomer to the European club of nation-states. Prior to its "unification" in 1860, there existed a series of eight kingdoms with a large section of what is now N.E. Italy being under the control of the Austrian Empire. It was not, therefore, a natural candidate for a unitary state once the unification process had been achieved. During the "unification", many plans existed for a federal/confederal or regional state but these finally died with Count Cavour (King, 1987, p328). Instead, the Piedmontese constitution was extended to the entire peninsula and Italy became a centralised, unitary state. This concept reached its zenith under Mussolini and it was partly as a backlash to the fascist years that the

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\* Correspondence with Dimitris Sfikas, Director for Organisational Development, Ministry to the Presidency of Government, Athens, 11th October 1993

new Constitution of 1948 proposed a regionalised state. In fact apart from five peripheral regions, the development of a regional level had to wait until 1970.

### I.7(b) Structure

The Italian state has four tiers of democratic government. At the basic level there are 8,100 municipalities. Above these units there are 103 provinces of which two are “autonomous” (Trento & Bolzano), and one is also a region (Valle d’Aosta) (Council of Europe, 1993h, p7). Including this regional province there are twenty regions in Italy. They cover the entire mainland but not all are equal. The 1970 reforms created fifteen democratic “ordinary” regions\* to add to the five “special” regions# that were already in existence. The latter vary in organisation and competences, but the former are all structurally identical. Above this regional tier there is the national level, consisting of two elected chambers, an executive the Council of Ministers (headed by the Prime Minister) and a Presidential head of state. The Chamber of Deputies is the primary legislative body and is elected by proportional representation on a national basis.

The Senate is the upper house and is directly elected on a regional basis with each region being represented by a minimum of seven senators (the exception to this is Valle d’Aosta which has only one). It thus has a “regional” base, though it does not represent the regional executives or legislatures. In this regard the Italian system mirrors the United States senate. In common with the U.S. example it also exhibits all the signs of being a national rather than a regional body. Regional issues are rarely discussed and it does not represent regions at the national level.

The judiciary, is organised on a national level, headed by a Constitutional Court. The only exception to this is Sicily, where a separate court structure exists.

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\* Abruzzo, Basilicata, Calabria, Campania, Emilia, Romagna, Lazio, Liguria, Lombardia, Marche, Molise, Piemonte, Puglia, Toscana, Umbria, Veneto

# Friuli Venezia-Giulia, Sardinia, Sicilia, Trento-Alto-Adige, Valle d’Aosta

Each region possesses both a deliberative assembly and an executive. The former comprises between thirty and eighty members elected by proportional representation from provincial constituencies. The size varies according to the size of the region concerned. This body is referred to as the regional council, (except in Sicily where it is termed the regional assembly). When the regions were first established it was hoped that the regional councils would allow more participatory democracy in Italy and sweep away the existing political elite. For this reason, standing committees at the regional level are required to hold public hearings, to hear the views of interested parties. Further variations from the national model include the inability of the executive to dissolve the council and the council's role in appointing the individual members of the executive body (at national level, the parliament is presented with a shortlist of candidates prepared by the prime-minister) (Zariski, 1987, p108).

The executive body, or *Giunta regionale* is drawn from the council and consists of the regional President, the deputy President and a number of *assessori*, not limited by national law. In Lombardy for example the 1990 *Giunta* consisted of fifteen of these regional "ministers" (Hine, 1993, p261). It is general practice for the regional government to organise itself into departments headed by *assessori*. The *giunta* departments are generally reflected in standing committees set up by the assembly to monitor the activities of the executive. Unlike the national level, however, the regional executives were intended to be a truly collegiate body, with the individual *assessori*, responsible only for implementing *giunta* decisions.

Officially, levels of deconcentration exist at both the provincial and regional levels. In fact, the prefect administers the field services of the national government only at the provincial level. At the regional tier the regional commissioner's role is only to supervise the actions of other local authorities (Zariski, 1993, p112).

**I.7(c) Constitutional Provisions**

It is in the area of constitutional protection that the difference between the “special” and “ordinary” regions becomes apparent. The “special” regions were individually established during the period 1946-1963. Each “ordinary region” has a constitutional law governing the operation of the regional authority in accordance with Article 116 of the Italian Constitution, all of which were originally enacted in 1970. The “special” regions by contrast are regulated by legislation enacted in 1953, 1968, 1972 and 1977. \*

Anyone with a knowledge of the Italian constitution might regard the need for separate regional laws strange since Articles 114-127 and 130-132 deal exclusively with the regional tier. However, the interpretation of this section of the constitution meant that legislation was necessary actually to institute the regions. Although competences, etc. are laid out in the above articles, they are only the maximum powers a region may possess, “[w]ithin the limits of the fundamental principles established by the laws of the State” (Italian Constitution, Article 117). This obviously requires that these “laws of the State” be established, giving the national government the ability to postpone indefinitely the creation of regional governments and control the amount of autonomy granted. This, in practice, is exactly what happened.

The “constitution” of each “ordinary” region is set down in its statute, approved by an absolute majority of the council and approved by a national law. The regions are thus granted a measure of influence as regards the organisation of their structures. However, the final say on the matter still lies with the national authorities, leaving any structural independence very much at the mercy of the

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\* Sicilia - 1946, (though statute dates from 1948 - originally granted autonomy by legislative royal decree). Sardinia, Valle d'Aosta and Trentino Alto-Adige - 1948. Friuli Venezia Giulia (1963).



national mood. In the event, the regions themselves proposed structures which mirrored national practice despite hopes to the contrary (Zariski, 1987).

Amendments to the statute of a region depend on its status. As “ordinary” regions are instituted by standard legislation it would seem that the national authorities could act without restraint in their alteration or abolition of regional authorities. This is not clear, however. Now that the regional authorities have actually been established, it would seem that they could rely on articles 114 & 115 of the constitution for protection. These state that “The Republic is divided into Regions, Provinces and Municipalities” and that, “[t]he Regions are constituted as autonomous territorial bodies with their own powers and functions according to the principles established by the constitution”. The effect of these provisions is unclear, but it could be argued that they guarantee at least the continued existence of a regional level, in some form. Whether the Italian constitutional court would agree with this view is questionable (see below).

The “special” regions' statutes are afforded a degree of protection as they are enshrined in constitutional laws which are under the same amendment restrictions as constitutional provisions themselves. Amendments must be passed twice by each of the parliamentary houses within three months. A minimum of five regional councils, 1/5th of the members in either national assembly or 500,000 electors may demand a referendum in the three months after the amendment is approved, (but only if less than 2/3rds of each house approved the measure). Nevertheless this still places the power to alter the regions' constitutions at national level. It should be noted that the same procedure applies to amendments to the constitution itself, meaning that the regional provisions of the Italian constitution could be removed without reference to the regional authorities. In practice however, the “special” regions are as constitutionally protected as democracy itself.

Constitutional adjudication is undertaken by the Italian Constitutional Court (I.C.C.). Regional governments do have recourse to this judicial remedy if they feel that the national authorities have impinged upon their constitutional rights but up

until recently the court consistently took a pro-national stance. This discouraged regions from using this facility (the so-called “flight from the court”) and led to a growth in national power over the regions. However, recent decisions suggest a change in the attitude of the I.C.C., and regional authorities seem to be returning to the court to uphold their rights against the national government (Zariski, 1987, p114).

*A priori* supervision of the regional tier is exercised by the national government. This is undertaken by the state commissioner for the region. Regional legislation does not become law until this official signs the relevant bill. This must be done within 30 days unless the government wishes to object. In this case, the bill is referred either to the Constitutional Court (which may annul it) or to the national parliament, if the bill in question presents a conflict of interest with the state or other regions (Council of Europe, 1993h, p31). The latter process has never been used. Financial and administrative supervision of the regional tier exists through the regional accounting courts and *tribunale amministrativo regionales* (T.A.R.)\*, respectively (Hine, 1993, p262).

Regional governments do possess certain unusual powers to influence the national authorities. For example, regional councils can initiate legislation in the national parliament, which obviously brings regional issues to national attention. However, perhaps most interestingly the Presidents of the special regions may attend the meetings of the Council of Ministers to state their region's case. The Sicilian president may even vote and has the rank of minister in the national government (King, 1987). In practice, however these powers are of little importance. They are rarely used and the national government does not encourage their application.

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\* Regional Administration Tribunals

## **I.8 Luxembourg**

Due to the size of this tiny country, the existence of a regional tier is regarded as unnecessary. With only 400,000 people living within the Grand Duchy's 3,000 km<sup>2</sup>, Luxembourg is smaller than many other local council units that exist within the EU (e.g. City of Glasgow District in Scotland has a population of 689,000\*). Indeed in some comparative federal literature Luxembourg is studied in the context of its semi-federal links with Belgium (Elazar, 1991).

Within Luxembourg itself there exists a single-tier system of 118 communes beneath the national government (Council of Europe, 1993i, p6).

## **I.9 Netherlands**

### **I.9(a) Development**

The development of the Dutch system of sub-national authorities has occurred in two distinct periods. Up until the late Eighteen Century the Dutch state was a Union of Provinces and highly decentralised. Indeed for many advocates of decentralised government it was a model to be emulated in other countries.<sup>†</sup> The French victory over the Dutch in 1795 led to the formation of the Batavian Republic, a centralised unitary state based upon the French republican model. The centralised nature of the Dutch state remained until 1848 when the revolutionary upheaval of that turbulent year resulted in a new constitution. The constitution of Rudolf Thorbecke, which became the basis for the modern Netherlands state incorporated the concept of the “decentralised unitary state” (Toonen, 1993, p122). This has remained as the basic philosophy of the Dutch system of governance.

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\* General Register Office for Scotland, 1990 mid-year estimate.

<sup>†</sup> This can be seen in the Anglo-Scottish Union debates of 1706. Those who advocated federal union used the Dutch United Provinces as their example.

**I.9(b) Structure**

Dutch sub-national government consists of two levels of authority. At the lowest level there exist 647 *gemeenten* (municipalities) which operate within a system of 12 *provincies* (provinces) (Council of Europe, 1993j, p5). Between them exist special municipal co-operation areas and some urban authorities. These are often referred to as regions, by Dutch writers but they are small and do not correspond to the wider European concept of regional authorities (see chapter 5). At present the closest to a European concept of regional government exists at the provincial level.

The provincial authority consists of a directly elected assembly and a executive branch which is only semi-accountable to the regional electorate. The assembly (or *provinciale staten*<sup>\*</sup>) is elected by proportional representation from the provincial electorate. There is no elected chairperson of the assembly. The executive branch (*gedeputeerde staten*) consists of the Queen's Commissioner, appointed by the central government, and a "cabinet" of between three and nine assembly members. It had been previous custom for the executive body to represent the parties' electoral strength in the assembly itself. However, recent practice has moved away from this consociational approach to a more political "cabinet" model. This has led to the majority coalition partners filling all the executive positions and leaving the opposition parties outside the executive altogether. The new law concerning sub-national government in the Netherlands may force provincial executives into at least consulting with the minority parties, in an effort to reverse this trend (Kortman & Bovend'Eert, 1993, p27).

In addition to the Dutch decentralised tiers of sub-national government, there exist a series of 120, non-democratic, deconcentrated agencies (Toonen, 1992, p128). These operate on many levels both above and below the provincial tier and

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\* Translation: Provincial States

cover such policy areas as labour, planning, education, housing and social insurance (Council of Europe, 1993, p7). Furthermore, 140 "Water Boards" operate in certain parts of the Dutch mainland. Their main purpose is to manage the Dykes and water management systems and for this reason they are irrelevant in areas of higher ground. These boards do, in some cases, control more than merely water. They can also have responsibility for transport and communications. In these cases it is common for more than one board to cover overlapping territories. Each board being assigned a certain portion of functional authority (Kortmann & Bovend'Eert, 1993, pp34-37).

The Water Boards consist of a general council and an executive. The council is generally elected by the landowners (or more recently property owners) of the area in question. The executive is also elected by limited franchise, but in both cases it is up to the province to define the exact electoral arrangements. The Water Boards are controlled by the provincial tier which may annul decisions of the Boards if they go against the rules prescribed by the Province (Dutch Ministry of Foreign Affairs, 1980, p33).

The result of this multi-organisational system is confusion and a lack of accountability. Although Dutch people identify closely with the province, the political activities of this unit of government are generally ignored. It is generally seen as too large to cope with local issues and too small to address regional problems. Thus, units of deconcentrated administration take on the responsibility for the regional organisation of many policies. This reduces the democratic credentials of the regional tier and increasingly makes the Provincial tier irrelevant. The response to this has been attempts to create a system of four "Euro-Regions" to reflect current economic and cultural realities in the Netherlands.\* However, attempts to introduce these units have so far failed.† Debate continues in the

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\* North, South, West and East Netherlands

† In 1987 the Dutch government attempted to re-organise the sub-national system by creating a regional level and increasing the number of provinces. The plan was never implemented

Netherlands as to how the system can be best structured, but until such changes are instituted, the Province will remain the “regional” level.

### **1.9(c) Constitutional Provisions**

Chapter seven of the Dutch constitution deals with sub-national levels of government. However, the protection afforded to both the municipalities and the provinces can only be described as minimal. Provinces and municipalities can be abolished at will by the national parliament, but they must be re-constituted (Art.123) (Dutch Constitution). Apart from this guarantee of their existence (in some form) the provinces are given little guaranteed autonomy. Article 124 of the Dutch constitution does give them the right to “regulate and administer their own internal affairs” and as such grants them a general competence.

This is the fundamental basis of the Dutch provincial (and municipal) system. It is, in effect a subsidiarity clause, whereby the national authorities have no right to interfere in policies where the province is capable of undertaking the task (see chapter two). This should allow the provincial authority the ability to defend its autonomy against interference from the state and force the national authorities into negotiating and co-operating with the regional tier rather than imposing policies upon it. However, the Dutch constitution in practice gives little defence. Apart from this “subsidiarity clause”, almost all the other protection granted to the provinces under the constitution has the attached proviso that they can be changed only by act of parliament. This is obviously not much of a guarantee of autonomy as it is the national authorities such autonomy is to be protected from.

Article 132 does offer some small comfort in that a provincial decision may only be quashed if it conflicts with national law or is against the national interest. In these cases the power is wielded by the national government exercising the “Royal Decree”. However, the proviso that a decision must be against the public interest gives a large degree of discretion to the national government in its dealings with the provinces. In addition, Article 132(3) gives the option that provincial decisions may

require *a priori* approval by another body if this process is approved by the national parliament.

Thus the Dutch constitution, though dealing with the provincial tier and guaranteeing its existence, does not protect its autonomy from encroachment by the state. Instead the provinces are mainly covered by the *Provinciewet*. This is the “constitutional document” within which the provinces must operate, and is approved by the national parliament. The position of the Dutch province therefore bears more resemblance to the French region in this respect, with its limits being defined by ordinary acts of the national parliament rather than a constitutional document. Unlike the French region, however, the Dutch province may still be subjected to *a priori* supervision by the state authorities while its decisions may also be annulled for reasons other than their illegality.

## **I.10 Portugal**

In 1974 the Portuguese army overthrew the fascist regime that had dominated the country for forty years. This paved the way for the re-introduction of democracy under the new constitution of 1976. Although Portugal is the most homogeneous country in Europe\*, the new regime still had to cope with the question of how the island groups of the Açores and Madeira should be governed. The population of both these islands have exhibited a desire for autonomy. In the case of the Açores, a right-wing guerilla movement has conducted a campaign of violence to achieve its declared goal of independence. The organisation re-emerged in 1986 when the Portuguese President refused to ratify the new Açores flag and anthem (Elazar, 1991, p201).

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\* Portugal has no minority languages, according to the European Bureau of Lesser Languages (Report, 1994)

### **I.10(a) Development**

The Development of Regional government in Portugal has taken place since the establishment of democratic government in 1974-6. With the fall of the dictatorship, the Açores and Madeira pressed for a special status in the Portuguese state. To assuage this, both island groups have been granted Regional Government and the status of Autonomous Regions. The implications of this are studied below.

On the mainland however, things have not been so simple. Although the Portuguese Constitution does allow for the creation of “Administrative Regions”, no steps have been taken to implement this part of the constitution. Indeed, it is not certain that the Regional tier will ever be established. With an extremely homogeneous culture and minimal regional affinities, it is hard to see where the impetus for such change will come from. Until recently the central government seemed content to continue with the system of deconcentrated administration in place at present. As yet, there does not seem to be a groundswell of opposition to the undemocratic nature of this state of affairs. Some question whether regions are relevant to a small country such as Portugal. However, the ten million inhabitants live in a country with widely different climates, industry and indeed people. The government has attempted to introduce the relevant legislation to introduce regions, but as yet lacks the two thirds majority needed.

### **I.10(b) Structures**

The Portuguese mainland possesses two tiers of democratic local authority. These are the Municipalities (275 units) and the Parishes (4,005 units). Above them, the Portuguese constitution also establishes the basis for the construction of “Administrative Regions”. As mentioned above and not unlike the Italian experience, these regions have not yet been constituted. Instead, there exist five Regional Co-ordinating areas of deconcentrated administration (C.C.R.'s). In addition to these, the central government also operates a district level of



administrative deconcentration (there are eighteen), and fifty two technical support structures.

The net result of this is a confused system of un-democratic sub-national government on the Portuguese mainland. If and when the Regions are actually established the situation should become clearer. The Region should replace the C.C.R., and the District, as the level of regional co-ordination and planning. However, since there exist no plans at present to institute the Regional tier, no firm concept of their final role can be given. Instead, one can only hypothesis on how such a change would alter the system of governance in Portugal.

Plans do exist, however, for the structure of the Regional tier, should it be established. The deliberative organ of the Region will be a Regional assembly of between 31 and 41 members. These shall either be directly elected by proportional representation from the Region or selected as representatives of the Regional municipalities. In the latter case the delegates (between 15 and 20) will be appointed by an electoral college of all the municipal councillors in the Region. The executive branch (or *junta regional*) will consist of between four and six members plus a Regional President. Unusually for democratic sub-national government in Portugal, the Regional Assembly will be able to remove the *junta* by a vote of no-confidence (Council of Europe, 1993l, pp6-15).

### **I.10(c) Constitutional Provisions**

As mentioned above, the Constitution does mention the establishment of a Regional level on the Portuguese mainland (Section VIII, Chapter IV) (Portuguese Constitution). Under this, the Regions must be established "by law" (Portuguese Constitution, Articles 225 & 256) but this would not seem to offer much protection against the central government's wishes. In addition, although there is no mention of the government's ability to abolish the regions once they are established, the provision of a clause to allow the dissolution of the Autonomous Regions'

democratic organs (see below) would suggest a similar act would be legal against the weaker mainland Regions (Portuguese Constitution, Article 235).

The only definite constitutional protection that exists is for the municipalities against the Region. Firstly a majority of them in each area must approve the setting up of the Region in question (Portuguese Constitution, Article 256). In addition, under article 257 the Region may not encroach upon the autonomy of the municipalities or reduce their power in any way.

#### **1.10(d) Açores and Madeira**

Under the 1976 Constitution, both of Portugal's island groups were granted the status of "Autonomous Regions". The status, powers, structure and inter-governmental relations of these regions are set out in Section VII of the Constitution. Local government in the islands is the same as that on the mainland, with a two tier system municipalities (Madeira 11, Açores 19) and parishes (52 & 134 respectively) being operated. Unlike their mainland counterparts, however, the Autonomous Regions have been instituted.

The deliberative body is a uni-cameral "Regional Legislative Assembly" elected by the population of each Region by proportional representation (Portuguese Constitution, Article 235). The Regional President is elected from this body and, in turn, appoints a Regional Government of which he or she is the head. Although the Autonomous Communities are seemingly guaranteed by the Constitution, there are limits to their constitutional autonomy. Firstly, the statutes of autonomy were approved, and must be amended by the Assembly of the Republic (the Portuguese Parliament). Although amendments (and the original statutes) are proposed by the Regional Legislature, the final decision lies with the National Assembly (Portuguese Constitution, Article 228). This therefore heavily weights the hand of the Nation-State in any discussions over structural independence. Furthermore, under Art.236 the National President may dissolve the Regional Authorities completely and place their functions under the control of the State Representative in

the Region (Minister of the Republic, see below). There is no mention in this article as to how long such a dissolution would be allowed to continue or indeed any elaboration on the reasons the President must give, merely that they had acted “contrary to the Constitution”. Although such a draconian power would seem to hang over the island authorities, one suspects that political realities make this particular sword of Damocles rather rusty.

The central government is represented in each region by the Minister of the Republic. This post is filled by a Presidential appointee proposed by the National Government after the Council of State\* has given its opinion. Once appointed, the Minister acts not unlike a French Regional Prefect, but with certain similarities to a UK Secretary of State.

Although the Minister of the Republic's role has been described as the “executive authority” in the Region, this is not exactly the case (Elazar, 1991, p200). He or she does exercise executive authority but only in those areas where Central Government ministries still exercise authority in the Autonomous Regions. In areas within the competence of the Region, it is the Regional government that is the executive organ. In this respect the Minister is similar to the French Regional Prefect as both are the head of centrally organised field services, in the territorial area that they are responsible for. Further similarities are evident in the control that Ministers exert over the Regional authorities. As with the French Prefect, the Portuguese Minister may exert post-facto supervision over the Region. If he or she suspects a Regional decree to be unconstitutional, it can be referred to the constitutional court. However, in Portugal, the powers of control seem to be significantly stronger, than in the French example. Under Article 235 the Minister may refuse to sign a decree of the Regional Legislature even if it is adjudged within

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\* The Portuguese Council of State consists of the President, the Prime Minister, The President of the Constitutional Court, The National Ombudsman, The Presidents of the Regional governments, former democratic Presidents, five Presidential appointees and five representatives of the Assembly (Portuguese Constitution Art.145)

the Constitution if he or she does so within fifteen days of having either received the decree, or the decision of the Court. In this case the Minister's veto may still be overruled, but only if an overall majority of the Regional Legislature back the decision, after it has been reconsidered. In this case, the Minister must sign the decree within eight days of the Assembly's verdict. Until the signature is obtained, the legislation is not considered law. Although only a delaying measure, this suspensory veto power is something that even the French Prefects no longer possess.

The similarity with Scottish or Welsh Secretaries in the UK system of government comes from the Minister's dual role as member of the cabinet. Whenever Regional issues or issues concerning the interests of the Region are discussed, he or she has a seat in the Council of Ministers. As such they also exercise full Ministerial Powers (Portuguese Constitution, Article 232).

## **I.11 Spain**

### **I.11(a) Development**

The modern Spanish system of regional authorities, or “autonomous communities”, emerged after fascist regime collapsed in 1976. Much of the resistance to the dictatorship had been centred around the Catalan and Basque areas, and the re-establishment of democracy gave these areas the chance to press for a regionally organised Spanish state.

Spain is such a diverse nation-state, that anything other than a regionalised structure would not have been feasible. In addition to *Euskadi* and *Catalunya*; Galicia, the Canaries, the Balearic islands, Andulucia and Valencia all have distinct micro-nationalist identities. Some of these areas also possess different languages. If this were not enough, the economic diversity of the Spanish peninsula also invites a decentralised system.

The establishment of the first regional authorities, in the late 1970's had the effect of encouraging other areas, not noted for strong regional affinities, to press for the same status. This process ended in 1983, when the last "autonomous communities" were created. The last few regions had to be created by the Spanish national government, often against local wishes, but by the early 1990s the regional structure covered the entire Spanish territory (Cuchillo, 1993).

### I.11(b) Structure

Spain is a regionalised state. This has occurred to the extent that the Spanish state is now sometimes referred to as the United State of the Autonomies (U.S.A.).\* The regional nature of the new organisation of the Spanish portion of the Iberian peninsula makes a general description of the structure of territorial authority rather meaningless. Regions differ markedly from each other in their approach to territorial government depending on historical as well as geographical factors. The end result is that a total of nine levels of government exist below the national authorities. However, only a selection of these levels exist in each region. For this reason a description of the general levels which exist throughout Spain is given below.

The lowest general level of sub-national authorities are the municipalities which cover the entire territory of the Spanish state (in total there are 8,082).+ However, sub-municipal units can be created, at the instigation of either the population concerned, or the local municipality. Power to set up such units lies with the Autonomous Community. At present there exist a total of 3,679 throughout Spain. The *mancomunidas* are another optional unit of government that can be found throughout Spain. These are best described as associations of municipalities

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\* Defined in the judgement of the Spanish constitutional court 32/1981. Translation from Aurrechoechea, I, 1989, p74-103

+ These vary in population, from a maximum 3,058,182 (Madrid) to a minimum of 4 (Cerveruela) (Council of Europe, 1993m, p7).

which deal with a specific issue or issues within their municipal mandates, collectively. As with sub-municipal units, their activities are covered by regional legislation

Above the municipalities there exist fifty provinces, a throwback to when Spain was administered along French departemental lines. Above these again lie the Autonomous Communities of which there a total of seventeen. In seven cases the *autonomías* actually consist of only one province and as such the provincial duties have been taken over by the regional authority.\* In nine of the other ten, the provincial authority continues to operate seperately from, though sometimes uneasily with, the regional tier.#

The *autonomías* have both legislative and executive branches of government. The legislative body is the assembly or parliament which is elected by proportional representation. The organisation of the deliberative body is prescribed in the founding statute of the *autonomías*. The executive branch of the *autonomías* is also defined in the relevant statute of autonomy, though its members (usually no more than ten) are drawn from the legislative branch and it is always headed by the regional president (Solé-Vilanova, 1989, p213).

Deconcentrated agencies of the Spanish state exist at each of the three principle levels of sub-national territorial authority (municipalities, provinces and *autonomías*). In the case of the regional level, a government delegate is appointed to head the state administrative services and co-ordinate activities with the regional authorities (Council of Europe, 1993m, p13).

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\* Balearic Islands, Asturias, Cantabria, Madrid, Murcia, Navarre and Rioja

# Aragon, Andalusia, Castile-La-Mancha, Castile-Leon, Catalunya, Estremadura, Euskadi (the Basque country), Galicia and Valencia. The Canary islands possess a seperate system outlined below.

### I.11(c) Constitutional Position

The Constitutional position of the *autonomías* of Spain is strong. Article two of the Spanish constitution states:

“The Constitution is based on the indissoluble unity of the Spanish nation.....and guarantees the right to autonomy of the nationalities and regions of which it is composed and the common links that bind them together.”(emphasis added)

This article could not be more explicit in its recognition and guarantee of autonomy to the constituent regions of the Spanish state. It does this by recognising both the Spanish nation and the “micronationalities” that exist within it, something unique in Europe.

Section VIII deals entirely with the organisation of the *autonomías*. Unlike the other constitutionally defined regional states (Germany and Belgium), the Spanish model does not define any of the functions, organisation etc. of the sub-national level. Indeed it does not even assume that the entire Spanish territory would become regionalised. Instead, it outlines methods by which areas of the state may set up *autonomías* and gives the maximum powers they can assume. Even this is not definitive, as the regional government can gain further powers by direct negotiation with the national authorities. A few areas are non-negotiably granted to the national level.

The three methods by which an area may gain autonomy are defined as:

- i) The second transitional disposition.
- ii) Art.143
- iii) Art.151

The first method applied only to the so-called historic regions of Catalunya and Euskadi. These regions (plus the other “historic” region of Galicia) had all voted for regional autonomy during the republican regime of the early 1930's though only in the case of Catalunya did the authority have time to function properly before the nationalist victory.\* These regions were granted a high degree of autonomy early in the process of constitutional reform.

The second procedure was designed to be the most common, allowing quite an easy route to regional government but giving the proviso that full autonomy would not be achieved for five years after the *autonomías* had been established. This left the Art.151 procedure which was originally seen as the exceptional route for autonomy. This would give the successful region a “fast track” to the high degree of autonomy granted to the “historic” regions. The drawback was that to achieve this, the prospective *autonomías* needed to pass a series of referenda and gain the support of every province within its borders. This made such a route unlikely. However, much to the Spanish government's surprise, five *autonomías* were created in this way, despite the national government's attempt to tighten the rules in 1982 (Cuchillo, 1993).†

Each *autonomía* is limited by its statute of autonomy. In essence this is the constitution of the region. These are all “organic” laws which require the consent of both houses of parliament, (the Chamber of deputies by absolute majority) to be amended. The vote of the Senate is not required if the President of the *autonomías* has given his consent (Art.155 of the Spanish Constitution). This power also gives

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\* In the case of Euskadi, by the time the Basques were granted their autonomy the nationalist forces were already advancing into the Basque country. Basque support for the Republican regime won them little more than a few weeks of regional government and the abiding hatred of the fascist state. Galicia fell to Franco's forces almost immediately giving no time for the region's autonomy to be implemented.

† Although Andalusia and Galicia were the only regions granted autonomy under this article (and in Andalusia, only after a special law was passed allowing the low turnout in one of the provinces to be ignored) a decision of the constitutional court, regarding the new procedures for achieving autonomy (the so-called autonomic-pact) invalidated much of them and forced the Spanish government to grant de-facto Art.151 status to the three other regions.



the national government the ability to force a Community to take an action to fulfill a constitutional obligation. Further caveats to regional independence exist in the cases of crisis or rebellion. In each *autonoímias*' statute there exists a clause whereby the national authority can assume control in such situations (Clark, 1985, p7).

## **I.12 British Isles**

The “British Isles” is the collective noun for the island group located off the North West coast of the European mainland. In its constitutional sense it excludes the Republic of Ireland, but includes the kingdoms of Scotland, England and the Isle of Man; the principality of Wales; the province of Northern Ireland and the Baliwicks of Jersey and Guernsey.\* The United Kingdom of Great Britain and Northern Ireland excludes the three island communities. In the following section the constitutional position in the UK is examined in general, followed by a discussion of the structures in each of its constituent parts. The island units will be briefly discussed at the end of this section.

### **I.12(a) The United Kingdom**

#### **I.12(a)i Development**

The present United Kingdom was established in 1922. After two years of armed conflict the government in London ceded twenty of the twenty-six Irish counties to the newly created Irish Free State. From this point the United Kingdom of Great Britain and Ireland was reduced to that of Great Britain and Northern Ireland.

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\* Interpretation Act 1978, section 5. sched. 1

It has often been the practice of scholars, and the general public, to confuse England and the United Kingdom. This is both constitutionally incorrect and gives a false impression of the makeup of the UK.

Scotland and Wales were both independent countries in the middle ages. Wales has been a part of the English crown since the thirteenth century when the last of the Welsh princes was defeated. Scotland, however, entered into two separate unions in 1603 (uniting the crowns) and 1707 (uniting the parliaments), thus creating the United Kingdom. Finally, the semi-autonomous Irish parliament was forced to accept union with the parliament of the UK in 1803, creating the United Kingdom which was to survive until the end of the Irish war of independence, and the secession of the Irish Free State.

The unitary nature of the United Kingdom has caused a series of stresses to be placed on the continued existence of the state in its present form. This has led to the creation of the Secretary system, with Scotland, Wales and Northern Ireland\* having a Secretary of State to administer certain functions within the territory. In England, no such post exists, but the development of regional planning and the perceived need for a tier of regional administration has led to the development of non-elected regional bodies since the 1960's.

#### I.12(a)ii Structure

The UK is a democratic unitary state, headed by a constitutional monarch. The basis of the state is the concept of parliamentary sovereignty and there exists no written constitution.† Under this principle all power, in theory, emanates from the national parliament at Westminster which cannot be bound. The parliament consists

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\* Northern Ireland had regional government from 1922-1972

† This is not strictly true as the basis of the British state are actually the Acts of Union (between England and Scotland). However it has, as yet, never been successfully used to declare an Act of Parliament ultra vires although the Scottish judiciary has flirted with the idea.

of two houses, the Commons and the Lords. The Commons is the dominant house and represents all the constituent parts of the United Kingdom.\* The Lords is a non-democratically elected body which has only delaying powers.

The executive of the UK is headed by the Prime Minister and consists of around twenty ministers, responsible for government departments. Of these, three are responsible for territorially distinct departments. The rest either head UK departments or occupy traditional posts, such as the Chancellor of the Duchy of Lancaster. Ministers of these departments are responsible to parliament (Turpin, 1990, p164).

The system of territorial administration and governance that operates varies markedly in each of the constituent units of the United Kingdom. For this reason each one's development and structure will be examined separately.

### **I.12(b) England**

#### **I.12(b)i Development**

England is the largest non-regionalised territory in the EU. Unusual amongst such a large territory it does not suffer from serious political pressures aimed at devolving power to a regional tier. The regional pressures that exist within the country have not been translated into calls for regional autonomy as in Italy or France. The political issues which have united regional opposition to central government actions have been limited to specific problems. The further step, to call for such issues to be resolved at the regional level has, until recently, been missing.

There is, however, a limited tier of regional authority in England, though its development has been, until recently, rather erratic. As mentioned in chapter three, the indicative planning era did not wholly pass England by. In 1964, the Labour

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\* N.Ireland - 17, Scotland - 72, Wales - 38, England - 523 (Total 650)

government introduced a system of Regional Economic Planning Boards staffed by “experts” to draw up the regional portions of the national plan. Although, these did not survive the Thatcherite years,<sup>\*</sup> in areas such as the National Health Service (established in 1948), regional administration has continued (Turpin, 1990, p220). This regional administration, has also been complemented by the existence of regional offices to administer the functions of national departments at a sub-national level. However, all these experiments in regional governance have been neither democratically elected nor accountable to the local electorate.

Calls for their conversion into a general purpose democratically elected tier have been weakened by the non coterminous nature of their boundaries. Thus, unlike Italy or France, where the creation of regional deconcentrated units gave a natural basis for protests about regional devolution, in England there is no agreement as to what such regions should constitute. The present government has, to a certain extent, resolved this by creating a structure of 10 new regional offices.

The establishment of a standardised regional tier, if the pattern in Italy and France is repeated in England, may well lead to increased calls for its democratisation. Indeed the leader of Birmingham District Council described the new regional offices as, “regional government with neither answerability or accountability”, leading to a “democratic deficit” at the regional level (Financial Times, 11/4/94). At present, however, the regional tier remains non-elected, although all opposition parties are committed to assemblies for the English regions (see chapter nine).

Local government, comprising the democratic level beneath the regional tier has suffered a consistent loss of authority, often to non-elected Quangos (Quasi Non-Governmental Organisations) and nationally appointed regional administrators. The result has been to turn local government into the enablers of national policy and little else, thus destroying the “dual polity” consensus described

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<sup>\*</sup> They were abolished in 1979.

by Bulpitt (Bulpitt, 1983). Instead of a distinction between high and low politics, allowing the local authorities to govern “local” issues while the national government concerns itself with the more strategic ones, national authority has reduced the ability of local councils to do anything but implement central policies. Instead, nationally appointed territorial bodies, responsible to the government, not the local electorate, are growing in their powers and responsibilities. Alternatively, responsibilities of the local authorities have been privatised (e.g. water). In this case the monitoring of the private service is now a national matter assigned to a Quango.

The continued withdraw of local responsibilities from local government has led to a democratic deficit throughout the English sub-national level and the increasing need for all policy objectives, no matter how small, to be addressed to Whitehall. This is alarmingly similar to the pre-1994 Italian system. In this case, the over powerful centralised state became increasingly overburdened. This lead to inefficiency in the un-accountable administrations and widespread corruption throughout the system. The commitment of the opposition parties to English regional assemblies and the re-empowerment of local authorities may reverse this trend, but whether such a pledge will be fulfilled when the opposition acquire a taste of national power, is open to question.

#### I.12(b)ii Structure

At the present time, a two tier system of democratic sub-national authority exists throughout most of England. This consists of 39 County councils, which operate above 296 District councils. In metropolitan areas, a single tier structure of 36 Metropolitan Districts and 32 London Boroughs are the only sub-national units. Beneath these statutory authorities, over 8,000 parish councils operate on a voluntary basis (Council of Europe, 1993p, pp5-6). In addition, the Liberal council in the London borough of Tower Hamlets has experimented in devolving power to sub-borough units.

These councils all possess a directly elected assembly which acts as both the deliberative and executive body of the council. In practice, the decisions of the council are generally taken in committees to which the council delegates the relevant powers. Since no separate executive exists at local government level, the local government officers (civil servants) serve the whole council, not merely the governing party (Thompson, 1993, p215). This is in marked contrast to the national structure. However, in practice, power lies very much with the dominant party or coalition which controls council decisions and the makeup of its committees. The leader of the council is elected by the whole chamber.

At the present moment, the English system of sub-national governance is undergoing wholesale change. At the local government level, an independent review body is examining the future of local authorities. The independence of this review may be questioned by the review commission's remit:

“The Government would set guidelines for the process of moving towards more unitary authorities which reflect community loyalties. The Commission's task would be to advise the Secretary of State, within those guidelines, on reforms to the structure of local government. The Commission could also make recommendations about how any local government functions which would need arrangements across a wider area than that covered by the unitary authorities should be handled.” (emphasis added) (Local Government Commission for England, 1992, p7)

The government's desire for a single tier of democratic sub-national government was therefore clear. To leave England as the only country in the E.C. of substantial size with only one level of democratic sub-national authority.\* However, the independent review body did not follow these guidelines (they were in fact ultra vires) and many two-tier authorities will remain. In other cases, the gap may be

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\* The others are Ireland and Luxembourg, see above.

filled with the creation of additional deconcentrated agencies. This supposition seems to be born out by events at the regional level.

As of 11th April 1994, England has been divided into ten administrative regions. This reform has amalgamated the regional offices of six government departments under the authority of one regional director (The Financial Times, 5/11/93). The ten regions closely resemble those introduced in the 1960's for purposes of regional planning as well as the EU's regional division of England. The only exceptions are the Northern & North Western EU regions which have been divided into Merseyside, North Western and North Eastern regions in the 1994 reforms. Although the regional director is a government appointed post, without accountability to the regional electorate, the reforms have nevertheless accepted the need for a regional level of deconcentrated authority.

There are also certain agencies (e.g. the Environmental Protection Agency) which operate at a regional level through a series of offices. However, the government denies their relevance as regional authorities due to their status as non-departmental agencies (Council of Europe, 1993, p10). Despite their protestations, the official status of a government organisation does not seem to have any relevance as to whether it operates at a deconcentrated regional level. The existence of all regional offices, recognises the need for a regional level of administration, whatever their official status.

#### I.12(b)iii Constitutional Provisions

None of the sub-national levels of government in England are protected from interference by the national level. Indeed the practice of the last fifteen years has seen central government exercise increasing control over all locally elected tiers. This may be due to the strength of opposition parties at this level of government.

The lack of a written constitution and the continued acceptance of the principle of parliamentary sovereignty will make any entrenchment of local councils or hypothetical regional governments, very difficult.

### I.12(c) Scotland

#### I.12(c)i Development

In 1707 the parliaments of Scotland and England were merged to form the British parliament. This event was unique in European history.\* Two sovereign states united of their own volition, although in practice, the Union was always going to be an unequal one. The image of the Union as a “freely negotiated bargain” is also somewhat misleading. The Scottish parliament's lack of democratic credentials was exacerbated by the bribery, corruption and intimidation that surrounded the rough passage of this contentious measure (Hopkins, 1988). Nevertheless, the Treaty of Union continues to be the basis for the British State.

Some opposition to the Union, within Scotland has been constant throughout almost the entire three hundred years since its implementation. After the final Jacobite rising of 1745, with its anti-Union message, the position of Scottish Secretary was abolished, leaving the administration of the Scottish legal, education and local government systems to the Lord Advocate and civil servants in Whitehall.

By the middle of the Nineteenth Century, this system was under strain from both unionists and anti-unionists who saw it as constraining Scottish development. From this period a process of functional deconcentration has granted increased powers to deconcentrated units representing the British government in Scotland. This policy was begun in 1870 with the establishment of the Scotch (sic) Education Department. This was followed in 1885 by the appointment of a Scottish Secretary of State. Although these developments were partly in response to “nationalist”

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\* Recently, East Germany also voted itself into extinction



pressures, much of the impetus behind these reforms came from businessmen and professionals dissatisfied with the incompetent system of administration that existed in Scotland at the time (Keating, 1988, p87). The similarities between these criticisms (and the government response) and those of the centralised Italian and French states, almost a century later, are striking.

Opposition to the current system of government in Scotland has continued, with opinion polls regularly finding over 80% of Scots in favour of a Scottish parliament. This is generally split between support for independence (around 25%) and devolution or “home rule” (around 50%). The bitterness aroused between these two factions is such that opposition to the present Union is seriously divided.\* A UK government with only 11 of the 72 Scottish seats is happy for this to continue.†

#### I.12(c)ii Structure

The system of democratic sub-national government in Scotland now comprises a single tier of locally elected units. Scotland as a whole is substantially governed by the non-directly elected Scottish Office. The latter is a UK government department headed by a cabinet minister and not held directly accountable to the Scottish population. It is thus a deconcentrated authority, but is unusual in that it is headed by a politician and not a civil servant. It also has a greater policy role than is common among deconcentrated layers of authority on the continent.

The two-tier system of local authorities was abolished in 1996 to be replaced by a single tier of all purpose authorities. Three island councils already operated as single tier authorities prior to this (Council of Europe, 1993p, p6). Each

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\* The referendum of 1979 produced a 52% vote in favour of a weak devolved assembly. However, only around 60% voted and the required 40% support of the entire electorate was not reached. The Labour governments' failure to implement the referendum result led to the withdrawal of support by the S.N.P. and the consequent election of the pro-Union Conservative regime. Large sections of each party blame the other for this.

† The Liberal and Labour parties have advocated a policy of federalism and devolution respectively, but have agreed a minimalist common programme through the “Constitutional Convention”. The Scottish nationalists (S.N.P.) have boycotted such agreements.

local authority unit has an assembly elected by a first-past-the-post electoral system. As in England, the council thus elected is both executive and legislature. Beneath these compulsory authorities, local areas may establish “community councils” though these have no powers of their own (Scottish Office, 1992, p95).

The Scottish Office is, in practice, a regional executive appointed by the national government in London. Its remit mirrors that of a regional government on the German or Spanish model. Though unlike these examples, it is not accountable to the regional electorate. The head of the Scottish Office is the Secretary of State for Scotland. This post is filled by a member of the UK governing party and is generally a Scottish MP. Until 1987 the Secretary of State, though often belonging to a minority party in Scotland, always had some sort of political base. Since the collapse of the Scottish conservatives in that year, however, this has not been the case.\*

The Scottish Office itself is divided into five departments:

Agriculture and Fisheries

Education

Environment

Home and Health

Industry

In addition there are a variety of support services including Office of Solicitor to the Secretary of State, the Information Directorate and Directorate of Administration Services. Collectively these are referred to as “Central Services”.

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\* The Scottish conservatives at present control eleven of the seventy two Scottish seats. Although under proportional representation they would receive around 18 seats (25% of votes cast in 1992).

Further semi-independent departments and agencies which are responsible to the Secretary of State include the Scottish Records Office, General Register Office and the Scottish Courts Administration. Ministerial responsibility may also apply to the Secretary of State for the actions of certain UK departments, in Scotland. The Lord Advocate and the Solicitor-General are appointed as the Scottish Law officers, separate from their English counterparts (Secretary of State for Scotland, 1993, p16).

The division of the territorially defined Scottish Office into these five functional departments confirms its role as a regional executive. It also has a separate branch of the UK Civil Service to support its activities (13,413 employees in 1993), again emphasising its distinctive nature (Secretary of State for Scotland, 1993, p56).

The operation of the Scottish office team (or “cabinet”) is somewhat unusual, however. Unlike the national government, each minister (there are four) has a variety of responsibilities not limited to one department. This leads to a rather confused map of authority and responsibility. Control over policy areas are allocated on an apparently personal basis with each minister having several unconnected portfolios. The need for this is obviously exacerbated by the lack of Scottish Conservative MP’s some of whom are unwilling or incapable of filling a ministerial position.

This leads to a rather obscure system whereby one minister (in 1995 Lord James Douglas Hamilton) has responsibility for housing, building control and the construction industry; another for town and country planning and a third for natural heritage and rural affairs. All of these areas fall within the remit of the Scottish Environment Department.

All Scottish M.P.'s are members of the Scottish Grand Committee which debates Scottish matters in general and gives the second reading to bills in certain cases. It has been described as a “sub-parliament for Scotland” and often sits in

Scotland (Turpin, 1990, p234). Under the Conservative government's "taking stock"\* exercise of 1993, the role of this Committee is to be increased and an increased number of sittings will be held north of the border, but this cannot disguise the essentially weak nature of the institution. It is merely a forum for discussion and debate and lacks any real power.

The existence of separate Scottish institutions creates a need for separate bills to cover Scottish peculiarities. In practice many are merely tagged on the end of UK bills and only 60 Scottish bills were enacted in the period 1983-93. Nevertheless, Scottish bills are processed in the Committee stage by one of two Scottish standing committees. However, the government majority on these is now assured by the co-opting of English M.P.'s to sit on them. In some cases, even difficult Scots Tory M.P.'s have been excluded in favour of more acceptable English members.

A Scottish Select Committee has intermittently functioned since 1969, though it is was defunct for several years in the 1980s, due to a lack of Scottish Conservative MPs to serve on it. It now includes some English Conservative members.

#### I.12(c)iii Constitutional Provisions

Although there is no protection for the continued existence of a Scottish Office, debate continues to surround the ability of a UK parliament to infringe the guarantees of the Treaty and Act of Union. The continued existence of the Scottish systems of law and education are provided for in articles 19, 25 and 28 of the Union, while art. 25 also guarantees the Church of Scotland's status.<sup>†</sup> Legal debate continues to surround the value of this document. On the one hand, writers such as

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\* The name given by the Major government to the minimalist reforms of 1992

<sup>†</sup> Union with Scotland Act 1706 6 Anne c.11 and Union with England Act 1707(S) 1707 c.7

T.B. Smith (Smith, 1957), Neil MacCormick (MacCormick, 1978) and Michael Upton (Upton, 1989) have argued that the UK parliament was created by the Treaty of Union and as such must be limited by it. On the other, Dicey (Dicey & Rait, 1920) and Munro (Munro, 1987 chapter 4) have argued that the principle of parliamentary sovereignty overrides the constitutional claims of the Union. This hypothesis has been tested on several occasions in the Scottish courts, but never conclusively.\* It seems that if the British government made an attempt to abolish the Scottish institutions wholesale, then the courts have reserved the right to enforce the Union.

If the former argument is correct, then the Scottish legal and education systems may not be abolished. Neither can any tax be levied only in Scotland and not in England. On the other hand, the creation of a Scottish parliament may break article 3, and the Union would thus be defunct, necessitating a re-negotiation of the Anglo-Scottish relationship (Hopkins, 1988).

### I.12(d) Wales

#### I.12(d)i Development

Wales ceased to exist as a political entity in the thirteenth century with the final defeat of the Welsh princes by Edward I of England. Several guerrilla movements challenged English rule in the next few centuries but these were ultimately unsuccessful. Wales was finally assimilated into England after the English parliament passed an “Act of Union” in 1542 allowing Welsh representation at Westminster.†

The governance of Wales has caused intermittent problems for the English regime, rather like their Celtic brothers in Scotland and Ireland. Unlike their less

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\* MacCormick v. Lord Advocate 1953 SC 396; Pringle, Petitioner 1991 SLT 330; Stewart v. Henry 1989 SLT (Sh Ct) 34. For a discussion of the “Poll Tax” cases see Edwards, 1992

† Laws in Wales Act 1542, 34 & 55 Hen.8 c.26

assimilated cousins the Welsh have become politically divided into an English speaking south and a Welsh speaking North. Thus, the success of Plaid Cymru (the Welsh nationalists) has been limited to the Welsh language areas. It is only recently that the policies of the nationalists have changed to a more regionalist/pan-Welsh platform of "Wales in Europe". This reflects similar moves amongst Scots and Basque nationalists.

Unlike Scotland and Ireland, Wales was not recognised as a separate constitutional entity until 1881. In this year the Liberal party, passed the first bill applying exclusively to Wales (Welsh Sunday Closing Act). However, it was not until 1964 that Mr. James Griffiths became the first Secretary of State for Wales. The new post assumed control over a plethora of bodies, boards and Quangos established since the late Nineteenth Century. Indeed a Minister of Welsh Affairs had existed since 1951 but this was, until Mr. Griffith's appointment, occupied by an incumbent of another office (Bogdanor, 1979, pp120 & 131-133).

This continued deconcentration of power to Wales has not halted claims for further decentralisation. This came to a head in the failed referendum of 1979. Despite this setback, increased support for democratic accountability in Wales has again led all opposition parties to support the establishment of some sort of Welsh assembly (see chapter 9).

#### I.12(d)ii Structure

Welsh sub-national government, in common with Scotland and England is currently undergoing enormous change. The existing two tier structure, of eight county and thirty seven district authorities, was replaced in April 1995 with a single level of twenty one new local government units. The organs of the existing and proposed councils are similar to those for England and Scotland (Welsh Office, 1993).

At the regional level, the Welsh Office operates as a deconcentrated unit, with many similarities to its Scottish counterpart. Indeed, the Welsh office was

created as a response to the perceived “success” of the Scottish model. As with the Scottish example, the Welsh Secretary has a seat in Cabinet. They also have two ministers under their control.

Few bills apply exclusively to Wales, unlike Scotland. This is due to the increased absorption of Welsh institutions into the English mainstream. There is, for instance, no separate legal or educational system in the principality. Nevertheless, Wales has experienced increasing deconcentration of functions to the Welsh Office or to Welsh regional quangos. Most recently, the H.E.F.C.W. (Higher Education Funding Council for Wales) now administers all Higher education funding in the principality.

A Welsh Grand Committee sits at the House of Commons to debate Welsh affairs and bills relating exclusively to the Welsh territory, on the motion of a minister. It consists of all Welsh M.P.s and up to five non-Welsh members. A Welsh Select Committee scrutinises the workings of the Welsh Office and “associated public bodies” (Turpin, 1990, p238).

Unlike Scotland, the Welsh Secretary is often not Welsh. Indeed the previous incumbent’s only link with the principality was that he had visited the country on holiday. The extreme weakness of the Conservatives in Wales, where they have never won a majority of seats, makes the continuation of this trend likely under the present government.

#### I.12(d)iii Constitutional Provisions

The accession of Wales to the English Crown was achieved by force of arms and not by treaty. Unlike the Scottish example, the union of England and Wales did not even pretend to be a joining of two countries. The Welsh “Act of Union” of 1536 was not an agreement of the two states but rather an action of the English parliament to complete the political assimilation of the principality into England. This was achieved by the extension of English law and administration to Wales which until that time had been ruled by semi-autonomous English nobles.

There is therefore no constitutional argument surrounding the status of Wales, within the present constitutional set-up. All the organs of government that operate within the principality are subject to the same parliamentary sovereignty as exists in England and Northern Ireland.

### **I.12(e) Northern Ireland**

#### **I.12(e)i Development**

The governance of Northern Ireland is a complex and highly politicised issue. Despite attempts at Devolution (1922-72) and Direct Rule from Westminster (1972-74[Jan] & 1974[May]- the present) no lasting solution to the conflict has been achieved and people continue to die. A brief attempt at consociational government failed in 1974, (due to opposition from Unionist groups and a general strike) and tentative steps to establish an assembly after 1982 finally collapsed in 1986. The consultative assembly established, did not include Nationalist parties (who refused to take their seats) and the committee working on proposals for a new legislative Assembly was dissolved in 1985, after disagreements between the parties that did sit in the Assembly.

Further attempts such as the Anglo-Irish agreement and the Brooke initiative have all failed to resolve the conflict. The most recent proposals enshrined in the "Downing Street Declaration" also seem doomed to failure. Nevertheless, there are continued attempts to bring peace to the province. It is in the interests of neither government to continue the conflict and indeed if the Republic ever did join with the north the cost of maintaining the six counties would bankrupt the small Irish state. The cost on the British exchequer continues to be substantial.

#### **I.12(e)ii Structures**

At present Northern Ireland is administered by a Secretary of State, supported by five ministers. As with Wales and Scotland, the Secretary of State sits as a member of the British cabinet. The Anglo-Irish agreement, signed in 1985



allows for inter-governmental conferences between the Irish and British ministers to discuss the issues of the province and co-operate in areas such as security. It also affirms the right of the people of "Northern Ireland" to decide their future. This is something Sinn Fein and the I.R.A. have failed to recognise.

Beneath the deconcentrated level of government, exists a tier of twenty-six districts. These have very limited powers, not dissimilar to that of an English Parish. The remaining local government authority is exercised by Civil Servants in Belfast for the entire six counties. This was deemed necessary to avoid the sectarian discrimination and gerry mandering that was rife in local government prior to 1972.

#### I.12(e)iii Constitutional Provisions

Until the beginning of direct rule in 1972, the Government of Ireland Act (1920) was the Northern Irish constitution. However, section 75 of the Act made it clear that the Stormont parliament was subordinate to that of Westminster. In addition, any alterations of the Act were to be made in the UK parliament not by the province's legislature. However, these and other "safeguards" to prevent discrimination against the Catholic minority were singularly ineffective. Proportional representation was abolished in 1929 and the local government franchise relied on property ownership, denying 25% of the population (mostly Catholics) a vote (Bogdanor, 1979, p53).

The final subordinate nature of the Northern Irish authorities was emphasised when in 1972 the province's separate government was abolished. Since then, the Secretary of State has had no constitutional protection, and none of the Northern Irish institutions are protected from Westminster abolition or interference. Nevertheless, had the democratic and civil rights credentials of the devolved parliament not been called into question when the troubles reignited in 1968, the government may have found it politically unacceptable to dissolve the province's parliament.

**I.12(f) Isle of Man**

The Isle of Man is an ancient island kingdom located off the west coast of Cumbria. However, the island was purchased by the British crown in 1765, from the previous monarchs, (the Stanleys). Although it remains a territory of the crown, it is not part of the United Kingdom and as such is not subject to the laws of the British Parliament. From the period 1765 to 1866 the island was administered directly by the crown. The Governor ruled the island as a colony, without any involvement from the local populace. This proved hugely unpopular, and during the reform acts of the nineteenth century, this issue was addressed. From this period to the present day the island's institutions have become increasingly responsible for its internal policy.

The Manx parliament (the Tynwald) is, in fact, the longest continuing legislative body in the world (it continued to sit during the period of direct rule). It comprises two houses; the House of Keys (24 members) and the Legislative Council (10 members). The former is elected through universal direct suffrage, while the latter is indirectly appointed by the Keys (it also includes the Bishop of Man & the Attorney General, who does not vote). There is, at present no party system on the island, though this has shown signs of changing. The Executive Council comprises the Chief Minister and nine other Ministers. The Isle of Man Civil Service is entirely separate from its UK counterpart.

Functionally, the island is entirely self-governed. With the exception of defence and international relations, the UK government does not intervene in its affairs. It is theoretically possible for it to do so, however. Royal Assent to Acts of the Tynwald must be given by the Lieutenant Governor, representing the Lord of Mann (i.e. the Queen). He acts on the direction of of the Home Office, however and has been known to veto legislation. The last time this happened was in 1977 but Manx self confidence has grown substantially since then. Whether refusal of Royal Assent could be used today is debateable.

The Isle of Man is not part of the European Union and receives no aid from the Commission. It is part of the free trade area, however. It also enjoys complete financial autonomy, receiving and setting all taxes within its territory (though a voluntary Customs Union exists with the UK). Overall, the island has done rather well out of its autonomous status in recent years (unemployment is significantly lower than the mainland, for example). It is also a rare example of “home rule” in the British Isles. In the light of this perhaps the previous Bishop of Man’s comment that the island consisted of “60,000 alcoholics clinging to a rock”, was slightly unfair.

### 1.12(g) Channel Islands

Much of what applies to the Isle of Man also applies to the Channel Islands. These actually comprise two legal entities; Guernsey and Jersey. The former Bailiwick includes two other inhabited islands, Alderney and Sark. Both of these have substantial autonomy from the larger island. In Alderney’s case this means the island’s legislative body exercises authority, in the latter, significant power is still wielded by a feudal Lord (the *seigneur*).

Jersey and Alderney are both unicameral systems, while Guernsey has two houses within its legislature. In all cases, the members are directly elected. Some important appointments (notably the Baliff or Lord Chancellor) are appointed by the crown, but must be islanders. This appointment method has aroused considerable resentment in recent years.

As with the Isle of Man, defence and international relations are generally handled by the UK government, though in the latter case, the islands can and do undertake their own policy. A sum is paid by the two Bailiwicks for the provision of these services. The islands are completely autonomous, financially, from the UK. Neither of the Bailiwicks is in the European Union, though they are both part of the free trade area.

## **II APPENDIX - Regional Autonomy in the New Members of the European Union**

### **II.1 Austria**

Austria is a federal state comprising nine *Länder*. As in Germany, these bodies are part of the national level of government and have theoretical equality with the *Bund*. It also possesses independent legal status in private law which allows the operation of the region outwith the sphere of competences assigned to it. Nevertheless, in many areas, the Austrian *Länder* are far less independent than their German counterparts. The *Bund* may veto any legislation passed by the regional parliament, although this can be overturned by a simple majority of the *Landtage*. This suspensory veto is notably lacking in the other federal systems of Belgium and Germany.

Each Austrian *Land* has a unicameral legislature (numbering between 36 and 56 members) from which is elected a *Landeshauptmann*. This regional “governor” is assisted by a number of councillors who together comprise the regional executive (*Landesregierung*). The *Landtage* also elect the members of Austria’s upper house (the *Bundesrat*). This body has the right to delay almost all federal legislation. In the case of legislation or international treaties that effect *Länder* rights, the *Bundesrat* exercises an absolute veto (as in Germany). In common with the German regions, this has been the most effective defence, the regions have had against federal encroachment. The legal system is uniform, headed by the Supreme Court of Justice, in Vienna (Elazar, 1991, p32).

The operation of the Austrian regions in the international sphere has been far greater than that seen in other regional countries. This is due to the early recognition of the need to allow such activities. The constitutional amendment of 1988\* allowed *Länder* to undertake treaty negotiations unless the *Bund* states an objection within eight weeks of being notified. Although this allows a national veto, it does mean the Austrian regions are specifically authorised to undertake international relations unless specifically barred from doing so. With the entry of Austria into the EU, other significant constitutional amendments have been approved in this areas. Most notably, a new Constitutional clause will give the Austrian *Länder* powers not unlike those that apply to their German cousins. Principal amongst these are the *Bund's* acceptance of the common regional opinion in European matters that affect their competences and the right to be informed of EU negotiations (Dertnig & Handstanger, 1992).

Functional competences in the Austrian *Länder* are significantly fewer than those granted to the German regions. As in the German constitution, no powers are exclusively granted specifically to the regions. Instead, those areas not specifically granted to the *Bund* are exclusively regional. However, in Austria these amount to a short list.

Regional planning, building regulations, nature conservation, culture, sports, ambulance and fire services, the organisation of the region's administration and civil defence are exclusive regional competences. In addition to these, social welfare, hospitals and nursing homes are regional competences operated within national frameworks. With these exceptions, the competences of the Austrian *Länder* are exclusively executive in nature. As in Germany, much of the executive power that the regions possess, comes from the fact that the *Bund* has no field agencies in most areas of policy.

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\* Article 16.1 to 16.3

Finally, the Austrian *Länder* are extremely independent in financial matters. Unlike their German compatriots, the Austrian regions may introduce new taxes and have control over all those taxes that they receive. The majority of *Länder* finance comes from these regional taxes and those shared between the regions and the *Bund*.

## **II.2 Finland**

Finland, until recently was a unitary state with a single autonomous island region (the Åland islands). The islands are highly autonomous. With the exception of international affairs, defence and currency issues the island government undertakes all policy. Taxation is the main source of income for the islands. Responsibility for this is shared between the national and regional levels.

Recent reforms have introduced a degree of democracy to the regional administrative tier. Regional councils (indirectly appointed from the municipal councils) have taken over some regional planning competences from the state. These reforms are ongoing.

## **II.3 Sweden**

Sweden has three levels of government authority within the state. These are the municipalities (of which there are 286), the *Länsstyrelsen* (24) and the *Länsting* (23). The latter two, together make up the regional tier. The *Länsstyrelsen* are the state controlled regional bodies (headed by the Prefect or *Landhövding*), while the *Länsting* are democratically elected. In a few cases the territories of these bodies are not coterminous. Attempts to democratise the deconcentrated tier have led to the creation of a representative body to head these bodies. This now consists of fourteen members appointed by the relevant regional

council plus the regional prefect who acts as chairman. However, the democratic tier is the primary unit of regional governance.

The democratic regions, although possessing a variety of responsibilities (eg. civil defence, theatres, concerts, museums, agriculture and tourism) spend over three quarters of their resources on their primary function; health care. To fund this expenditure, the primary source of income is taxation. Around 60% of income came from this source in 1987. Importantly, the *Länsting* control the rates of these taxes (primarily income tax) (Hansen, 1992, p317). A further 18% of income comes from grants allocated by central government. The nature of these grants altered substantially in 1993 when the predominant specific grants were replaced by block funds.

Overall, the Swedish regions follow the pattern seen in Denmark. Namely, high autonomy regions, focussed on providing the health service of the country. Importantly, however, the fact they account for 10%\* of total national expenditure means their expenditure in other areas is significant. Importantly, unlike their Danish counterparts, the Swedish regions have no restrictions placed on their ability to borrow.

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\* Note this figure cannot be compared with those used in Chapter 6.1 above.

## **III - Functions of the Proposed Scottish Parliament\***

### **III.1 Economy and Business**

Industrial Development, including Enterprise networks

Tourism promotion and development, including the Scottish Tourist Board

Energy, including electricity generation and supply

Agriculture, including land tenure and management, and crofting

Fisheries, both marine and fresh water, including protection, improvement and maintenance

Forestry

### **III.2 Infrastructure**

Transportation, including public passenger and freight services, and payment of subsidies to operators of services

Roads, including provision, improvement and maintenance of streets, roads and bridges

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\* Taken from Appendix I of "Scotland's Parliament, Scotland's Right", Constitutional Convention, Edinburgh, 1995



Harbours and boatslips

Inland waterways

Town and country planning and land use, including building control, new towns, industrial sites, land improvement

Water and sewerage, including water supply and reservoirs

Environment and sustainability, including pollution control, regulation of emissions and of dumping, coastal protection, flood prevention and mitigation, countryside development and conservation

Historic buildings and monuments

### **III.3 Health and Social Welfare**

Health, including the structure, organisation and administration of the National Health Service in Scotland; prevention, treatment and alleviation of disease or illness including injury, disability, and mental illness; Community Care; family planning; private health care

Housing, including regulation of rents, rent allowances and rebates, mobile homes and caravans

Social Welfare, including children, adoption and care of the elderly

Strategic planning of welfare services

### **III.4 Education and Leisure**

Education at all levels, including nursery, primary, secondary, tertiary and higher provision; the teaching profession, private schools in Scotland

Training provision, including youth and adult training and re-training, and special needs training

Broadcasting

Arts and culture, including libraries, museums and art galleries

Recreation, including sports provision, parks, open spaces, markets and fairs, allotments

### **III.5 Law and Regulation**

Local government, including the areas, power and duties of local authorities and similar bodies; the revenue and expenditure of local authorities; rating and valuation; investigation of maladministration, rate support and other grants; local government taxation

Charities; public holidays; deer; local regulation of trades; provision or control by local authorities of facilities and local activities; lotteries; liquor licensing; local licensing; shop hours; burial and cremation; licensing and control of dogs

Police, including organisation and structure, terms and conditions of service, role of chief constables

Prison service; Law and order, including principles of criminal liability

Civil Law, including property, conveyancing, trusts, bankruptcy, succession, remedies, evidence, diligence, arbitration, prescription and limitation of actions, private international law, recognition and enforcement of court orders

Courts and legal system, including court jurisdiction and procedure, juries, contempt, vexatious litigation, judges, sheriffs, Justices of the Peace, members of the Scottish land court, legal profession, legal aid

Tribunals and inquiries, including the Lands Tribunal for Scotland

Fire services and fire precautions

Equal opportunities

Public Records, including records of the Scottish Parliament, the Scottish Executive, the courts, and any other body for which the Parliament is responsible, private records held by the Keeper of the Records of Scotland

Registration of birth, deaths, marriage and adoption; population statistics

## **IV - Financial Resources**

The largest portion of this work investigated the financial autonomy of regional governments within the European Union. This proved a very difficult task, due to a combination of lack of resources, incompatibility of figures and inaccuracies in some works on the subject. This is explored more thoroughly in chapter four. In this Appendix, a list of the financial sources used is presented. In some cases, a combination of the available resources (plus some informal contacts) was need to compile useable regional accounts.

### **IV.1 General Sources**

**Government Finance Statistics Yearbook**, International Monetary Fund, 1992 & 1993

## **IV.2 Belgium**

**Annuaire Statistique de la Belgique - Tome III**, Institut National de Statistiques, Ministère des Affaires Economiques, Brussels, 1991

**Bulletin de Documentation 1994**, Ministère des Finances, 1994

**Moniteur Belge** (various years)

**Note de Conjoncture**, Service d'études et de documentation, Ministère des Finances, Brussels, Belgium, 1994

in conjunction with:

**Traduction des Tableaux**, Service d'études et de documentation, Ministère des Finances, Brussels, Belgium, 1984 (+ later supplements)

### **IV.2(a) Flanders**

**Flanders: A Reliable Financial Partner**, Flemish Minister of Finance (Demeester-De Meyer), 1993

**Fiscal Federalism & Fiscal Base**, both information sheets prepared by Flemish Ministry of Finance, 1992

### **IV.2(b) German Community**

**Rat der Deutschsprachigen Gemeinschaft Sitzungsperiode 1994-95**, Deutschsprachigen Gemeinschaft, Eupen, 1994

### **IV.2(c) Walloon**

**Budget des Recettes et des Dépenses de la Région Wallonne pour l'Année Budgétaire - Exposé Général**, Conseil Régional Wallon, Namur, Belgium, 1994

### **IV.3 France**

**Guide Statistique de la Fiscalité Directe Locale 1993**, Direction Générale des Collectivités Locales, Ministère de l'Intérieur et de l'Aménagement du Territoire, Paris

**Les Budgets Primitifs des Régions (various years)**, Direction Générale des Collectivités Locales, Ministère de l'Intérieur et de l'Aménagement du Territoire, Paris, 1990-1994

**Les Finances Régionales (various years)**, Direction Générale des Collectivités Locales, Ministère de l'Intérieur et de l'Aménagement du Territoire, Paris, 1985-1994

### **IV.4 Germany**

**Die Entwicklung der Haushalte der alten Länder, der neun Länder und Berlins im Jahre 1993**, Dokumentation, Bundesministerium der Finanzen, Bonn, Germany, 1995

**Finanzbericht 1995**, Bundesministerium der Finanzen, Bonn, Germany, 1994

**Rechnungsergebnisse der Staatlicher Haushalte 1991**, Arbeitsunterlage des Statistisches BundesAmts, Wiesbaden, Germany

**Statistisches Jahrbuch 1990 für die Bundesrepublik Deutschland**, Arbeitsunterlage des Statistisches BundesAmts, Wiesbaden, Germany

### **IV.5 Italy**

**Conto Economico delle Regioni**, Istituto Nazionale di Statistica, Rome, 1992

## **IV.6 Netherlands**

**Overheidsfinancien**, Statistics Netherlands, Voorberg, 1991

**Statistical Yearbook of the Netherlands**, CBS publications, The Hague, 1991

## **IV.7 Portugal**

### **IV.7(a) Açores**

**Orçamento (1993 & 1994)**, Açores regional government, Açores

**Regional Accounts (various)**, supplied by Serviço Regional de Estatística dos Açores, Açores

### **IV.7(b) Madeira**

**Conta da Região Autónoma da Madeira**, Funchal, Madeira, 1991,1992,1993

## **IV.8 Spain**

**Contabilidad Nacional de España. Base 1986**, Instituto Nacional de Estadística, Madrid, 1993

also computer package **Publicaciones Electrónicas**, as above

**Informe Sobre la Financiación de las Comunidades Autonomas (1985-1992)**, Dirección General de Coordinación con las Haciendas Territoriales, Secretaría de Estado de Hacienda, Ministerio de Economía y Hacienda

**Informe Económico-Financiero de las Administraciones Territoriales en 1992**, Direccion General de Accion Economica Territorial, Secretaria de Estado para las Administraciones Territoriales, Ministerio Para las Administraciones Publicas, Madrid, 1993

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