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Federalism and Higher Education Policy

A comparative study of Canada and Germany

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Abbreviations

APO	Extraparliamentary Opposition (<i>Außerparlamentarische Opposition</i>)
AUCC	Association of Universities and Colleges of Canada
BLK	Federal-Länder Commission for Educational Planning and Promotion of Research (<i>Bund-Länder-Kommission für Bildungspannung und Forschungsförderung</i>)
BMBF	Federal Ministry for Education, Science, Research and Technology (<i>Bundeministerium für Bildung, Wissenschaft, Forschung und Technologie</i>) – since 1998: Federal Ministry for Education and Research (<i>Bundesministerium für Bildung und Forschung</i>)
BMBW	Federal Ministry for education and Science (<i>Bundesministerium für Bildung und Wissenschaft</i>)
BMFT	Federal Ministry for research and technology (<i>Bundeministerium für Forschung und Technologie</i>)
BNA	British North America (Act, 1867)
BVG	Federal Constitutional Court (<i>Bundesverfassungsgericht</i>)
CAP	Canada Assistance Plan
CAUT	Canadian Association of University Teachers
CCFUR	Canadian Committee on Financing University Research
CDU	Christian-Democratic Union (<i>Christlich-Demokratische Union</i>)
CFI	Canada Foundation for Innovation
CHIR	Canadian Institutes of Health Research
CHST	Canada Health and Social Transfer
CMEC	Council of Ministers of Education of Canada
CMS	Canada Millennium Scholarship Fund
CRC	Canada Research Chairs
CSLP	Canada Student Loan Plan/Program
CSSHE	Canadian Society for the study of Higher Education
CSU	Christian-Social Union (<i>Christlich-Soziale Union</i>)
CUF	Canadian University Foundation
DAAD	German Academic Exchange Service (<i>Deutscher Akademischer Austauschdienst</i>)
DFG	German Research Association (<i>Deutsche Forschungsgemeinschaft</i>)
DM	German Mark (<i>Deutsche Mark</i>)

EPF	Established Programs Financing
EU	European Union
FDP	Free Democratic Party (<i>Freie Demokratische Partei</i>)
FH	University of Applied Sciences (<i>Fachhochschule</i>)
FRG	Federal Republic of Germany
G7/G8	group of seven/eight most important industrial nations (formerly only G7)
GDR	German Democratic Republic
GNP	Gross National Product
GSH	Comprehensive University (<i>Gesamthochschule</i>)
HBFG	Higher Education construction Act (<i>Hochschulbauförderungsgesetz</i>)
HEP	Higher Education Renewal Program (Hochschulerneuerungsprogramm)
HRG	Higher Education Framework Act (<i>Hochschulrahmengesetz</i>)
HRK	Standing Conference of University Rectors and Presidents (<i>Hochschulrektorenkonferenz</i>)
KMK	Standing Conference of the Education Ministers of the Länder (<i>Ständige Konferenz der Kultusminister der Länder in der Bunderepublik Deutschland</i> – short: <i>Kultusministerkonferenz</i>)
MPG	Max Planck Society (<i>Max Planck Gesellschaft</i>)
MPHEC	Maritime Provinces Higher Education Commission
MRC	Medical Research Council
NAFTA	North American Free Trade Agreement
NCCU	National Conference of Canadian Universities (predecessor of AUCC)
NCCUC	National Conference of Canadian Universities <i>and Colleges</i> (successor name of NCCU and predecessor of AUCC)
NCE	Networks of Centres of Excellence
NRC	National Research Council
NSERC	Natural Sciences and Engineering Research Council
OECD	Organisation for Economic Co-operation and Development
PSE	Post-secondary education
SDS	Socialist German Student Alliance (<i>Sozialistischer Deutscher Studentenbund</i>)
SED	Socialist United Party of Germany (<i>Sozialistische Einheitspartei Deutschlands</i>)
SPD	Social Democratic Party (<i>Sozialdemokratische Partei Deutschlands</i>)
SSHRC	Social Sciences and Humanities Research Council

SUFA	Social Union Framework Agreement
WR	Science Council (<i>Wissenschaftsrat</i>)
WRK	West German Rectors' Conference (<i>Westdeutsche Rektorenkonferenz</i>)
WTO	World Trade Organisation
ZVS	Central Admission Agency (<i>Zentralstelle für die Vergabe von Studienplätzen</i>)

Abstract

The present study focuses on the functioning of federations in practice by looking at two case studies that can be described as representing two different models of federalism – interstate federalism in Canada and intrastate federalism in Germany. To clarify the functioning of these models in practice the research is based on the analysis of a specific policy field – higher education.

Higher education in both case studies represents the constitutional prerogative of the constituent units but also attracts some interest by the federal levels, making it especially suitable for an analysis of the dynamics of a federation. This view of dynamic entities is central to the argument, focusing attention on questions concerned with the various forms of balances within the federations. This allows for a fine-grained portrayal of how the different models of federalism are actually represented in the policy sector.

In order to highlight the view of federalism as a dynamic system characterised by a constant search for balance(s) the present study undertakes a long term observation of the policy fields starting in 1945, which allows for broad patterns of policy development to be identified. Although this is done from a mainly institutional perspective, the study also emphasises the necessity of including a society centred dimension.

The outcome of the research offers not only a substantive picture of the higher education policy sector in each country, but also allows for the identification of more conceptual categories that suggest avenues for further investigation. While the specific results of the empirical analysis cannot be transferred to other policy fields, these conceptual categories potentially provide tools of wider utility.

Both the conceptual categories and the specific empirical evidence from each country not only provide the basis for a portrayal of federations as dynamic entities, but also emphasise their differences in practice – making the use of the singular form “federalism” (in contrast to federalisms) appear rather inadequate.

I

INTRODUCTION

Federalism and higher education policy in Canada and Germany

1 The relevance of federalism and higher education

In 1930 the Spanish philosopher José Ortega y Gasset (1883-1955) gave a series of lectures at the University of Madrid on the ‘Mission of the University’. These lectures – which were later published as a single essay – basically dealt with the reform of the Spanish universities at a time of great prospect for a democracy after the end of the dictatorship of General Primo de Rivera. In this – ultimately – short-lived period, hopes were high for a change of the system. What makes Ortega's approach interesting is the incorporation of somewhat comparative elements in his study by showing *critical* awareness towards other education and university systems outside Spain (Kerr, 1992: ix-xi).¹ Whereas there had been the tendency in Spain to look at other countries as examples for the reform of its own university sector, Ortega in contrast emphasised the shortcomings of this method by referring to the examples of the secondary schools of Great Britain and the higher education system in Germany – and by exaggerating the wider environment:

The reason for our best attempts so far has been fallacious: British life has been, and is, a marvel; *therefore* the British secondary schools must be exemplary, *since* out of them British life has grown. German science is prodigious; therefore the German university is a model institution, *because* it engendered the prodigy. So let us imitate the British secondary schools and the German higher education. (Ortega, 1992: 19)

This error of judgement stemmed from the lack of recognition that “institutions are only a part of a larger entity” which at the end “is nothing less than the whole nation which created and maintains them” (Ibid.: 20). The logical conclusion of this statement could be that those institutions (of higher education in this case) can tell us something about the larger entity.

Yet, Ortega chose a different strategy. While he had not completely dismissed any comparison, he still partially abandoned the approach and instead chose to develop the concept of a ‘general culture’ that would fit into any national boundary and still explain the ‘Mission of the University’.

¹ This was also based on his own experience. For example, amongst other places, he had studied at various universities in Germany (Kerr, 1992: xi).

In contrast, this study will not only use a comparative approach but it will actually focus on the ‘larger entity’ with the university sector (or higher education more generally) only serving as a policy field to illustrate the functioning and the evolution of the ‘larger entity’ by looking at the effect it has on higher education. Or the other way round, what can the higher education sectors of various ‘larger entities’ tell us about the differences in the organisation of these entities? And from a slightly different perspective, what if these entities offer similar conditions but still allow the impact of differences to be evaluated? The next point would therefore be to define the ‘larger entity’. Although its whole complexity cannot be embraced, it is without doubt that one fundamental aspect is the organisation of the state itself, or more specifically, its political system. Under the premise that the university sector can tell us something about the functioning and the impact of the political system in this policy field (a term which in itself manifests this impact), the starting point here will be the political system.

This study is about one specific way of organising the political structure of a state: federalism. It is a concept that is prominent around the globe due to various factors, perhaps most notably its ability to combine the advantage of a larger entity with the maintenance of smaller units. As Ronald L. Watts points out (2000: 3):

Federalism provides a technique of political organization that permits action by a shared government for certain common purposes, together with autonomous action by regional units of government for purposes that relate to maintaining regional distinctiveness.

Others simply argue that unlike centralism, federalism represents the *modern* form of governance (Gaschke, 2002: 6). Nevertheless, despite such arguments and despite its prominence, federalism is a contested concept – in theory as well as in practice. Essentially, this is mainly due to a basic fact: there is not *one* model of federalism.

If Ortega would be able to write about the Spanish universities today, he would have to take into consideration an emerging federal political system. Yet, while the Spanish (quasi-) federal system is still rather young, for the purpose of this thesis the focus will be on the two established federations of Canada and Germany. However, whether established or not, there is one thing all these three

states have in common: they do represent different expressions of the federal principle. From this perspective the question arises of the policy-shaping influence of the actual differences in the federal organisation of a state. Furthermore, given the involvement of two relatively independent levels of government as a characterising feature of federalism, the question has also to be asked of how the structure of the federation affects the functioning and the conditions within the policy field. That is at least relevant when looking at a policy area where both governmental levels are involved, which is actually the case in higher education in Canada and Germany. This thereby further emphasises the role of the ‘larger entity’.

Before turning to a more detailed explanation of the relevance of bringing together federalism and higher education, the following sections will briefly look at the two topics separately, starting with some fundamental aspects of federalism.

1.1. Federalism

Although it is not the intention of this thesis to provide an in-depth discussion of federalism, a brief look at the idea of federalism is nevertheless helpful for the further development of the argument.

Federalism is a concept that has not only been influenced and affected by different disciplinary approaches but also by time. Ivo D. Duchacek, in his influential study on comparative federalism of 1970, deals with this aspect and concludes:

As *capitalism* and *socialism* mean today something quite different from what they had meant at the time of Queen Victoria and Karl Marx, so does *federalism*; the term seems to be acquiring a different meaning from what Madison, Bismarck, and Lenin had meant by *federalism*.
(Duchacek, 1970: 356)

This changing meaning of federalism over the centuries can be observed in many ways. Daniel J. Elazar (1995: 475), for example, points to the different meaning of

federalism before the American Constitution of 1787 when it was defined in terms of what is now called a confederation.²

The USA Constitution is today considered to be the initial starting point of the first modern federal state. Not surprisingly therefore, early scholars of federalism focused on the USA as the model for a federal state. One of them, representing a constitutional-legal approach, was A. V. Dicey whose well-known *Introduction to the Study of the Constitution* was first published in 1885. In his work, Dicey compares the parliamentary system of England with the federal system of the USA. The reason for choosing the USA was that it represented for Dicey “the most completely developed type of federalism” (with Canada – entering the federal stage in 1867 – being only “more or less” a copy of the US model). Consequently, “Federalism [was] understood best by studying [the] constitution of [the] United States” (10th edition, 1965: 138).³

In a later seminal study K.C. Wheare in his *Federal Government* (4th edition, 1963) similarly defined the ‘federal norm’ by referring to the US example. In the case of Germany that led to the evaluation of its constitution as only being “quasi-federal”. Even taking into consideration the actual functioning of the governmental system, Wheare remained sceptical about Germany being federal in a strict sense, i.e. following the example of the USA and other ‘pure’ federal systems (Ibid.: 26). In the case of the Canadian constitution he came to a similar conclusion. Yet, he does not seem to be sure whether to call it a quasi-federal (Ibid.: 19) or not a federal constitution at all (Ibid.: 20). In any case, in contrast to

² A confederation represents a rather less integrated form of federalism. The resulting distinction between a federation and a confederation was introduced in the nineteenth century to differ between strong and weak forms of union. However, the once useful distinction has become blurred especially if attempts are made to use one concept as the antithesis of the other (Forsyth, 1996: 32 f). The distinction also seems not to be clear all the time amongst the general Canadian public, as regularly reference is made to the Canadian *confederation*, despite the country being clearly more a federation. This is probably due to the British North America (BNA) Act of 1867 which is regularly referred to as marking the beginning of the Canadian confederation. Despite this historical dimension it does not reflect a correct use of the term confederation (see for example: Van Loon and Whittington, 1987: 238-46). However, it is probably less relevant if one follows the argument of Murray Forsyth (1996: 32) who suggests that it is no longer useful to focus on this distinction but that “it is probably better to focus on a few concrete turning-points in the history of federal unions, which illuminate their differing levels of intensity”. (For more detailed discussions of federation – confederation, reflecting different positions, see: Burgess (2000) and Forsyth (1981))

³ It might be worth noting, though, that for Dicey a federal government essentially meant a “weak government” (1965: 171) lacking the strength and the energy of unitarian states (Ibid.: 171-3).

Germany, Wheare recognises that, in practice, Canada has a clearly federal government (Ibid.).

Nowadays, the USA is still considered to be an important example of a federal state, also exactly because of its historical dimension. However, to regard the USA as the norm defining the federal model is no longer tenable. As Ronald L. Watts summarises (1994: 324): “There is no single pure model of federalism ... that is applicable everywhere.” Earlier, Ivo D. Duchacek (1970: 189) expressed it even in stronger terms: “There is no accepted theory of federalism. Nor is there an agreement as to what *federalism* is exactly. The term itself is unclear and controversial.”

When studying federalism it becomes obvious that the underlying argument – the problem of a common definition – is still valid today. In a more recent contribution, A. Burris argues that even if only “broad parameters” are applied – like for example the division of powers – and although “scholars have offered a range of more specific definitions of federalism ... no universal agreement about the term’s precise definition has been reached” (Burris, 2001: 5441).

The resulting complexity of federalism led Roger Gibbins (1987: 15) to draw an analogy with a (large) jigsaw puzzle. For M. Burgess (1993: 110) the many variations lead him to talk of federalisms rather than federalism. He explains this by arguing that “they are multidimensional in character incorporating a range of economic, political and socio-cultural attributes which intermingle to produce complex patterns of interest and identities”.

In this light it is not surprising that definitions of federalism are contested. Looking at this problem alone would require a study on its own. One way of avoiding a disputed definition is by applying a minimalist approach such as that suggested by Elazar. As one of the most distinguished scholars of federalism, he describes federalism as “self-rule plus shared rule” which he terms the “simplest possible definition” (Elazar, 1987: 12).

This section, of course, does not reflect all the dimensions surrounding the discussions of federalism. More points will be added later as part of the more specific discussions of the case studies. In the next section, however, the focus will be on the second aspect defining this comparative study: higher education.

1.2. Higher education and research

While the ‘mission of the university’ as such is not the central theme in this study, the importance of higher education for a state more generally cannot be denied. However, before coming to the actual role played by higher education, it is probably helpful to first clarify the use of the term ‘higher education’ here.

Henry D.R. Miller (1995: 49) stresses that “Canadian higher education has been dominated by universities”. The same can arguably be said about German higher education, at least for most of the time under observation in this work (i.e. the period since 1945). Hence, when using the term higher education, the reference will be mainly to the university sector. Despite that, it is still worth remembering that the institutions of the FHs (*Fachhochschulen* – Universities of Applied Sciences)⁴ in Germany and the community colleges in Canada are also an integral part of the sector. However, those two institutions will only be mentioned specifically if it is relevant within the context of the discussion.

The reason for including research in the policy field is simply that it is an integral part of the higher education sector and an essential ingredient of the universities. This is especially emphasised in Germany by the tradition and principle of the indivisibility of teaching and research (*Einheit von Forschung und Lehre*). Furthermore, in Canada, as will be shown, research plays a particularly prominent part in defining the role of the federal government in the development of the policy field.

The clarification of the term higher education does not answer the question of its significance. Michael Daxner (1996) in his critical evaluation of the German university system explained the need for effective reforms with the importance of the systems which he highlights in the hypothesis that “central problems of the

⁴ The German term for the FH does not contain the term ‘university’ which makes the difference in status and function more obvious. Initially the FHs were more vocationally orientated and research was not considered to be one of their core activities. However, the original differentiation has become more difficult to sustain in recent years as there are more and more overlaps. They might even ‘disappear’ and face the same ‘destiny’ as the former polytechnics in the UK which have established themselves as ‘new universities’.

human society will not be solved without scientific [*wissenschaftliche*] education”⁵ (Ibid.: 41).

In a less ‘dramatic’ approach, the political scientist David A. Wolfe (1998: 1), in a paper prepared for the Canadian Council of Ministers of Education (CMEC), focuses on the aspect of what has become known as the “information society” or the “knowledge-based economy”. From this perspective, knowledge becomes a commodity with the universities and the public research sector being at the centre of the production of this commodity. This view also underlines the weight of the universities for the national economy.

Portraying universities as being of economic relevance or offering the source for the solutions of the problems of mankind only represents a part of what higher education represents. On a micro level, higher education reflects a significant step in the socialisation of individuals which stands in contrast to the evaluation of studying as being part of a larger service system of society (Daxner, 1996: 28-9). From the view point of socialisation, university education is an important source in the development of identities. However, this aspect of identity is not only restricted to the individual. Universities on a larger scale also contribute to the formation of regional and/or national identities. This can happen as a result of important historical developments with the institutions reflecting or even being the source of societal changes. Furthermore, the nature of the universities (students and scholars from different backgrounds/countries; development of university culture and life) also allows them to play a more active part in society by contributing to its cultural diversity.

Such a cultural dimension stands somewhat in contrast to the economic factor of higher education. However, it is not a natural contradiction. A successful university can economically bring forward a city or a whole region which again reinforces its acceptance amongst society and can eventually lead to identification with the institution (as it also, indeed, happens with some economic enterprises with a strong regional base).

The various dimensions of the function of higher education have been summarised on a more general level in a report by the Council of Ministers of

⁵ Own translation of: “Ohne wissenschaftliche Ausbildung werden zentrale Probleme der menschlichen Gesellschaft nicht zu lösen sein.”

Education of Canada (CMEC). Although meant to represent the wider functions of postsecondary education (which normally also incorporates vocational training), the points can also be seen as reflecting the goals of higher education:

- to inspire and enable individuals to develop their capabilities to the highest potential levels throughout their life (for individual growth, self-sufficiency, and fulfillment and for effective contributions to society and the economy)
- to advance, preserve, disseminate knowledge and understanding
- to foster the application of knowledge and understanding to the benefit of the economy and society
- to help shape a healthy, democratic, civil society

(Council of Ministers of Education, Canada, 1999: 4-5)

When considering all these dimensions of higher education, which go beyond that of education more generally, its political dimension becomes more obvious. Although some implications might already be evident, the next section will explicitly try to bring together the two main aspects of this thesis – federalism and higher education – and evaluate the existing literature on the topic.

1.3. The relevance of federalism and higher education as a research topic

1.3.1. WHY DOES IT MATTER?

What has become clear from the previous sections is that higher education and federalism are both concepts of considerable importance. Yet, whereas this in itself might be enough of a reason to examine the correlation between both aspects, a more specific justification is required here to explain why the relationship between federalism and higher education matters. First, though, the suitability of Canada and Germany for a comparative study must be briefly addressed in this section (a more detailed analysis will follow further down), in order to set the scene.

In both countries, higher education is mainly the responsibility of the state, i.e. private institutions of higher education do not play – yet – a particularly significant role. One of the consequences of this is that both university systems are relatively homogenous, resulting in a considerable emphasis on equality of opportunity. This, however, also results in a lack of internationally leading universities. The contrasting model would be the USA with its many top-

universities based on a large private sector leading to a much more diverse higher education system (Teichler, 1987: 96; Skolnik, 1999: 23).

Another point which is relevant here is that higher education in both case studies lies mainly within the constitutional jurisdiction of the subnational units, i.e. the provincial level in Canada and the Land level in Germany. Whereas this in itself is not unusual in federal states, it also does not exclude a more or less significant federal role.

As has already been indicated earlier, higher education is a policy field that is characterised by conflicting interests. On the one hand there are the interests of the constituent units which is reflected in the cultural dimension more generally and the aspect of identity more specifically. Education at a more elementary level is a fundamental element contributing to the formation of a regional consciousness. Despite operating at a different level, higher education is not an exception. From this perspective, the constitutional prerogative of the regional level appears to be a logical consequence. On the other hand, however, higher education – more than other levels of education – is a decisive factor in a national economy, producing knowledge (especially through research) and highly educated manpower. This again almost demands the involvement of the national government. What further distinguishes the universities from the ‘lower’ educational institutions and thereby attracts the attention of the federal level, is the result of intranational mobility associated with university education (for example as result of different universities developing different subject profiles including varying emphasises on research or simply because of societal demands and the requirement for ‘flexibility’ from students).

The reasons and the consequence of these conflicting interests of the governmental levels in the higher education sector in a federal state have been summarised by Ronald L. Watts (1992: 12):

In a federation with the distribution of authority between two levels of government, higher education has generally been one of those areas in which both levels of government had an interest. ... Because higher education is clearly an important factor in the development of the cultures and the distinctive historic traditions within the constituent units, especially in federations with a multilingual or multicultural character, there will always be a very strong pressure for higher education to remain under the control of

the constituent governments. But because higher education is a crucial factor in producing the educated human resources and research required for international economic competitiveness, there will be pressures for a federal involvement as well. ... Higher education turns out, therefore, to be one of those areas which characteristically is in an area of tension in terms of the appropriate roles of the federal state or provincial governments within federations.

The conclusion to draw from this situation seems to be clear in that “higher education has turned out to be an area requiring intergovernmental collaboration and cooperation between the two levels of government” (Ibid.: 12-3). This again is particularly relevant – or arguably only possible – in a federal system. In the case of Canada, David M. Cameron (1992: 47) has even come to the conclusion that “to a very large extent the politics of higher education in Canada *is* the politics of federalism” and that this “has been so for a long time”. Although one has to be careful in generalising from one policy field to the general functioning of a federation, it nevertheless indicates that there is a significant correlation between federalism and higher education.

1.3.2. EXISTING LITERATURE

Given the political and cultural weight of federalism and higher education there is of course no shortage of literature on each subject. Yet, the range of written material naturally narrows down considerably when considering only the literature explicitly focusing on federalism *and* higher education.

Although any work focusing on the higher education systems in Canada and Germany will almost automatically – due to the public status of the universities – have to at least touch the subject of the (federal) political environment, this in itself does not reflect a more thoroughgoing consideration of the federal polity. This also applies the other way round, where the mere mentioning of universities in the literature on federalism does not in itself represent a focus on higher education policy. Taking this into account, the number of contributions with an emphasis on higher education and federalism in each country under observation here is even more limited.

When it comes to single case studies, there are in particular two authors who have written about the Canadian higher education sector and the impact of the

federal system more generally: David M. Cameron (1991, 1992; 1997, 2001) and Glen A. Jones (1996, 1997, 1998). Yet, there is only one monograph amongst these sources, *More than an academic question: Universities, government, and public policy in Canada* by David M. Cameron (1991). Although already published at the beginning of the 1990s, it is still arguably the most comprehensive account of the development of Canadian universities – internally and in their public policy dimension – since the Second World War.

There are of course other authors who use the federalism – higher education dimension as a theme for their work. More recently this was done by J. Robert S. Prichard (2000) by particularly looking at the role of the federal government in the support of higher education and research. Another example is the study by Peter M. Leslie conducted for the Association of Universities and Colleges of Canada (AUCC). Published in 1980, the study dealt comprehensively with higher education as a public policy issue at the provincial and the federal level. Thereby one of the main focuses was on the financing aspect. In further articles (1981, 1993) Leslie looked specifically at this point again.

Generally, there are quite a few studies dealing in particular with the financing aspect of the Canadian universities.⁶ This, as will become obvious in the empirical chapter on Canada, is no surprise. It is also not a coincidence that studies dealing with the financial aspects of general university funding have become more rare. This is due to the fact that general financing has lost its controversial element in intergovernmental relations. Nevertheless, the story of federalism and higher education in Canada is one which is very much centred around the financial dimension.

What most of the literature mentioned so far has in common is a historical-narrative approach to the subject. Cameron's book (1991) might be the most obvious case with the outline clearly following the course of historical events and developments. Such an approach stands somewhat in contrast to the German literature on federalism and higher education. It is generally more conceptual and theory driven (which can arguably be explained by different academic traditions).

⁶ See for example Desrosiers (1986), Watts (1985), Wu (1985, 1985a) and the edited volumes of Cutt and Dobell (1992) and especially Nowlan and Bellaire (1981) which also includes the chapter by Peter Leslie.

One of the most recent publications on the subject of federalism and higher education – *Federalism and Länder Autonomy. The Higher Education Policy Network in the Federal Republic of Germany* by Cesare Onestini (2002) – appears to contradict such an evaluation. It offers a considerable amount of empirical data along the lines of the development of the policy sector since 1945. Thereby Onestini (Ibid.: ix) attempts to fill a perceived gap in the existing literature as “most accounts of German federalism do not carry their analysis to policy-making in specific policy areas or over a period of time”. Yet, despite such an empirical emphasis, Onestini’s analysis ultimately focuses on the theoretical approach concerned with policy networks – as revealed in the subtitle – to explain and understand the empirical evidence. Given the similarities of Onestini’s empirical approach with the present study, it might be useful to look a bit more closely at his tool for analysis.

For his study Onestini draws on Rhodes and Marsh’s (1992: 4) definition of the concept of policy network:

[T]he policy networks approach emphasizes the need to disaggregate policy analysis and stresses that relationships between groups and government vary between policy areas. At the same time, it recognizes that in most policy areas a limited number of interests are involved in the policy making process and suggests that many fields are characterized by continuity, not necessarily as far as policy outcomes are concerned, but in terms of the groups involved in policy making.

Although Onestini (2001: 35) realises that policy networks only represent “*one* way of looking at policy-making” he nevertheless argues that it is “an approach which helps to emphasise the role of actors and helps account for peculiarities of each sector”. As a consequence, Onestini is not only able to produce a map of the relevant policy network in German higher education policy but furthermore is able – because of the long-term observation of the sector – to distinguish different policy networks at different periods within the same policy field. However, as the empirical part on Canada will show, the policy network approach appears to be not a ‘generalisable theory’. The different formal institutional (constitutional) structures of the Canadian federation have not allowed for the development of such clearly articulated policy communities as in the German case. The implication of Canada therefore could be that if institutional structures can

fundamentally influence the developments of policy networks, then generally those structures matter. From this perspective, and as a consequence of looking predominately at policy networks, Onestini seems to ignore to a certain degree the influence of those formal institutional structures.

The limited exemplary value of the policy network approach alone also leads John Peterson (1994: 32) to argue that “policy networks cannot provide complete explanations of policy change because they are always one component in a larger system of governance”. Hence, policy networks represent an extra dimension which helps to understand higher education policy in Germany, but is of little help in Canada.

The example shows that the focus on a particular conceptual approach might limit the explanatory value of a study for a comparison even if any other approach has its limits, too. Klaus H. Götz (1992) in his study on the implications of federal decision-making structures for the scope of action of the policies of the Länder using the example of research and technology policy in Baden-Württemberg, appears to have reduced these limitations by choosing a more descriptive direction. However, he explains that with reference to the limited empirical material available at that time, which prevented the development of a more theory based method (Ibid.: 15). Ultimately, he still sees such a method as the final goal as he expresses his hope at the end that his study has fulfilled the task of “point[ing] to some promising lines for future, more ambitious, conceptual endeavours” (Ibid.: 291).

The conceptual element is one that can – to various degrees – be found in nearly all the other literature dealing with higher education and federalism in Germany. Probably also as a consequence of this ‘different culture’, there does not exist such an extensive and general account of the federal dimension in higher education as has been produced by David M. Cameron. Yet, this does not imply a total absence of studies incorporating a more general description of historical developments. Such an account can be found in the already mentioned Onestini book, but also to a certain degree in Keller (2000) and in Turner (2001) who both focus on the reforms of the universities. Especially George Turner thereby gives a more detailed account of certain key aspects of higher education policy and their development.

When it comes to the arguably most established experts on the subject area, there are two names that have to be mentioned here: Christoph Oehler (1989) and Ulrich Teichler (1987, 1992).⁷ However, both authors have not only published within the specific higher education – federalism field but also in the wider subject area of higher education, including the internal development of higher education institutions (Teichler, 1990) or the changing role of the university teachers (Oehler, 1986). More relevant here is that Teichler (1992) has also contributed to edited volumes applying a comparative approach to the subject.

Generally, it can be said that comparative literature dealing with the topic outlined here is quite rare. It is therefore not surprising that there is currently no comprehensive study available offering a systematic comparison of the political systems of the two federations and its impact on higher education. The work which comes closest to such a comparison is an edited volume (Brown, Cazalis, Jasmin, 1992) looking at higher education in various federations, including Teichler's contribution on Germany and Cameron's on Canada. However, though the volume includes seven case studies, it does adopt a more general approach for analysis, limiting its contribution to genuinely comparative understanding.

Another edited book (Goedegebuure et. al., 1993) that contains amongst others Ontario (!) (Jones, 1993) and Germany (Frackmann, de Weert, 1993) as case studies also lacks a common concept and furthermore looks not only at federal systems. A further contribution that looks amongst other aspects at the relationship between state and universities, but also goes beyond the federal dimension by including Australia, Canada *and* the United Kingdom, is a work by Henry D.R. Miller (1995).

The more common comparison with the USA has led to an edited volume by Steven Muller (1996) using Germany as the second case study. Yet, while both countries are federal entities, the federal dimension does not figure with particular prominence in the comparison.

This short literature review is of course not exhaustive but gives an indication of the relevant literature which is currently on offer. Thereby, what has

⁷ In the case of Christoph Oehler, his 65th birthday marked the occasion for the publication of an edited volume – appositely dedicated to examining the relationship of higher education, the state and politics (Neusel, Teichler, Winkler, 1993).

become clear is that while there is some material available on each country concerning higher education and federalism, a comprehensive and direct comparison of Canada and Germany in this respect does not exist. In the following sections the focus will therefore be on the two countries and their suitability for a comparison.

2 Canada and Germany

Although it is clear that this study follows the path of the comparative method, the reasons for choosing this approach have not been outlined specifically. Hence, before coming to the actual case studies, a more general description of the advantages of a comparison will be discussed over the next few pages.

2.1. The advantages of a comparative approach to federalism

The comparative method is nowadays by no means unique. Yet, earlier studies examining the federal dimension were less concerned with the comparative aspect. In the book *Federalism and the Role of the State* (edited by Bakvis and Chandler, 1987) which deals with “the themes of governability and workability within the context of federal arrangements” (Ibid.: 5), the editors criticise the lack of the comparative method in the literature of that time. The reason for that critique is that they think that any questions regarding federal arrangements “are at base comparative ... requiring comparative responses”. Therefore they identify a need for such an approach: “Our concern for fostering comparison in the study of federalism is also propelled by recognition of the relative lack of convincing comparative analysis in much of the traditional literature on federalism ” (Ibid.). They further explain that

[A]lthough the concept of federalism is inherently comparative, by far the largest part of in-depth research on federalism has been carried on within national boundaries with a view to dealing with a problem or a set of problems peculiar to each system. ... Today we

most often find federalism treated as a dimension of domestic politics and within-system analysis. (Ibid.: 5-6)⁸

This statement dates back to 1987 and would not be entirely appropriate when analysing the current comparative federalism literature. However, considering the above described complexity of federalism, the question remains whether it itself is not a concept which is too complex and therefore causes problems when used in a comparative approach. As a system of government, federalism can appear in different forms depending on the country. It can be a central and unchallenged feature of government but it can also be in a situation where it just survives under constant challenge. In some countries federalism has failed, leading to the ‘death’ and disintegration of the former federal state, whereas in other countries it has been introduced to overcome the governmental or societal problems of a state (MacPherson, 1994: 9-12). Consequently, federalism can serve different purposes. The more common use of federalism today for devolution stands in contrast to the integrative character of for instance European federalism. What is especially problematic is the comparison with older federations which have developed and changed over the years. For example, a comparison to the early version of American federalism – after all representing the first modern federation – or to the current one is likely to “lead to very different lines of inquiry” (Sbragia, 1992: 265) because of developments within the system and because of changes to the external environment.

Ronald Watts – in the second edition of ‘Comparing Federal Systems’ (1999) – also advises caution when engaging in a comparative analysis. Not only because there is no ‘pure model’ (see above) but also because “[f]ederations have varied and continue to vary in many ways” (Ibid.: 1). In addition to the internal changes mentioned above, this applies to the variations amongst the federations. For example, federations can show a considerable difference in their institutional design and in their development over time. This obviously also affects the actual functioning of the system – in the form of policy making in the wider context for instance. And finally, external factors influencing the federal systems can also vary widely. Consequently, Watts emphasises that “[e]ven where similar institutions are

⁸ They do, however recognise that there are some exceptions like for example Smiley and Watts (1985) and to a certain degree K.C. Wheare (1963). Another one is obviously Duchacek (1970).

adopted, different circumstances may make them operate differently” (Ibid.: 2). Still, by carefully taking all this into consideration, Watts argues, that “there is a genuine value in undertaking comparative analyses” (Ibid.). And as a Canadian, Watts thereby sees a chance for learning more about Canadian problems which he identifies as being “common to virtually all federations” (Ibid.). He finally summarises his position by stating:

Comparisons may therefore help us in several ways. They may help to identify options that might otherwise be overlooked. They may allow us to foresee more clearly the consequences of particular arrangements advocated. Through identifying similarities and difference they may draw attention to certain features of our own arrangements whose significance might otherwise be underestimated. Furthermore, comparison may suggest both positive and negative lessons; we can learn not only from the successes but also from the failures of other federations and of the mechanisms and processes they have employed to deal with problems. (Ibid.)

Although this is a rather long and optimistic list of what can be achieved by applying the comparative method, it nevertheless outlines the potential benefits of such an approach. However, in order to be beneficial, a comparison has to be based on an appropriate choice of countries. To prove that this applies to the countries under observation here remains the task of the following sections.

2.2. Why Canada and Germany?

It is perhaps surprising that the two case studies here, Canada and Germany, until not long ago were not considered to be obvious candidates for a comparison. Thomas O. Hueglin (1984: 2), a scholar who knows both countries well, assumes that there were reasons for this on both sides:

From a Canadian point of view a comparative inquiry into the nature of German politics has probably been rather unattractive for obvious historical reasons, and for reasons of language. From a German perspective, on the other hand, Canada has been largely overlooked as a rather insignificant specimen of the North American political culture which postwar Germans learned to identify exclusively with that of the United States.

Whatever one thinks of such reasons, it remains the case, though, that even until today a comparative study of the federal political systems of these two countries alone appears to be rather an exception.

Despite such a situation, Hueglin is not the only scholar focussing on Canada and Germany.⁹ Probably the most established German political scientist within this field – and according to Hueglin (*Ibid.*: 31) “one of the very few German experts on Canadian politics” (at least in 1984) – appears to be Rainer-Olaf Schultze, who has published widely with reference to a specific Canadian–German dimension.¹⁰ However, there is still much more of a focus on the USA. Hueglin certainly seemed to be right as regards the preference of German scholars for the US model. Literature concerning such a comparison is still easier to find.¹¹

A substantial literature placing the German federal system in comparative perspective also exists as regards the European Union (EU).¹² This might not come as a surprise, given the discussions surrounding federalism in the EU, the role of German politicians in stimulating these discussions and the fact that Germany as a federation is a member of the EU.

From a Canadian perspective – with the USA being an obvious candidate for a comparison with Canada – it seems to be even less attractive to carry out a comparative case study including Germany.¹³ Although Germany has not been completely ignored by Canadian comparative analysts, extensive studies dealing with the two countries here are difficult to find. For example, one of those analysts

⁹ For another contribution by Hueglin that focuses on Canada and Germany, though not exclusively, see: Hueglin (1987) ‘Legitimacy, Democracy, and Federalism’.

¹⁰ See for example ‘Politikverflechtung und konföderaler Föderalismus: Entwicklungslinien und Strukturprobleme im bundesrepublikanischen und kanadischen Föderalismus’ (1983); ‘Das politische System Kanadas im Strukturvergleich’ (1985) and within a wider context ‘Föderalismus als Alternative? Überlegungen zur territorialen Reorganisation von Herrschaft’ (1990).

¹¹ For more recent examples, see Roland Sturm (1997) ‘Föderalismus in Deutschland und in den USA – Tendenzen der Angleichung?’ or the book (1999) ‘Krise und Reform des Föderalismus’ edited by Meier-Walser and Hirscher, which contains two articles dealing with a US – Germany comparison and only one article applying a Canadian comparison – with Australia.

¹² See for example: Sbragia (1992), Scharpf (1988, 1996), Börzel and Risse (2000) and Börzel and Hosli (2003).

¹³ It has to be emphasised again that this statement applies only to a general comparative federalism approach from a political science perspective. There are of course other disciplines looking at the federal dimension as well. For an example of a comparative federalism study from a legal science perspective, see: McWhinney, Edward; Zaslove, Jerald and Wolf, Werner (eds.) (1992) *Federalism-in-the-Making. Contemporary Canadian and German Constitutionalism, National and Transnational*.

– Ronald L. Watts – whose expertise includes German federalism, not only has looked at Germany as part of an examination of a greater number of cases (for example 1989, 1999) but he has also done research with a particular emphasis on the German situation (1994a, 1999a). Yet, Watts’ work also reflects the approach that can be found in the majority of comparative federalism literature that deals with Canada and Germany. In most studies, the two countries are part of a research design that includes more than two cases, either in a single study¹⁴ or in the form of case studies by individual authors contributing to a more extensive (edited) project, with the overall framework reflecting a comparative approach.¹⁵

All in all, there is now a considerable amount of comparative federalism literature available, proving that there has been some development in this field since Bakvis and Chandler (1987, see above) criticised the lack of a comparative dimension.¹⁶ Yet, as has been shown, Canada and Germany do not appear to be a ‘naturally’ matching pair. Both countries are established western-style democracies but they have more in common than that. Hueglin (1984: 2), by assuming that there is some prospect for a “fruitful comparison” and after examining both countries more closely, comes to the conclusion:

And indeed, the similarities and affinities of the Canadian and West German political system appear to be striking. Both countries have to look back at a largely autocratic historical heritage. Unlike France and the United States, they were not results of a democratic revolution, and they both cannot claim a long history of democratic evolution as can England.

Although the implication of the same level of ‘autocratic historical heritage’ in both countries might be controversial, there are nevertheless some historical parallels.

Another aspect which both countries share, as has been indicated above, finds its reflection in the comparative literature – the focus on the United States.

¹⁴ For examples of comparative studies, published in book form, see: Duchacek (1970), Elazar (1987), Watts, (1999) and more recently McKay (2001). See also, in article form, Thorlakson (2003). For a compilation using the European context, see: Hesse and Wright (eds., 1996).

¹⁵ See for example Bakvis and Chandler (eds., 1987) and Burgess and Gagnon (eds., 1993). There is of course some overlap, as some of the individual chapters in these books deal with more than just one federal system.

¹⁶ The development of the EU and the resulting discussions in the academic world certainly plays an important role in this change.

Hueglin formulates it quite drastically by stating that both states “have ... been exposed to an extreme degree of Americanisation” (Ibid.: 2-3), obviously for different reasons:

In Canada it is the result of geographical and economic linkages which were hardly avoidable. In Germany Americanization was part of the postwar reeducation programme. It was readily accepted as a welcome escape out of the totalitarian past which had encompassed virtually all aspects of German tradition and German culture. As Canada – albeit less thoroughly – Germany was exposed to substantial American capital investment. (Ibid.: 3)

These observations were obviously made before German unification and do not reflect the differences between the former German Democratic Republic (GDR) and the Federal Republic of Germany (FRG). Yet, as the GDR more or less joined the FRG instead of it being a ‘real’ unification amongst equal partners (as the chapter on higher education in Germany will also demonstrate), the similarities between Canada and Germany have not changed fundamentally.¹⁷ One could probably argue that unification even brought in another element of similarity between Canada and Germany: territorial diversity. The constitutional guarantee of equal living conditions in the whole of the FRG meant that up until unification in 1990, West German society had reached a high level of homogeneity across the country. That does not imply that there was no territorial diversity left, but certainly not on the same scale as in Canada, with the division between Quebec and the rest of Canada only being from the outside initially the most visible of multiple expressions of territorial diversity. In the case of Germany, 1990 introduced a more prominent example of territorial diversity than existed before in the FRG – the division between East and West.¹⁸

Further similarities may be highlighted as regards the institutional design of the two federations. Both candidates do indeed show some similarities here: the federal system with three levels of government, two chambers at the federal level

¹⁷ This is not to say that the GDR did not have a history which left behind its own mark. A further distinction was the influence of the Soviet Union in contrast to the West and its Americanisation (which, though, was probably more ‘successful’). However, a more detailed analysis of these aspects (including the revolution of 1989) would lead too far away from the focus of the present study.

¹⁸ Although it would still be difficult to argue that Germany is experiencing a similar degree of territorial diversity in comparison with Canada.

and parliamentary governments at the federal and the subnational level (Hueglin, 1984: 3). Yet, there are also obvious differences. Thereby it also becomes clear that “the two political systems differ fundamentally with regard to their political culture, ideology and dynamic” (Ibid.). The reason for choosing Canada and Germany as case studies is exactly because of the differences in their federal expression which makes them represent opposing ideal-type models of federalism. Those relevant models will be looked at in the next section.

2.3. Two opposing models of federalism

The consequence of federalism representing a rather complex concept has led to an enormous number of models describing the different expressions of federalism. Within the empirical-descriptive branch of federalism alone, over 300 (!) such models have been identified (Burris, 2001: 5441). It will, of course, be neither possible nor necessary to consider at all these concepts here. Within the framework of this thesis, the focus will therefore be on two models of federalism that have received particular attention in the English-speaking academic environment and are especially suitable for the comparison: interstate and intrastate federalism.

2.3.1. THE CONCEPTS OF INTERSTATE AND INTRASTATE FEDERALISM

Both these two dimensions of federalism are well established concepts and are commonly referred to in the comparative federalism literature.¹⁹ What is, however, even more relevant within the framework of this thesis is the fact that one of the two case studies here has been portrayed as representing more the interstate model (Canada) and the other one as being closer to the intrastate idea (Germany). This, together with the fact that interstate and intrastate federalism “as a pure type”

¹⁹ Other concepts that are closely related to interstate and intrastate federalism are dual federalism and cooperative federalism. Sometimes they are used interchangeably with dual federalism treated as equivalent to interstate federalism and cooperative federalism meaning the same as intrastate federalism (see for example: Börzel and Risse, 2000; Wachendorfer-Schmidt, 2000). However, especially in the case of cooperative federalism the case can be made that it is more specific as it deals in particular with intergovernmental relations (Watts, 1998: 129-30; Harmsen, forthcoming: 2-3). On the other hand, in the German literature the more common term used to describe the German federation is cooperative federalism as the use of the concept of interstate federalism as an analytical tool is not as widespread as in Canada (see for example: Laufer and Münch, 1998: 247-8).

represent “a logical antithesis” to each other (Cairns, 1978: 15) makes them especially interesting for this comparative study.

The typological distinction between interstate and intrastate federalism was originally introduced by Karl Loewenstein.²⁰ The use as a tool for the analysis of federalism, though, was particularly developed by Canadian political scientists who again applied it mainly while examining their own country. The starting point for this development was a 1971 article by Donald V. Smiley²¹ (Cairns, 1978: 15-6; Smiley and Watts, 1985: 4; Schultze, 1990: 479-80). By the end of the 1970s, the interstate–intrastate distinction had come to determine “the mainstream thinking about Canadian federalism” which therefore started, according to Alan Cairns (1978: 15), another leading scholar on Canadian politics, “from a general assumption that a federal system can be organized in one of two ways, respectively labelled interstate or intrastate federalism” (Ibid.). A few years later, in 1985, followed “[p]erhaps the most systematic attempt to date at conceptualising the distinctive interstate and intrastate aspects of federalism” (Harmsen, forthcoming: 2), presented by Donald V. Smiley and Ronald L. Watts in their publication *Intrastate Federalism in Canada*. The volume was part of a series of academic studies concerned with the structural reform of Canadian federalism and which was commissioned by the Royal Commission on the Economic Union and Development Prospects for Canada. Despite the focus of the series on Canada, Smiley and Watts also made substantial use of the comparative approach in their study (Ibid.).

In general, the conceptual distinction between interstate and intrastate federalism addresses the kind of representation of the constituent units at the federal level and the distribution of power amongst the levels of government of a federal state. Applied more concretely to the case of Canada, Smiley and Watts (1985: 4) in their study “designate the distribution of powers and financial resources between the federal and provincial governments as well as the relations between those two orders of government as “interstate federalism””. Intrastate federalism, on the other hand, is described by them as reflecting “arrangements by

²⁰ Karl Loewenstein (1965) *Political Power and the Governmental Process* (2nd edition).

²¹ Donald V. Smiley (1971) ‘The Structural Problem of Canadian Federalism’

which the interests of regional units – the interests either of the government or of the residents of these units – are channelled through and protected by the structures and operations of the central government” (Ibid.).

A concrete example of the difference is the field of policy competence (Börzel and Risse, 2000: 10-11). In an intrastate entity, the distribution of policy competencies is along functional lines between the two levels of government. That is for example expressed by policy-making at the federal level and the administration and implementation through the other level. Yet, regional governments can be directly represented in the decision-making process at the federal level of government (e.g. *Bundesrat* in Germany) which emphasises the aspect of interdependence (Harmsen, forthcoming: 2-4).

Interstate federalism in contrast rests on a sectional division of policy competencies where each level has both executive and legislative powers for their policy areas. This is a visible expression of the interstate dimension emphasising the sovereignty and independence of the different levels of government within their sphere which means that each level is more autonomous. This leads – in ideal-type circumstances – to the result that all important structural elements of the state are duplicated at each level to ensure the independent survival of both levels (Schultze, 1990: 481).

To summarise the aspects of both models for the case studies, here just a brief outline of both countries which can be seen to a certain degree as representing interstate federalism (Canada) and intrastate federalism (Germany). In this light Germany is characterised by shared functional tasks and overlapping powers.²² As such it is generally defined by (Schultze, 1990: 480):

- functional differentiation of types of competence: legislation at the federal level and administration at the *Länder* level (and below)
- strong intrastate participation of the *Länder* governments in federal politics via the *Bundesrat* and its legislative competence
- interstate co-operation amongst the *Länder* and the federal level
- strong and vertically integrated party system

²² which can lead to the (in-)famous ‘joint decision trap’ described by Scharpf (1988) which will be looked at later on

Canada, representing more the model of interstate federalism, is based on a vertical separation of power. Here as well, some general aspects can be highlighted (Ibid.: 480-1):

- dualism of structural elements of the state and to a certain degree independence and viability of both political levels
- allocation of competence according to fields of politics
- little legislative power of the Senate at the federal level
- less strong vertically integrated party system

While it is possible to characterise a federal system as being based more on interstate or on intrastate federalism, that does not imply that it is purely one or the other (or indeed that one is more federal than the other). In a more interstate system there are normally also intrastate elements, and the other way round. Smiley and Watts (1985: 40) therefore assume “that interstate and intrastate elements are complements rather than alternatives”. Going a step further, R. Harmsen (forthcoming: 2) draws attention to the existence of a “range of possible relationships which may exist between these two conceptions of federalism.” And using the examples of America, Canada and Germany, he points out that “it is presently argued that complementary, compensatory, and conflictual relationships may exist between the interstate and intrastate axes of federal political systems” (Ibid.). The implication of that would be that any kind of reform or change of one of the two axes would automatically affect the other one too – positively or negatively. From another perspective, such relationships could also manifest themselves in the way that the constitutionally defined formal institutional structure might be predominately characterised by the interstate or intrastate dimension whereas informal structures or non-constitutional aspects play an important role by acting as a counterweight or by reinforcing the orientation of the formal institutions. From this point of view, the already briefly mentioned party systems become particularly interesting.

2.3.2. THE INFLUENCE OF THE PARTY SYSTEM

The party system undeniably plays an important role in the functioning of any democratic society. This importance is derived from the parties’ role as resting “on

the mechanisms for guaranteeing responsibility and accountability” (Chandler, 1987: 149). As such, “[p]arties, through elections and representative institutions, serve as intermediaries between citizens and the state and provide the most important channels for the recruitment and circulation of political élites” (Ibid.). Although this evaluation of the function of parties appears to be of little direct relevance for a federal system, it should not “disguise the extensive overlap between party politics and federalism” (Ibid.). Although such overlap can be witnessed in various ways, the most significant aspect here is that “[b]oth federalism and parties determine participants, power relations, and arenas for political struggle” which ultimately leads to the consequence that “federalism and party systems necessarily interact to the extent that they both organize conflict” (Ibid.).

The functions of the parties say little about how they are organised as a system. From a comparative perspective, the parties might share similar functions but the party system might be organised quite differently. As has already been indicated above in terms of their level of vertical integration, the party systems of Canada and Germany are actually quite different. Whereas the German parties show a strong organisational and political link between the individual party’s Länder and federal representation, the Canadian system is characterised by a rather weak connection between the individual party’s organisation on the provincial and the federal level, even to the degree that some parties do not have a ‘proper’ federal branch (Watts, 1989: 11; 1999: 91; Thorlakson, 2003: 17-8). The difference between the two countries is further emphasised by the fact that in Germany nearly all significant political parties are organised on the federal level with the Länder branches being somewhat subordinated (Laufer and Münch, 1998: 253-4), thereby already implying a rather hierarchical, centralised system.²³

The reason for why a party system in a federation takes a certain expression has been attributed by some observers to the organisational form of the federal system itself. Lori Thorlakson (2003: 17) for example argues that “[t]he

²³ The only prominent German party that does not have a federal branch and therefore is essentially a regional party is the conservative Bavarian Christian-Social Union (CSU). However, as it is a sister party of the Christian-Democratic Union (CDU), the CDU has as ‘compensation’ no regional branch in Bavaria. Nevertheless, this situation does not restrict the ambitions of the CSU on the federal level (for example via the *Bundesrat*). (Laufer and Münch, 1998: 253-4)

representation of state governments in the federal legislative arena is a decisive factor” leading to a “structured competition [that] creates an incentive for national party organisations to influence state governments through partisan channels”. She further argues (Ibid.):

If this effect is present, one would expect to find both a high degree of vertical integration in party organisations, because national parties have an incentive to ensure that their sub-national branches are strong contenders in elections.

Germany with its participation of the Länder governments in federal legislation via the Bundesrat seems to prove the case and so does Canada, as it does not have such formalised participation of the provinces on the federal level.

In a much earlier contribution, Alan Cairns (1977: 695) while generally advocating “an approach which stresses the impact of government on the functioning of society” also underlines the impact of the federal organisation on the party system in Canada (Ibid.: 715):

The federal system contributes to party system separation by its provision of discrete provincial arenas in which sectionally-based parties can capture power while weak in the country as a whole. The federal system also stimulates ideological differentiation between federal and provincial parties bearing the same name. This combines with divergent strategy requirements at the two levels to generate recurrent tensions between the federal and provincial branches of the party.

While he shares the basic observations about the state of the party structure in Canada, Ronald Watts (1999: 91) adds a further perspective by generally arguing that in “parliamentary federations, the pressures for party discipline within each government have tended to separate federal and provincial or state branches of parties into more autonomous layers of party organization”. He concludes that “[t]his tendency appears to have been strongest in Canada” (Ibid.). However, as Germany is also a parliamentary federation but does not show this kind of party organisation, Watts (1989: 11) identifies the Bundesrat representing a “unique form of intrastate federalism”, as being the reason for an integrated party structure:

The fact that the Bundesrat consists of the Ministers-President and other delegates of the Land governments has meant that every Land election can potentially affect the party balance within the national second chamber and thus affect the national government’s ability to

have its legislation adopted by the second chamber. Consequently, national parties have taken a keen interest in Land elections. As a result, this unique federal second chamber has not only sensitized national governments to state interests, but has integrated closely the national and Land parties in the resolution of issues. The net effect has been to reinforce the role of political parties within the process of executive federalism.

Watts' evaluation but also Thorlakson's analysis (see quote above) points to another aspect as a result of the party-political dimension of the Bundesrat: the view that Länder elections are fought on national issues representing a test for the respective federal government, rather than being fought on regional issues.

It could be misleading to emphasise that the Bundesrat has been dominated by party politics rather than by Länder or territorial considerations. Nevertheless, the party system does shape the appearance of federalism in Germany and is probably characterised by more unitary features because of the parties (Laufer and Münch, 1998: 252-3). Yet, while a party political confrontation in the Bundesrat is only really a major issue in case of different majorities in both chambers, quite a few authors emphasise that even in those cases there is more than a party-political dimension to the Bundesrat with legislative procedure not always leading to party-political polarisation (Wachendorfer-Schmidt, 1999: 15-6) or 'takeover' (Schüttemeyer and Sturm, 1992: 531). Pointing in the same direction, Roland Sturm (2001: 81) insists that Länder elections are more than test elections for the federal government. This view that is shared by Daniel Hough and Charlie Jeffery (2003) who, while analysing more recent legislative decisions in the Bundesrat (and during times of 'hostile' majorities in both chambers), come to the conclusion that the territorial dimension in the Bundesrat is actually growing again.

What has become clear is that the party structures in Canada and Germany can be seen as reinforcing the interstate and intrastate dimensions of both states. As such, the German party system is of particular relevance when looking at the policy field of higher education whereas the Canadian party structure probably does not require the same amount of attention in the analysis.

The German party system also highlights the role of the Bundesrat which itself is an institution that represents – as part of the joint-decision making system

– a key feature of the intrastate dimension of German federalism and which therefore needs some attention.

2.3.3. *INTRASTATE FEDERALISM AND THE JOINT-DECISION TRAP*

A rather extreme expression of joint-decision making is what has become known as the joint-decision trap. The concept has been widely referred to in the English-language literature since it was described in an article by Fritz W. Scharpf (1988). In this article, while comparing the decision making in Germany and the European Community, Scharpf defines the joint-decision trap as “an institutional arrangement whose policy outcomes have an inherent (non-accidental) tendency to be sub-optimal – certainly when compared to the policy potential of unitary governments of similar size and resources” (Ibid.: 271). This is essentially due to a system that is characterised by an overlap of competencies combined with a strong self-interest of the political actors involved in the policy-making process – which is potentially not good for the system.

The analysis of the underlying concept – joint decision making or interlocking politics (*Politikverflechtung*) – actually goes back to the work by Scharpf, Reissert and Schnabel, published in 1976 (*Politikverflechtung: Theorie und Empirie des kooperativen Föderalismus in der Bundesrepublik*). The influential theory of ‘Politikverflechtung’ takes as its starting point the fact that the responsibilities of the state are not fulfilled separately anymore by the institutions of the federal system but together, creating an interlocking of competencies. That has the consequence that the decision-making autonomy of the constituent units is restricted, yet without the central institution acquiring power in these areas over the subnational units. Yet, what the central institutions somewhat gain is the possibility of trying to directly or indirectly influence the decision-making bodies of the local and regional units (Benz, 1985: 32). In short, one of the main results of the interlocking condition is that the “material policy outcome of joint decision systems is said to systematically miss the goals of problem solution” (Wachendorfer-Schmidt, 2000: 8). In his English exposition of 1988, Scharpf highlights this last aspect by referring to it as the joint-decision trap.

One fundamental reason for the ‘trap’ is that decision making in Germany is characterised by the ‘bargaining’ rather than by the ‘problem solving’ (Ibid.) of the

political actors involved. The problem is that the bargaining style, in an ideal type approach, reflects the individual self-interests of the relevant actors (Scharpf, 1988: 258-9). Yet, in reality that does not mean that consensus is impossible and that self-blockage prevails. Scharpf explains (Ibid.: 264):

In an ongoing system without exit, and with ‘pre-emption’, pressures to reach some kind of agreement are very powerful, indeed. ... But the terms of agreement are likely to be defined by a ‘bargaining’ logic in which the benefits received under the present policy become the base line below which nobody will settle.²⁴

Hence, there is a need for adequate compensation but there are many situations where this is not possible “either because the losses involved would be of a non-quantifiable, qualitative nature, or because of uncertainty over their future incidence and magnitude, or finally because of the negative-sum character of the decision situation itself” (Ibid.). In those cases the likely outcome is described by Scharpf (Ibid.: 265) more generally:

Individual losses expected from a policy option which would be collectively optimal, cannot be adequately compensated through side payments. Under such conditions, therefore, ‘bargaining’ is likely to lead to solutions which are unable to achieve realizable common gains or to prevent avoidable common losses.

Higher education, as will be shown in the chapter on Germany, appears to be a good example to study the effect of the joint-decision trap. Despite the constitutional competencies being mainly located at the Länder level, the federal government over the years has acquired a considerable amount of formal influence, including shared responsibilities. Thereby a policy field appeared that is fundamentally characterised by ‘Politikverflechtung’. Applying the concept of the joint-decision trap, the expectations might be that higher education policy in Germany would ‘suffer’ from sub-optimal policy outcomes and a declining overall capacity of the political arena to deal with the sector. Canada and its interstate federalism resulting in a far less

²⁴ The lack of an ‘exit’ hints at one of the differences between joint decision and cooperative federalism. According to Rainer-Olaf Schultze (2000: 690-1), the distinction between both concepts somewhat got lost in the German understanding of federalism. Hence, he criticises that both are treated as synonymous. Schultze, however, argues that they differ in various ways. Joint decision is defined by a compulsion to join, majority decisions and exactly by the lack of an exit option. Cooperative federalism in contrast is characterised by voluntary co-operation, decision based on consent (without actually the need to come to a decision) and real exit options.

interlocked higher education policy field, in contrast, could be expected to be more efficient (because of higher flexibility) in their higher education policies.²⁵

However, Scharpf realised himself already in 1976 – though, only in the introduction – that the model of ‘Politikverflechtung’ has its limitations. In a later contribution (1999) he argues that, despite the danger of being trapped, the German joint decision system after all has been quite successful in the past:

It [the joint decision making] did not prevent the economic miracle of the fifties and early sixties, nor was it in the way of the brilliant coping with the difficulties of the recession of 1965/6. Even during the first great postwar crisis of the seventies, ‘model Germany’ coped reasonably well. And also during the second half of the eighties, most of those countries that are nowadays held up as models to us, would have liked to swap with us.²⁶ (Scharpf, 1999: 6)

More concrete reservations concerning the application of the concept have been raised earlier. One of the main points of criticism has been the limited focus of the theory. Arthur Benz (1985), for example, sees this as resulting in a limited range of the possibilities for analysis. Thereby he summarises three main aspects that are lacking (Ibid.: 36):

- there is no specific reference to the societal environment of the political-administrative system
- the background and the developments of the problems and the structure of the responsibilities are only taken into consideration on a very abstract level
- the problem solving is only looked at on a state level in the narrow sense of intergovernmental relations

Benz summarises these criticisms by arguing that the autonomy of the political-administrative system is exaggerated and does not find its reflection in reality (Ibid.: 37).

²⁵ A fundamental question that could be asked here, though, is, what are (sub-) optimal policy outcomes anyway? The evaluation of the individual political actors of what constitutes an optimal policy outcome might be very much driven by short-term considerations but future developments could unveil aspects that invalidate their initial judgement about a particular policy.

²⁶ Own translation of: “Sie hat weder das Wirtschaftswunder der fünfziger und frühen sechziger Jahre verhindert, noch stand sie der brillanten Bewältigung der Rezession von 1965/66 im Wege. Selbst in der ersten großen Nachkriegskrise der siebziger Jahre hat sich das “Modell Deutschland” recht ordentlich bewährt; und auch in der zweiten Hälfte der achtziger Jahre hätten die meisten Länder, die uns heute als Vorbild vorgehalten werden, gerne mit uns getauscht.”

Taking this criticism into consideration, the expectations for the analysis of the higher education policy sector especially in Germany should not be that predictable anymore.

2.3.4. *INTERSTATE FEDERALISM AND EXECUTIVE FEDERALISM*

In contrast to the joint-decision trap which as research tool makes more sense when applied to the analysis of the German federal system than when applied to the Canadian case, the concept of executive federalism can be observed in both countries. In general, it characterises intergovernmental relations in parliamentary federations – like Canada and Germany – where executive and legislature are not as clearly separated as in federations like the USA and Switzerland (Watts, 1998: 130). Therefore, in parliamentary federations intergovernmental negotiations are even more prominent as the governments involved normally also represent their respective legislatures, i.e. are based on parliamentary majorities. Hence, the executive enjoys a dominant role (Watts, 1989: 3). The negative effect of this can be that such executive federalism tends to “bypass the normal mechanism of democratic accountability” (Bakvis and Chandler, 1987: 308-9).

Although executive federalism is a concept that can be applied to Germany as well, it has received particular attention in Canada. As in the case of the interstate and intrastate distinction, Donald V. Smiley was at the forefront of the recognition of the importance of the idea. In one of his last contributions to this topic, he clarified the actual effect for Canada (Smiley, 1987: 83):

Canadians live under a system of government which is executive dominated and within which a large number of important public issues are debated and resolved through the ongoing interactions among governments which we have come to call “executive federalism”.

Thus, he more specifically defines executive federalism “as the relations between elected and appointed officials of the two orders of government on federal-provincial interactions and among the executives of the provinces in interprovincial interactions” (Smiley, 1980: 91). The interactions are expressed by intergovernmental negotiations which again are especially prominent in Canada. They can take many forms as they “range from the involvement of federal and

provincial officials in the grading of meat to the highly publicized first ministers' conferences dealing with constitutional reform or the fundamental aspects of economic policy" (Ibid.). But why is there such a "preoccupation with intergovernmental relations" (Smiley and Watts, 1985: 2) in Canada? C.E.S. Franks and David M. Olsen (1993: 18-20) identify two preconditions that help to explain this preoccupation:

- 1) highly centralised governments at both levels that carry with them the assurance of the acceptance of the outcome by the respective legislatures
- 2) constitutional or political power of the provinces to grant or withhold consent from the policies preferred by the federal government

Both these preconditions point at the institutional interstate design as a reason for the strong role of executive federalism. Ronald L. Watts (1989: 17) appears to agree with this when he writes:

It has often been argued in Canada that a factor contributing to the strength of executive federalism has been the weakness of our institutions of "intrastate federalism", i.e., institutions ensuring the representation of distinctly regional or provincial views at the national level. ... Certainly, of all the contemporary federations, Canada does the least institutionally to provide an adequate regional expression of views in national affairs through the structure of its central institutions.

Despite such views, Watts argues that even if the Canadian Senate would be turned into an institution of more genuine provincial expression and representation, existing examples suggest that it would not fundamentally undermine executive federalism as it "flows logically from the combination of parliamentary and federal institutions" (Ibid.). Indeed, the general concept of executive federalism can be applied to Germany as well, which again in the form of the Bundesrat has a strong institutional representation at the federal level. Watts therefore finds it ironic that "in the light of Canadian concerns about the potential divisiveness", the reform of the Senate would lead to "a 'house of the provinces'". After all, the example of the Bundesrat (and the functional distribution of powers) shows that it "has contributed to extensive consultation between governments and to an integration of the Federal and Land political parties in a way which has produced an emphasis on intergovernmental cooperation rather than

confrontation” (Ibid.). To a certain degree, the institutionalisation of executive federalism in the form of the Bundesrat appears to be therefore an even more obvious expression of this kind of intergovernmental relations.

Based on that, the institutional design alone is not sufficient to explain the prominence of executive federalism in Canada. Bakvis and Chandler (1987: 316) therefore point at a different condition, namely “the relative lack of public controversy in federations other than Canada over the nature of intergovernmental bargaining”. They further argue (Ibid.):

For Canada, in contrast to federal systems such as the United States, Australia and West Germany, constituent issues focussing on centre-periphery bargaining and executive federalism have been central to political debate and have prompted a noticeable degree of citizen awareness and, to a lesser extent, participation. ... such changes in other federations have had a lower profile, have tended to be less controversial, and have often been confined to discussions among bureaucratic élites or academic experts. The style of debate confined to bureaucratic circles and technical issues is perhaps best exemplified in the workings of West German administrative federalism.

The territorial diversity and the constitutional ‘issue’ highlighted by the failure of the Meech Lake Accord and subsequently by the unsuccessful Charlottetown Accord certainly contributed to such a particular awareness. However, further aspects probably have to be considered too. Like for example the aspect of the societal environment that already in the critical analysis of the joint-decision trap revealed the necessity to look beyond the more general models of interstate and intrastate federalism to identify factors that influence the higher education policy sector in both countries.

2.4. Influencing factors beyond the political models

The focus so far has been more or less explicitly on the institutional expression of federalism. Yet, already in 1952, William S. Livingston argued that the “essence of federalism lies not in the institutional or constitutional structure but in the society itself” and that a federal government is only “a device by which the federal qualities of the society are articulated and protected” (Ibid.: 84). The conclusion to be drawn from this was clear for Livingston (1956: 4):

From this it follows that the real nature of the society cannot be divined merely by an analysis of the institutions. Its nature can be examined only by observing how the institutions work in the context of that society. It is the operation, not the form, that is important; and it is the forces that determine the manner of operation that are more important still.

Despite such a portrayal of certainty concerning his findings about the role of what have been labelled ‘federal societies’, it is no surprise that the theory has been challenged. Alan C. Cairns (1977), for example, in his ‘The Governments and Societies of Canadian Federalism’, devoted the paper to arguing against Livingston’s claims by stating “that federalism, at least in the Canadian case, is a function not of societies but of the constitution, and more importantly of the governments that work the constitution” (Ibid.: 698-9). Taking this institutional perspective, Cairns further explains (Ibid.: 699):

The sociological perspective pays inadequate attention to the possibility that the support for powerful, independent provincial governments is a product of the political system itself, that is fostered and created by provincial government elites employing the policy-making apparatus of their jurisdictions, and that such support need not take the form of a distinct culture, society, or nation as these are conventionally understood.

Labelled as a “rival approach to sociological accounts” this “state-centred theory of institutional and elite-led political developments” (Thorlakson, 2000: 130) has also attracted some support (as indeed by Thorlakson in her article). Yet, arguments are also still made for the application of the federal society theory. Jan Erk (2003), for example, takes Livingston’s idea further by drawing the conclusion that if a federal state reflects a federal society, then a non-federal society should have a centralising effect on a federal system. He tries to demonstrate this by looking at Germany and the example of the emergence of an ‘All-German Educational Policy in a System of Exclusive Provincial Jurisdiction’. In his analysis he comes indeed to the conclusion that in the case of federal Germany with its non-federal society, “German educational policy increasingly acquired a national character, despite explicit constitutional clauses that placed education under exclusive Länder jurisdiction” (Ibid.: 313), thereby implying the dominant impact of the non-federal society.

As with any competing theories, there are both arguments for and against – in this case – an either state-centred or society-centred approach. However, although it is not the purpose of this thesis to particularly focus on this ‘competition’ despite applying a predominately institutional approach (see further down), the ‘federal society’ aspect is a factor that has to be considered as well, less as a ‘rival’ method than as a complementary factor to help understand the developments within the policy fields under observation. After all, the differences between Canada and Germany in terms of the level of territorial diversity (see above) are significant (and were even greater before German unification). Hence, based on a rather limited territorial diversity the society in Germany has been labelled non-federal (see Erk, 2003) whereas territorially diverse Canada has been characterised as a federal society (see Cairns, 1977; Thorlakson, 2000). In a way it could probably be argued that this description of the two societies broadly correlates to the interstate and intrastate models both countries represent. After all, the relatively homogenous society of Germany implies a ‘closeness’ that seems to be more reflected by the intrastate model than by the provincial autonomy highlighted in the Canadian interstate concept (which again suits more the needs of diverse territorial actors like for example Quebec and Alberta).

The question for the further argument would be whether the sociological method offers an explanation for developments in the policy field of both countries that cannot be explained by the institutional structures or institutional approach. Or whether it might be possible to identify a correlation between both approaches. In any case, ‘federal society’ is an aspect that has to be taken into consideration as the two countries differ on this point.

Another important factor that goes beyond the political models and can be seen as having an influence on the functioning of a system is the economic environment. In contrast to the societal conditions, the differences between both countries are not as emphasised. Both are part of the same economic area and have similar economic systems. Both countries belonged in 1997 to the ten countries in the world with the highest GNP (Gross National Product)²⁷, both showed a similar

²⁷ Der Fischer Weltalmanach (2000), p 1088

division in the employment sector and counted on the USA as the largest (Canada) or the second largest (Germany) trading partner.²⁸ On a more specific level, however, the two obviously show differences in their economic performance. Notably, Canada has done better in the last few years than Germany and even benefited from a budget surplus (for the sixth year running)²⁹ which, financially, gives the government in Ottawa more room to manoeuvre than its counterpart in Berlin.³⁰ Furthermore, given that the focus here is on a comparison over a rather long period, various periods of different economic performances might offer some explanatory value in the analysis of different stages in the development of the policy sectors. Here in particular, German unification and the resulting massive ‘bill’ has to be taken into consideration. Yet, it is not only the internal economic environment that counts but also the influence and even pressure of the external (economic) environment. However, Canada and Germany are not just exposed to the external global environment, they are actually important actors within it, as highlighted by their membership of key international organisations like the G7/G8, the OECD and the WTO.

In the case of Germany, another membership, that of the EU, also has an impact that, however, goes well beyond the economic dimension (unlike Canada’s membership of NAFTA). The political development of the EU led eventually to the Länder losing some of their competencies to Brussels. Only after their protests were they compensated by the grant of more participatory rights in the national European decision making process as laid down in a 1993 constitutional article (Article 23).³¹ However, the impact of the EU in the national higher education policy sector in Germany is still very limited for one simple reason: the EU does not have any legal competence in this field.

²⁸ Ibid.: p 164, p 432

²⁹ Canada was the only G7 country to finish with a surplus (\$7 billion) in the most recent fiscal year of 2002-2003 (Weber, 2003).

³⁰ More recent figures (Die ZEIT, 22nd of January 2004, p 27) for example show that Canada had a higher growth rate in its GDP (Gross Domestic Product) between the end of 2002 and 2003 (1% in comparison with an actual decline in Germany of 0.2%), a lower unemployment rate (7.4% versus 10.4%) and only a slightly higher, but still acceptable inflation rate (1.6% versus 1.1%).

³¹ For a more intensive discussion of the aspects surrounding the role of the Länder in the EU, see: Laufer and Münch, 1998: 281-322.

Taking all the above mentioned aspects into consideration with the main emphasis being on Canada and Germany as representing two opposing models of federalism, the next step will focus on how to actually approach the topic for a detailed analysis.

3 Federalism and higher education: approaching the problem

The starting point for this thesis was the attempt to examine the subject of federalism and its empirical expression. The necessity to specify the topic and narrow it down led to a comparative approach involving two countries representing two opposing models of federalism with a focus on a particular policy field. Despite such qualifications, potentially that still implies a large research field. Hence, there is the need for a more specific research design which will be outlined in the next sections.

3.1. The question of balance and the impact of the federal models

Both models of federalism looked at in this study can ultimately be seen as representing distinctive kinds of relationship between the respective levels of government. After all, the German system of direct and institutionalised Länder participation at the federal level combined with overlapping competencies implies a different dynamic in intergovernmental relations than the Canadian one with a clearer separation of power between the two levels. However, the nature of federalism – relatively independent constituent units, highlighted by ‘self-rule plus shared rule’ (Elazar) – requires and implies a certain balance in intergovernmental relations and in legal competencies assigned to the two levels – a balance that distinguishes a federation from a centralised state or a confederation. Yet, the perception of federalism as reflecting a strong dimension of balance is not the rule. Robert Harmsen (forthcoming: 15), in a contribution dealing with comparative federalism in the context of the EU, therefore states:

There is still a rather pronounced and unhelpful tendency to view federalism as a teleology rather than as a balance. Federalism

appears as a process of programmed centralisation, rather than as an evolving relationship between two co-ordinate spheres of government.

The view of federalism as a dynamic relationship was one which was not recognised in the early stages of research on federalism. For classical authors like A. V. Dicey and K.C. Wheare, the focus was more on the formal structure as a result of constitutional arrangements. Hence it was a rather static approach which in the case of Dicey (1965: 143) was underlined by the view of federalism as being determined by an end. However, the analysis of federalism has evolved since then, leading to various approaches which go beyond an analysis centred mainly around the constitutional arrangement.³² Within political science, it is presently widely accepted that in order to understand federalism, it has to be seen in a wider context and therefore has to be viewed as representing more than just a formal governmental structure. Reviewing this development, Ronald Watts (1998: 127) points out:

It is now generally recognized that understanding the establishment, operation, and evolution of federal systems requires an examination of more than the formal constitutional and governmental structures. Indeed it requires analysis of the interaction of societies, institutional structures, and processes.

Watts goes on to emphasise that “[o]nce established, federal systems are not static structures. They are dynamic, evolving entities” (Ibid.: 128). This kind of recognition of the dimension of federalism is one which developed especially in North America. According to the German scholar Arthur Benz (1985) in his influential book on federalism as a dynamic system, the American ‘way’ – with its focus on development and less on formal structures – revealed a completely different understanding of federalism than that which existed in Germany up until the 1970s. Before that time little consideration was given by German political scientists to the empirical expression of federalism. This only changed in the middle of the 1970s when political science discovered the topic of interlocking politics or joint decision making (*Politikverflechtung*). The most influential publication in this vein was initially the already mentioned work by Scharpf,

³² See for example the attempt of Lori Thorlakson (2003) to classify the various approaches into three broad categories (sociological, constitutional and governmental or political approaches).

Reissert and Schnabel (1976). It was this work, according to Benz, that stimulated for the first time the empirical analysis of federalism in Germany (Ibid.: 21-30).

One of the most influential representatives of the empirical branch of the research on federalism is David Elazar. In ‘Exploring Federalism’ (1987) he looks intensively at the various approaches to federalism and their development. He portrays the view of federalism as either representing a structure or a process, including a political-cultural dimension. Elazar believes, though, that both aspects have to be considered in an analysis as “that combination, indeed, is what creates a federal system” (Ibid.: 68). The analysis of such a federal system requires that the balance within that system be taken into consideration (Ibid.: 185):

In any federal system, it is likely that there will be continued tension between the federal government and the constituent polities over the years and the different ‘balances’ between them will develop at different times. The existence of this tension is an integral part of the federal relationship, and its character does much to determine the future of federalism in each system.

Furthermore Elazar argues later on in the book that when including the idea of popular sovereignty which “means, inter alia, that government with the consent of the governed is the only legitimate basis of political organisation ... federalism most clearly becomes a matter of structuring relationships and not simply institutions” (Ibid. 231).

When considering federalism as a question of balance, there are still a few aspects that have to be considered. First, there are various balances that could be looked at and that make up the whole federal system. There is, for example, more than just one form of relationship that is characterised by a search for balance. In addition these various relationships involve different actors and different institutions. Second, whatever expression of balance one looks at, it is a balance that is changing almost constantly thereby further underlining the aspect of a dynamic system.

Applying the view of federalism as representing a system of balances, the question remains what impact the different structures in each country – represented by the interstate and intrastate models – have on these balances or how these federal structures shape any given balance. In the concrete case this will be examined by

looking at a policy sector – higher education – that in Canada and Germany constitutionally is a prerogative of the subnational level. Resulting from this the research question focuses on ‘federalism in practice’ and its institutional expression. The main instrumental question thereby asks:

- *What does the policy sector of higher education tell us about the balance of the federation and its development and changes over time?*

In order to answer this question the main empirical focus will be on the evolution of the federal role in a policy field that is constitutionally dominated by the constituent units.

To address these points, the following related areas will also have to be considered:

- on the federal level the balance between the cultural autonomy of the constituent units on one side and the federal level’s responsibility for the nation’s economy on the other
- within the constituent units the balance of the tension between influencing higher education policy on a national level on the one hand and the desire for (cultural) autonomy on the other hand
- the coherence of the policy sector³³

These questions will need to be answered not only by referring to the constitutional and legal environment but also by considering the involvement of further actors (such as political parties), the societal environment in each country and other factors like for example the economic conditions. In order to provide a coherent framework for the analysis, an institutional approach has been chosen within which to address the above questions. This framework will be outlined in the next section.

³³ Coherence of the policy sector here means the degree to which one can speak of a coordinated standardised higher education policy on a national level incorporating the input and the involvement of both governmental levels. ‘Coordination’ thereby is used in a non-normative way.

3.2. Framework for analysis

The overall purpose of this study is to analyse the influence of the institutions defined by a particular constitutional model of federalism. This combined with the choice of Canada and Germany as examples of interstate and intrastate federalism already indicate the underlying assumption applied here: institutions do have a policy-shaping influence. Yet, one former leading scholar of federalism, William H. Riker (1975: 143) implied that federal institutional arrangements do not matter at all – without even considering different models of federalism – by stating that “[f]ederalism makes no particular difference for public policy”. He further argued: “It is difficult to escape the conclusion that the accidents of federalism (i.e. the constitutional and administrative details) do not make any difference at all” (Ibid.: 144). Applying an institutionalist perspective, Alfred Stepan (2001) – by using an analytical framework along a ‘demos constraining – demos enabling continuum’ – tries to prove that Riker was wrong and that federal institutions do matter. With Germany being one of his case studies, he uses the concrete example of the Bundesrat in a situation of different majorities in both chambers to show that the institution matters (Ibid.: 360):

In Germany in the mid-1990s parties that were in opposition to the governing coalition at the center came to control a majority of the Länder and thus to control a majority in the upper house. De facto, even without a constitutional change, the relative weight of the upper chamber in German federalism increased in this period.

Such a shift of power has also an effect that matters from an institutionalist perspective as “many decision rules and institutional routines that affect power relations in federal systems are constitutionally embedded ... and therefore require supermajorities to change” (Ibid.: 360-1).

Another example that clarifies the relevance of institutions was the transfer of competencies from the Länder level to the EU level including the situation that only the federal government was represented in the decision making at the European level, despite the requirement for the involvement of the Länder level, thereby acting more like a representative of a centralist state. This situation fundamentally undermined the balance of the federation by reducing the autonomy of the Länder. This led eventually to the previously mentioned constitutional

amendment of 1993 to restore the federal balance (Schmidt, 2001; Laufer and Münch, 1998: 281-322).

The present thesis is inspired and mainly situated within the theoretical approach of historical institutionalism. Although my approach is predominately inductive, this does not reflect an inconsistency with historical institutionalism. Kathleen Thelen and Sven Steinmo (1992: 12) for example argue that “[r]ather than deducing hypotheses of global assumptions and prior to the analysis, historical institutionalists generally develop their hypothesis more inductively, in the course of interpreting the empirical material itself”.

On a more general level, the institutional approach is an established method in the Political Science. It has already partly been discussed above in the section on ‘federal society’ and the criticism of this perspective by Alan Cairns (1977). Yet, the institutional perspective goes back further, including the already mentioned work by K.C. Wheare (1963) in the field of federalism (Wachendorfer-Schmidt, 2000: 3). However, the roots of the movement can be traced still much further back (Peters, 1999: 3):

Going back even to antiquity and the first systematic thinking about political life, the primary questions asked by scholars tended to concern the nature of the governing institutions that could structure the behaviour of individuals – both the governing and the governed – toward better ends.

From this point of view, the study of institutionalism is a defining feature of traditional political science. However, although we still speak of institutionalism today, it is now called the ‘new’ institutionalism in order to distinguish it from the ‘old’ institutionalism and its perceived shortcomings. Thelen and Steinmo (1992: 3) summarise those shortcomings:

The “old” institutionalism consisted mainly, though not exclusively, of detailed configurative studies of different administrative, legal, and political structures. This work was often deeply normative, and the little comparative “analysis” then existing largely entailed juxtaposing descriptions of different institutional configurations in different countries, comparing and contrasting [Wheare (1963)!]. This approach did not encourage the development of intermediate-

level categories and concepts that would facilitate truly comparative research and advance explanatory theory.³⁴

The new institutionalism – labelled as such by James March and Johan Olsen (1984) – tries to correct these weaknesses of the old approach in order to keep it ‘competitive’ against the successful disciplines of Behaviourism and Rational Choice, but by still keeping the traditional institutional focus (Harmsen, 2000: 58; Peters, 1999: 15-7). A generalised account of the new institutionalism by Robert Harmsen (Ibid.) describes it in the following way:

The new institutionalism seeks, in its most basic form, to restore the autonomy of the political. It argues that ‘institutions matter’. Its proponents affirm that the choices of individual political actors cannot be understood in a vacuum, but must be placed in specific institutional contexts. Equally, while accepting that politics is influenced by broader social forces, the new institutionalists argue that influence may also run the other way. Government shapes its societal environment as well as being shaped by it.

As a result, the new institutionalism shows a much wider and more dynamic understanding of the term institution. Furthermore, it takes into consideration a wider range of related institutions and is also “concerned with the full range of formal and informal organizing principles which structure both political institutions and the broader sets of relationships which connect them to their environment” (Ibid.: 59). However, despite such generalised explanations, the new institutionalism does not represent a single coherent approach. Peter Hall and Rosemary Taylor (1996), for example, identify at least three categories³⁵ whereas Guy Peters (1999: 17-20) catalogues six versions in current use.³⁶

One of the subcategories within the new institutionalism is historical institutionalism. Although one of the first major statements of historical institutionalism as such was not made before 1992 (Steinmo, Thelen and Longstreth (eds.)),³⁷ an earlier study by Peter Hall (1986) did already – while not

³⁴ For a more detailed discussion of the ‘old’ institutionalism, see: Peters, 1999: 2-11.

³⁵ which are: Historical, Rational Choice and Sociological Institutionalism

³⁶ Beside agreeing on the existence of Rational Choice and Historical Institutionalism, Peters further mentions Normative, Empirical, International and Societal Institutionalism.

³⁷ Whereby the authors admit borrowing “the term “historical institutionalism” from Theda Skocpol, to distinguish this variant of institutionalism from the alternative, rational choice variant” (Thelen and Steinmo, 1992: 28 (footnote 4))

yet using the term historical institutionalism – point to a distinguishing feature: the importance of the dimension of time in shaping institutions. For Peters (1999: 64), also because of this contribution, “[h]istorical institutionalism was virtually the first version of the new institutionalism to emerge in the discipline of political science”.

As in the case of the more general category of new institutionalism, historical institutionalism does not represent one single approach but rather leads to various strategies in the analysis (Pierson and Skocpol, forthcoming: 2). This does not, however, imply that there is no common underlying scheme. Stressing the temporal dimension, Peters (1999: 19) defines the general strategy of historical institutionalists:

For these scholars the basic point of analytic departure is the choices that are made early in the history of any policy, or indeed of any governmental system. These initial policy choices, and the institutionalized commitments that grow out of them, are argued to determine subsequent decisions. If we do not understand those initial decisions in the career of a policy then it becomes difficult to understand the logic of the development of that policy.

Closely connected to this view is what has been described as ‘path dependency’ which implies that “when a government program or organization embarks upon a path there is an inertial tendency for those initial policy choices to persist” (Ibid.: 63). Change can still occur “but it requires a good deal of political pressure to produce that change” (Ibid.). Inherently, path dependency somewhat “rejects the traditional postulate that the same operative forces will generate the same results everywhere in favour of the view that the effect of such forces will be mediated by the contextual features of a given situation often inherited from the past” (Hall and Taylor, 1996: 941). The implication of this view, and indeed a criticism of historical institutionalism, is the difficulty to explain the process of change (Ibid.: 953-4; Peters, 1999: 68-71).

One way of explaining change within the context of historical institutionalism is the concept of ‘critical junctures’, which occurs in situations where a variety of forces come together and create enough pressure to change the ‘path’ fundamentally leading to a new situation which is characterised by different dynamics and different options for development. A critical juncture in this way

reflects a ‘branching point’ (Hall and Taylor, 1996: 942; Peters, 1999: 69). Although this might not be enough to sufficiently explain any change from a historical institutionalists perspective, it has to be remembered again that the new institutionalism does go beyond the institutional structure in its analysis. This does, of course, also apply to historical institutionalism. As part of an edited volume by Steinmo, Thelen and Longstreth (1992) – which Peters (1999: 74) describes as the “manifesto” for the historical institutionalist movement – two of the authors explicitly state (Thelen and Steinmo, 1992: 3):

What is implicit but crucial in this and most other conceptions of historical institutionalism is that institutions constrain and refract politics but they are never the sole “cause” of outcomes. Institutional analyses do not deny the broad political forces that animate various theories of politics: class structure in Marxism, group dynamics in pluralism. Instead, they point to the ways that institutions structure these battles and in doing so, influence their outcomes.

The advocates of the approach therefore also claim to analytically bridge the state-centred and the society-centred analysis “by looking at the institutional arrangements that structure relations between the two” (Ibid.: 10). A federal society perspective (see above) can therefore add explanatory value to the analysis without contradicting the institutionalist method.

Although it has been characterised as a more descriptive approach and lacking sharp distinctions (Peters, 1999: 76), historical institutionalism, by emphasising the aspect of the dynamic in the analysis and by explaining how different variables relate to each other instead of using a single-variable method (which arguably explains the lack of ‘sharpness’), allows a particular focus on the institutional design at a broader level (Thelen and Steinmo, 1992: 13-4). Together with the inherently comparative nature of the idea, this allows it to be “especially helpful in illuminating cross-national differences and the persistence of patterns or policies over time within individual countries” (Ibid.: 14).

In this study the research questions will be answered by referring to the broader understanding of institutions as suggested by the ‘new institutionalism’. This approach will include the incorporation of the formal institutional structures, the societal environment and other factors that are relevant to understand the

environment within which the interaction between the institutions and the actors (and the society more general) takes place.

The policy field of higher education thereby serves as a visible expression of the functioning of the institutions in each country. The long term observation will thereby not only allow for the identification of changes within the policy sector but will provide the ground – by referring to historical institutionalism – for the analysis and interpretation of the reasons for those changes and developments. More specifically this will require the reference to the concepts of path dependency and critical juncture.

The various categories used for the empirical analysis of higher education policy in each country will help to understand the policy choices that were taken at various stages within a changing environment. The concept of path dependency thereby implies that these policy choices are a result of earlier institutional choices and the specific environment within which they took place. This will mean that the current situation within higher education policy in Canada and Germany not only can be, but must be understood with reference to earlier developments. This does not imply that the development of the path did not leave any options for different outcomes. It rather reduces the options for policy choices by excluding certain ‘branches’ as a result of earlier decisions. Sometimes, however, policy changes can take place that make the application of path dependency rather difficult. As already outlined above historical institutionalism also provides an analytical tool for those situations: the critical juncture.

Internal or external pressure, resulting in a crisis or even revolution can change the path fundamentally. Although gradual changes – as implied by path dependency – are the rule, institutional discontinuities can occur as a result of more radical changes (North, 1990: 101-2). As especially the example of Germany will show, the concept of critical juncture is necessary to understand certain policy developments resulting from institutional change. As critical junctures are connected to path dependency, this further underlines the need for longer term historical observation as a means to understand a policy sector beyond its temporary appearance.

In the concrete case, the current study and its central aspect of long-term observation uses 1945 as a main starting point despite the incorporation of some

aspects related to the policy field prior to this period. The reason for choosing the year 1945 is obviously compelling for Germany, but is almost equally applicable to Canada. Looking at higher education policy in Germany before that time does not make much sense for the comparison here because of the completely different nature of the state under the Nazis. However, even excluding this particular German aspect, focusing on the postwar period can also be justified more generally. Lynn Meek (2001: 8) outlines the reason for this:

About 60 per cent of the world's universities founded since the 12th century have been established since the Second World War. It is during this period that higher education has achieved most of its growth and transformed itself from a small collection of relatively mono-purpose elite institutions into very large mass system of higher education

This transformation “occurred in most if not in all industrialised countries” (Ibid.). Under such circumstances it can be assumed that higher education also increased its political relevance and became more of an issue in intergovernmental relations. Hence, even from a Canadian perspective, 1945 marked some sort of turning point. The long-term observation thereby allows for the identification of patterns of transformation and development in the higher education sector of both countries more generally.

To achieve this goal of identifying certain patterns that help to evaluate the policy sector and its relevance for intergovernmental relations, various sources have been used. As the focus is on broad developmental structure and less on a detailed policy analysis, the main sources thereby are the existing secondary literature on higher education policy and the literature on federalism in both countries. Naturally, those sources contained a wide range of information. This was helpful to enhance the broader understanding of the national context in each country despite the more narrowly defined focus of the study.

Primary material, while not representing the main source, has also been used. Especially in the case of more recent developments concerning the two case studies, primary literature became a more essential ingredient for analysis in order to identify the appearance of new structural patterns.

The literature analysis has furthermore been facilitated by fieldwork in the two countries. During those stays, the research was focused on a broader range of sources, including explorative interviews with academic experts and practitioners.

While the whole range of sources consulted primarily enhanced the understanding of each national context individually, the focus on more general patterns for the comparison marked a further step forward as it reveals similarities and difference that again in turn help to better understand the individual developments of the case studies. On a more general level, applying such a comparative approach makes it possible to paint a broader picture of the development of the complex interrelationship of policy and polity.

It has to be emphasised, though, that the result of such a comparison does not both federations as a whole. After all, one policy field does not represent the situation in the remaining policy fields. Generalising attempts therefore have to be treated carefully. In his previously cited analysis of one policy field – science and technology – in one Land in Germany (Baden-Württemberg), Klaus H. Götz (1992: 288-9) came accordingly to the following conclusion:

[H]ighly generalised accounts are of very limited use in studying the condition and development of intergovernmental relations, and, more specifically, state government discretion. As intergovernmental relations are becoming increasingly multifarious and, to a certain degree, contradictory, sweeping assessments of the intergovernmental system are no longer possible. Instead, the growing diversity of federal arrangements calls for differentiated analyses, which do justice to the extremely complex network of Federal-state and interstate links. Some of the essential differentiations which need to be introduced to such an approach have been hinted at above. Perhaps the most obvious one concerns the need to distinguish between different areas of public policy. There is no reason for assuming that the development of Federal-state and interstate arrangements follows a similar course across the whole range of public policies.

Not only does an analysis of a single policy restrict the scope of generalisations but the individual policy area is certainly not homogenous either. At least according to Götz (Ibid.: 289) who further observed as a result of his own research “that, within one and the same field of public policy, the forms and effects of intergovernmental relations can vary dramatically.” Nevertheless and despite such obvious conditions, the literature on German federalism still shows a tendency

where “to generalise and extrapolate from developments in one particular sector of public policy often enough proves to be irresistible” (Ibid.). Such a generalisation will not be attempted here even if the policy sector cannot be studied in total isolation and therefore has to take into account more general developments in the respective federations.

3.3. Outline of the remaining chapters

The whole study consists of five parts with this section representing the end of part *One* (Introduction). The following parts *Two* (Canada) and *Three* (Germany) represent the two central presentations of the empirical evidence on the higher education policy fields in the two case studies. Each of the two countries will be introduced by highlighting the main events of the policy sector within the period under observation. This will be followed by the main body represented by various sections along a historical narrative approach, outlining the empirical findings. The focus thereby will be mainly on the role of the federal governments and their attempts to establish a position within a policy field where constitutional power is predominately located at the subnational level.

The last section in each part will represent a conclusion that highlights again specific developments in particular in relation to the interstate or intrastate model of federalism respectively and the resulting impact on the various forms of balance within each federation.

More specifically, part *Two* on Canada will portray a picture of a higher education sector that, despite the constitutional prerogative, witnessed initially a rather weak provincial role and bore little resemblance to the interstate model of federalism. Instead higher education in the early years after the war saw not only a relatively prominent federal role but also was characterised by a considerable institutional autonomy of the universities, highlighted by their special relationship with Ottawa. This situation, however, gradually changed. Not only did the universities and their representation almost disappear from a central, policy influencing position, but the federal government also increasingly felt the pressure of the provinces claiming ‘back’ their territory. This not only changed the balance within the policy sector but had an especially visible decentralising effect. This

development was mainly the result of the so called ‘province-building’ which affected the Canadian state more generally. In the more specific case of higher education it led to the establishment of provincial bureaucracies that helped the respective governments to fill the gap between constitutional responsibility and the actual reality. Furthermore, as the federal power was predominately based on a ‘power of the purse’ and less on constitutional provisions, federal opposition to provincial claims was relatively powerless.

The following years further emphasised this condition and resulted in a gradual withdrawal of Ottawa from the general financing of higher education towards more targeted funding of research. The picture of the policy sector that emerges thereby looks quite different from that at the beginning of the period studied in a manner which is more reflective of the model of interstate federalism.

Part *Three* of the thesis looks at the German higher education policy field. Here, as in the Canadian case, the situation in the first years after the war bore little resemblance with the model of federalism (intrastate) with which it is nowadays associated. The Länder almost exclusively exercised power within the policy sector. This situation changed, but less gradually. As in the Canadian case this led to a changing balance within higher education but the overall movement was in the opposite direction – towards more centralisation.

The federal government, after its establishment in 1949, had some constitutional base (‘uniformity of living conditions’) for an involvement in higher education. Yet, while this might have acted as a starting point, it does not explain why we witnessed situations in between where it almost appeared that the federal government had ‘taken over’ the policy sector. To understand such developments in the German case it is helpful to refer to the ‘critical juncture’ argument as outlined above. The constitutional amendments of 1969 that provided for a much more prominent federal role in the policy process represented such a critical juncture and fundamentally changed the appearance of the higher education policy field in Germany. Yet, while the constitutional change meant a more emphasised federal role it also resulted in the Länder being able to influence the policy process at the national level via the Bundesrat. This way, the federal level was ultimately not able to dominate the sector especially if the Bundesrat was controlled by the party political opposition.

In any case, the implications of 1969 not only led to a comprehensive national higher education policy, but also manifested the intrastate federalism model in this policy field as well. As such, the policy sector also ‘suffered’ from the general problems of the resulting joint-decision making and its more extreme expression of the joint-decision trap. More recent developments seem to point in the direction of a disentanglement of higher education policy which is also a result of the increased diversity amongst the Länder following the German unification of 1990.

Part *Four* of this study will bring together the results of the empirical evidence from both countries. It will start with a recapitulation of the developments with a particular emphasis on the existence (Germany) or non-existence (Canada) of a national policy approach. The following sections will basically centre around the outlined research questions, starting with an analysis of the general conditions within the policy field, including the constitutional and legal environment, the involvement of further actors besides the governmental levels and the influence of the societal environment. While all these factors help to formally distinguish the two case studies from each other along the interstate and intrastate dimension, the following sections will focus more on the dynamic aspects of the systems.

One of the central themes thereby will be the question of balance. For the constituent units it is a question of balancing autonomy and influence which again also has an impact on the policy sector itself. Furthermore, the balancing act of the constituent units naturally influences the overall balance of the federation. While the resulting pictures for Canada and Germany are quite different, especially the long-term observation allows to portray them both as dynamic entities without a static balance.

Although it has been argued that the analysis of one policy sector has to be treated cautiously in terms of generalising the results, this in turn does not mean that the individual policy fields exist in total isolation from each other or are isolated from the general polity. Taking this into consideration, higher education in Canada and Germany can tell us something about the polity more generally, even if it only confirms its general characteristics. Yet, the policy analysis does illustrate these general characteristics of the two systems, specifically the

interlocking aspect in Germany and the more emphasised autonomy of the provinces in Canada.

Finally, the last part (*Five*) offers a short conclusion and an evaluation of the results of the comparison. It will attempt to outline the contribution of this study to the existing literature that is based on the portrayal of federalism as a dynamic concept, characterised by a constant search for balance. The evidence for that – as a result of the policy analysis – thereby concentrates on three main categories. First, it shows that institutions matter in form of the institutional resources and the resulting opportunity structures. Second, the empirical evidence also reveals the importance of what could be described as ‘cognitive and mental maps’, pointing to the ways in which problems are conceived and how senses of ‘appropriateness’ govern actions. Third, the societal dimension plays an important role too, thereby highlighting the state – society dichotomy, but highlighting also the necessity to include both dimensions in an analysis.

At the end a picture should emerge of federalism that actually demands the plural form of federalisms to be applied as the comparison of concrete policy fields emphasises the differences of federations in practice. The picture furthermore should also lead to the recognition that the models of interstate and intrastate federalism are not deterministic and that the actors within the system do perform an important function in shaping not only a policy sector but the system as a whole. These are in particular aspects of federalism that stress the importance of the comparative approach as a means of understanding both the existence of systemic patterns and the persistence of idiosyncratic factors.

II

CANADA

**The rise and fall of federal influence: towards provincial
higher education and federal research**

1 Introduction

The starting point for the analysis of the higher education policy sector in Canada (and in Germany) is the period beginning with the end of the Second World War. As in other industrialised nations, this period is characterised by a massive expansion of the universities, not only transforming their roles in society but also increasing their relevance for intergovernmental relations. There are two reasons for this. One was that the expansion not only resulted in higher costs but also in growing importance for the national level, attracting the attention of the federal government. The other was the growing desire of the political governments to shape an entire 'post-secondary sector' as a form of public utility to serve the goals of enhancing equality of opportunity, and to train a skilled workforce. These two themes dominated the time to come with a particular emphasis on the financial dimension. However, while this development is mainly restricted to the postwar period, there is in the Canadian case also a strong element of continuity. After all, the war did not lead to a fundamental change in the political organisation of the state. In the case of the structure of higher education this also meant that 1945 did not represent some sort of a critical juncture. Hence, the previous period requires some attention in order to fully understand the developments.

Before the war, universities were not a major topic for intergovernmental relations. One reason for this was the modest status of the provinces which at that time did not represent the same kind of articulated actors as they do now. A second reason was that the federal government's involvement in the university sector was slight. Under these conditions, interstate federalism in higher education – while already implicit in the constitution – was less emphasised in practice. This in particular applied to the periods of the two world wars when the state of national emergency led generally to a more centralised Canadian federalism.

After the Second World War, two things closely connected to each other changed. First, the higher education institutions were expanding substantially. This was at least initially mainly due to the 'Veterans Rehabilitation Act' resulting in direct federal subsidies to the universities for each war veteran attending the institutions. This led, second, to a financially increased federal role in the direct

financing of universities which thereby somewhat ignored the provincial governments and their constitutional jurisdiction over education in general.

Taking the above aspects into account, 1945 in Canadian higher education does mark at least an important milestone in the development of the sector even if this only became visible in the further expansion of the field.

Considering the relatively weak position of the provinces in the postwar period, it might not surprise that Ottawa further extended its influence in higher education by introducing a more permanent direct grant policy after the Veterans Act. This further undermined the role of the provinces as it was still a financing of the universities directly.

The further development of the sector witnessed a gradual change in the approach of the federal government by first withdrawing from the direct funding principle to a cost sharing arrangement resulting in payments to the provinces for the higher education institutions. While this agreement arguably still gave the federal government a limited policy influence, the 1977 Established Programs Financing (EPF) scheme and its unconditional transfers to the provinces reduced the federal role in general higher education policy dramatically.

Nevertheless, EPF reflected a certain aspiration of Ottawa in the policy field, despite the financial transfers under the program being for more than higher education only. Yet, the logic of the transfers as being unconditional combined with provincial jurisdiction in the field made the following development almost predictable.

The provinces rejected any further attempts by the federal level to influence their spending priorities. Hence, money as part of the EPF transfer 'earmarked' for higher education was used by the provinces for other purposes. Faced with rising costs and faced with little prospect of turning around this development, Ottawa made a somewhat logical step by reducing its financial commitments and basically withdrawing from the general funding of higher education under the successor program to EPF, the Canada Health and Social Transfer (CHST, 1995).

While the initial choice of the federal government of focusing almost exclusively on the financial issue (and relying on the 'power of the purse') without attempting to get a more substantive institutional base for their policy aspirations might already explain to a large degree the development which followed, it still

does not represent the ‘whole story’. The provinces were not particularly powerful in 1945 but they had the constitutional competence in the policy field. Ottawa, in contrast, had no constitutional power that would have provided the base for a more direct role in higher education policy (beside more general powers like the responsibility for the national economy). Hence, if Ottawa had attempted to influence the policy sector more fundamentally, it can be safely assumed that there would have been more resistance from the provinces. This view was proven by the formation of higher education policies in the provinces which eventually followed the immediate postwar period. As the more detailed analysis will show, this development marked an important step for the higher education field and fundamentally influenced the consequences of the above outlined federal programs. The analysis will also show that the ‘provincial awakening’ not only resulted in a shift of the roles of the governmental actors but also essentially undermined the role of the universities and their representative, the AUCC and its predecessors. While Canadian universities were and are rather autonomous, it is only more recently that the AUCC gained back some influence and was able to revive to a certain degree its former ‘special’ relationship with Ottawa (which was on the Veterans Act and the following direct grant policy). Yet, this time it is only within the more limited framework of research.

The aspect of research funding has also to be considered when evaluating the federal withdrawal. The empirical evidence will show that Ottawa’s reduced financial commitment to the general funding of higher education almost went hand in hand with an increased engagement in the direct targeted funding of research, which, while not completely undisputed, has less of a conflict potential than higher education more generally. Research in this sense provided an alternative route for the federal government for fulfilling its national duties without the need to focus too much on the policy process of higher education. These developments – while not a result of sudden changes but more based on an evolutionary process – nevertheless represent a major shift over time. The sections below detail this process, beginning with the long term historical background.

2 The historical background of higher education in Canada

In comparison with some European ‘standards’, Canada has a rather young higher education system. Yet, as has been pointed out earlier, within the framework of this thesis the focus is on the period beginning after the Second World War up until now. Nevertheless, the time before that period could offer some more insight into Canadian higher education, which again might be helpful to understand more recent events. Especially as the end of the Second World War – in contrast to Germany – did not mark such a critical turning point. The next sections will therefore start with a brief look at the historical background of the university system in Canada.

Canada’s de facto independence as an autonomous Dominion was marked by the British North America Act, 1867¹. In this Act, provision was made for education as a field of exclusive provincial jurisdiction. Section 93 dealt with this topic and reads as follows in the original version of 1867:

Education

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

- (1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:
- (2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen’s Roman Catholic Subjects shall be and the same are hereby extended to the Dissident Schools of the Queen’s Protestant and Roman Catholic Subjects in Quebec:
- (3) Where in any Province a System of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or

¹ The official name today is: *Constitution Act, 1867*. However, in the literature it is still common to refer to its historical name of *British North America (BNA) Act*.

Roman Catholic Minority of the Queen's Subjects in relation to Education:

- (4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.

Although it can be safely assumed that the general term 'education' included higher education (and thereby implied provincial authority for that field as well), there was no specific mention of it at the time. It is probably not surprising considering that there were not only about 1500 students but also only five institutions that had an attendance rate of 100 or more students when the BNA Act was signed (Cameron, 1992: 47).² It therefore causes no astonishment that "[h]igher education was not in any sense a major political issue in the 1860s and it received almost no attention in the various debates surrounding the proposed federation of British colonies" (Jones, 1996: 341).

The denominational character of many of its institutions reinforced this lack of importance of a limited higher education system. These religious affiliations were inherent in the system and can be traced back to the origin of higher education in Canada.

2.1. Early beginnings and the BNA Act

The "modest" start, to apply an assessment by David M. Cameron (1991: 6), of higher education within the boundaries of future Canada was marked by the Jesuits

² When looking at these figures, it is necessary to compare them with the figure for the population of Canada which at that time was only about three and a half million. However, it needs to be pointed out that the Canada of the BNA Act included only four provinces: Ontario, Quebec, New Brunswick and Nova Scotia (Sautter, 2000: 62, 118).

who founded the *Collège de Québec* in 1635.³ It was actually only 27 years after the foundation of Quebec itself as the first permanent settlement in what was then called New France. The College was the visible sign of the dominance of the Roman Catholic Church not just for higher education but for all levels of education. In contrast, the role of the civil authority was reduced to the support of the work of the church (Jones, 1996: 338). Going beyond this regional dimension, the establishment of the *Collège de Québec* marked the beginning of a period of nearly two hundred years of dominance of denominational teaching institutions in the whole of Canada. This was reflected not only by the involvement of the various churches in the founding processes but also by their continued operating grants to ‘their’ institutions and the resulting control of the appointments of staff (Jones, 1998: 6-7).

The next stepping-stone in the development of the university system was in 1789 marked by the establishment of the first institution to grant degrees: King’s College in Windsor, Nova Scotia. The driving forces behind the formation of this university were Anglican Loyalists but the actual founder was the Church of England (Cameron, 1991: 6-7; Auld, 1996: 19-20).

The exclusiveness of religious universities and colleges started to crumble with the launch of the non-denominational Dalhousie College in Halifax (Nova Scotia) in 1820.⁴ Other institutions were to follow. A more prominent example could be witnessed in Ontario after the establishment of responsible government in 1848. A bill was passed that changed the name of the College to University of Toronto and removed entirely its denominational character which was manifested by placing the University under direct provincial government control (Auld, 1996: 20-21; Cameron, 1991: 13-4). Although it was not the first time that a government got involved in this field of politics, there was generally speaking “little direct government involvement in higher education until the late 18th and early 19th centuries ...” (Jones, 1998: 6). Furthermore, the bill did not imply the end of religious colleges. In fact, Glen A. Jones (1996: 340) argues that

³ The Collège was forced to close during the British siege of Quebec and never reopened again (Cameron, 1991: 6).

⁴ However, Cameron (1991: 8) points out “that nothing came of Dalhousie College, apart from its building, for another 18 years, ...”.

“[d]enominational colleges, created and supported by specific church organizations, were the dominant institutional form in terms of the growth of Canadian higher education for the rest of the century”. However, at least for Ontario, Douglas Auld (1996: 21) is convinced, that “the founding of the University of Toronto was the turning point for higher education in the province”. Denominational colleges came under increasing pressure which was especially visible in the funding issue. This led to financial problems of the institutions and forced more and more of them into the public sector, abandoning their religious affiliation (Ibid.: 24-5). However, at the time of the BNA Act, denominational institutions were still dominating the higher education system in Canada.

2.2. From the BNA Act to the First World War

Although higher education was not a major issue immediately before the BNA Act (and no topic at all in it), the Act had more or less immediate consequences for provincial universities and colleges. This was particularly true for Ontario where a new government declared within a year after confederation that in the future it would not support church-affiliated universities. This obviously increased the funding problem for religious institutions as this move left them “entirely dependent on private support and fees for their revenues” (Auld, 1996: 22). But it also marked a further step by the provincial government towards taking over its new constitutional responsibilities.

The allocation of the authority over education in general to the provinces appeared to be a logical step, given the diversity of even the ‘smaller version’ of Canada at that time:

Each of the four provinces which formed the original Dominion had distinct cultural characteristics. It would have been illogical to suggest that a unified, centrally controlled education system could address both the needs of the largely francophone, Catholic population of Quebec and the needs of the largely anglophone, Protestant population of Ontario. (Jones, 1996: 342)

This viewpoint – while reflecting the characteristic of a federal society – is arguably still applicable today, at least when it comes to primary and secondary education. Within the higher education arena, though, the story was slightly

different. Already, soon after the BNA Act, the first signs of federal interest appeared within this sub-field of education.

In 1874 the Royal Military College in Kingston was established by legislation passed by the federal Parliament. The federal government was able to justify its initiative on constitutional grounds. Under section 91(7) of the BNA Act, national defence is assigned as one of the legislative powers of the federal Parliament. Hence, the federal government was able to found the Military College which, however, was not authorised to grant degrees. Furthermore, its existence was somewhat questionable, as Canada did not have a standing army. At the same time the legislative process behind the College was not challenged by the provinces (Cameron, 1991: 19-20). Which was not that surprising, as Cameron (1991: 19) explains: “While Confederation placed education firmly within the legislative responsibilities assigned to the provinces, it was not entirely clear in the early years what the limits of this assignment would turn out to be.” Despite this lack of clarity, the initiative had an effect as “it established the principle that higher education, ... might serve also as an instrument of public policy in areas of federal jurisdiction” (Cameron, 1992: 47). And, according to Jones (1996: 343), it showed something else. It “provided the first clear indication that in the realm of federal-provincial relations concerning education there was a tremendous difference between federal initiative and federal interference”.

Despite the favourable interpretation of constitutional responsibilities by the federal level for itself, its involvement remained very limited. For example, in the case of the University of Manitoba the federal government became engaged by providing a land grant in 1885 (Goodings, 1992: 39). Then again, it was not only those federal initiatives which shaped the policy area of higher education. As already mentioned above, the creation of the University of Toronto represented a significant step towards the involvement of a provincial authority in the business of higher education. The same university attracted attention again, though for a different reason.

The interest of the provincial government was not only restricted to financial aspects but also included the question of how these institutions should be governed. This led to problems as the government assumed “that there should be some element of government control over a government-funded institution”

(Jones, 1998: 7). The control, though, turned out to be more severe than was acceptable to the University of Toronto. It included for instance partisan interference, appointment of professors by political leaders without prior consultation of the university president and generally an unsuitable system of government and management of the University (Cameron, 1991: 26-7; Jones, 1996: 345). To solve the problems, a new provincial government in Ontario, more or less immediately after it was elected in 1905, established a royal commission on the University of Toronto. The report, which was chaired by the local industrialist Joseph Flavelle and which was submitted in 1906, had a lasting effect. As David Cameron rather enthusiastically emphasises (1991: 27):

The Flavelle royal commission report, ... was a masterpiece of analysis and advice, and proved to be probably the most influential report ever commissioned in the field of higher education in Canada. Not only did it result in dramatic changes to the structure of government of Toronto but, adopting and extending the bicameral principle already established in such institutions as Queen's, McGill and Dalhousie, it also provided the model of university government that was eventually to be adopted in almost all Canadian universities.

The essential consequence of the report⁵ was a strengthening of university autonomy, which, given the framework of this thesis, is of some importance as it had some influence on the later role of the universities as actors influencing intergovernmental relations.

Yet, university autonomy was not regarded as a major problem at the beginning of the 20th century as “[p]rovincial governments and university authorities were in basic agreement on the function of universities and on how they could best achieve their objectives” (Neatby, 1987: 34).

The situation was not challenged by the federal government. It did, however, involve itself again in higher education by using basically the same principle established for the Royal Military College: a justification based on federal responsibilities. This time it affected agricultural education, which was

⁵ For a more detailed description of the content of the report and some of the resulting action, see: Cameron, 1991: 27-9 and Jones, 1996: 344-8.

portrayed as matter of economic development important for the whole country.⁶ As the provinces had already opened several agricultural colleges, the federal government used a different approach to support the sector: the first (and not last) ever shared-cost program initiated in 1912 (Cameron, 1991: 31; 1992: 47-8).

The following years were overshadowed and influenced by the First World War. Although it temporarily stopped the development in higher education more generally, the First World war had – at least for some – a more positive influence as it led to the investment in scientific research by the federal government. Beside that and according to the historian H. Blair Neatby (1987: 21) this investment had an additional dimension as it marked the “first significant federal intervention” in higher education.

The federal move was inspired by the role of scientists in Germany. Before the war they contributed to Germany’s leading position in steel production and textiles. During the war they were involved in the development of new explosives. Such observations led the Canadian government to conclude that there is a connection between industrial development and research. Thus, in 1916, the federal government – on the initiative of the Minister of Trade and Commerce – appointed the Advisory Committee for Scientific and Industrial Research, later known as the National Research Council (NRC). As the name implies, its role was to coordinate and to conduct industrial research (Neatby, 1987: 21). Yet, despite its ‘dramatic’ war-inspiration, the Council “was not a high priority for the government during or after the war – railways and tariffs were still what federal politics was made of – and the NRC did not have any laboratories until the 1930s” (Ibid.). Given this initial dimension of the Council, which did not even reflect a federal research policy, it seems therefore arguable, whether this move marked the ‘first significant’ federal intervention. The future, however, supports this viewpoint, as the original appointment of the NRC can now be portrayed as “a new federal initiative that would have enormous implications for higher education” and

⁶ The general question of whose responsibility technical education is, was supposed to be answered “[i]n typical Canadian fashion” (Cameron, 1992: 47) by a royal commission appointed in 1910 by the federal government. Yet, the federal client did not even wait for the final report in 1913 before taking action (Ibid; 1991: 31).

that “effectively secured the federal government’s preeminence in the field of university research” (Cameron, 1997: 10).

2.3. The interwar period and the Second World War

The period from the end of the war until the beginning of the 1930s was a relatively unproblematic time for Canadian universities. It was marked by a significant growth in student enrolment and revenues. The student numbers increased by nearly 50 per cent between 1920 and 1930 (from over 23 thousand to 33 thousand). Revenues grew by half in the same period, from \$9 million to \$14.5 million (Foot, 1981: 40-1; Cameron, 1991: 33-5).

The following decade of the 1930s was the time of the Great Depression. Obviously, that affected higher education in Canada. Enrolment at universities, for example, grew by only ten per cent in the ten-year period until 1940, to about 36.4 thousand students (Foot, 1981: 41). The financial difficulties, though, were more problematic. The provinces reduced their assistance, sometimes to a minimum; maintenance expenditures were postponed, faculty salaries were reduced, as was the number of staff generally. Despite these troubles, a few universities were even able to expand and none had to close (Cameron, 1991: 38-9). This was partly made possible by a number of federal initiatives aimed at reducing unemployment, including greater efforts for training which led to more substantial shared-cost programs with the provinces. Also included in these efforts was the first federal program to support students through loans as part of the Dominion-Provincial Student Aid Program of 1939 (Cameron, 1997: 10). The program was the predecessor of the Canada Student Loan Program and it was, according to the scholar John Kucharczyk (1984: 87), not very effective. During its existence from 1939 to 1964, it affected on average not even 3,000 students per year. The resulting federal expenditures for the program was less than \$45 million for the whole period.

In the year after initiation of the Student Aid Program, the report of the landmark Rowell-Sirois Commission on Dominion-Provincial Relations was published. The report presented a view which was very critical of the above mentioned shared-cost programs and conditional grant programs, denouncing

them, in the words of Cameron (1997: 11), “as injurious to both sound public finance and efficient administration”. Yet, the commission was not generally against federal support for universities which led Cameron to the cynical comment that the “report so nicely captured the essence of the schizophrenic federal perspective on higher education” (Ibid.: 10-1).

The Second World War had already started when the report was released and that changed the situation again. Clearly, the war manifested exceptional circumstances which put the government of Canada in a powerful position in the interest of national security. One of the less dramatic consequences was another involvement of the federal government in university business:

The government actively encouraged the training of engineers and scientists by offering financial support to the students and by ruling that no professional scientist or technician could leave the university for any other employment without permission. There is no record of any protest from the universities. Indeed, the universities themselves shared the overriding commitment to winning the war and were more than eager to cooperate. (Neatby, 1987: 23)

The principals of McGill (Montreal) and Queen’s (Kingston) took that willingness to co-operate so far that they suggested in 1942 that students of the humanities and social sciences should not be exempted from military/war service. The federal government did not follow this suggestion and encouraged also those students to finish their degree in the ‘national interest’.⁷ (Ibid.)

The federal government did not, however, come to this conclusion on its own. The proposal of the principals was – unsurprisingly – not well taken by a number of scholars from the humanities and social sciences. In 1943 it was eventually rejected at a special meeting of the National Conference of Canadian Universities (NCCU).⁸ As a consequence, the NCCU became involved in the negotiations dealing with the selective services and their actual administration.

⁷ However, arts students were only able to benefit from the exemption if they belonged to the better half in a class (Cameron, 1991: 45).

⁸ The NCCU was originally founded in 1911 and included senior administrators as well as faculty members. Its importance was restricted as the first few decades represented more “a forum for sharing information than a vehicle for formulating common policies” (Cameron, 1991: 31). The NCCU, after another name change in between, became eventually the Association of Universities and Colleges of Canada (AUCC).

These tasks awakened the organisation and gave it “an entirely new lease on life, and it became the acknowledged vehicle for communication between the universities and the federal government” (Cameron, 1991: 44). Because of the special relationship, the NCCU, already during the war, took part in the preparation for what would eventually lead to the ‘Veterans Rehabilitation Act’, the first step in a comparatively massive expansion of the federal role in higher education after the Second World War.

Before getting to the post war period and its transformation of the higher education policy field, it might be useful to summarise some of the aspects of the periods described above: from the early appearance of Canadian universities until the time after the Second World War, the federal level played only a minor role in higher education. As a matter of fact, even the provincial authorities were not that much involved at the beginning of what could be called higher education in Canada. The various churches financed and dominated the institutions. When that started to change, mainly because of financial reasons, provincial governments became more involved in the business of universities. Fewer and fewer denominational – and thereby private – institutions were able to withstand the pressure to become public institutions which eventually led to a mainly public higher education system in Canada. As Auld (1996: 25) outlines:

From the Great Depression of the 1930s through to the present time, Canada’s mix of private and public universities and colleges changed into a largely public system, increasingly dependent first on provincial support and, ultimately, on a combination of provincial and federal governmental funding.

Despite the increased dependency of universities on provincial governments, the relationship was characterised by “blissful harmony” (until 1945) because there was basic agreement on the function and role of universities. This agreement left the universities in a situation where they were able to enjoy a considerable amount of autonomy. Neatby (1987: 35) uses a concise description to outline the role of the universities and the procedure concerning the allocation of provincial grants before the post war years:

For half a century the consensus on the role of the universities made overt government intervention unnecessary. ... Universities were rarely even mentioned in provincial legislatures. Provincial

governments did provide annual grants to meet the deficits of the public universities but even these grants were not a matter of public debate. The procedures were surprisingly informal. The university president, with the support of his Board, would submit a request directly to the premier who presumably with the consent of his Minister of Finance, would then decide the size of the annual grant, and there the matter would rest until the next year. Presidents would not protest publicly and legislators would not ask questions. ... And so universities were left undisturbed because they were doing what was expected of them with only modest demands on the public treasury.

This situation in comparison with the present appears rather strange, given the importance now attached to universities as institutions of education and research. However, Neatby already indicates one reason for this earlier situation in the above quote: the restricted amount of money available to universities. Yet, this is not the whole story. The limited size of the higher education sector is another aspect which needs to be considered when analysing the 'peaceful' situation at that period. A further source of 'harmony' was the recruitment of students from provincial elites who in turn provided the actors involved in the political and university arena. As this represented a kind of a closed circle, fundamental disagreement about the function of the university was probably less likely.

Another restriction for the universities was their limited research activities. This and the other aspects led Arnold Naimark (1987: 2), a former President and Vice Chancellor of the University of Manitoba, to make a rather critical comment about the state of Canadian universities at this time:

Until the Second World War Canadian universities were relatively small and selective. ... Only 70 percent of those entering high school graduated and of those that did only 8 percent went on to university studies. University students were predominately male and the vast majority came from upper middle class backgrounds. Tuition fees comprised a major fraction of university revenues. The scale of research activity was modest and spotty in its distribution. The amount of money attracted to the university in the form of external research grants was small. Postgraduate programs were poorly developed and nearly everyone seeking advanced study was forced to pursue such studies abroad.

Most of this was about to change after the war with a rather dramatic speed. These changes, which transformed the whole higher education policy area, will be looked at in the next section.

3 A public and federal issue: the postwar period and its aftermath

3.1. The Veterans Rehabilitation Act and its aftermath

At the end of the Second World War, Canada was facing the prospect of economic problems because of the returning war veterans who were threatening to overstretch the capacity of the labour market. One way of solving this problem was to pay for the veterans to go to university. Hence, the NCCU (as already mentioned above) and the federal government developed a plan that would provide adequate support for the veterans and the universities. The planning resulted in the ‘Veterans Rehabilitation Act’ in which the federal authorities committed themselves to paying \$150 per veteran enrolled to the relevant university directly on top of the university fees, which the national government would pay too. The program – which followed the path of fiscal federal involvement – proved to be quite successful. The numbers of students peaked in 1946-47 when about 35,000 of the veterans (representing 44 per cent of all students enrolling) decided to enter university (Neatby, 1987: 24; Cameron, 1991: 44-5).

The fee supplement scheme amounted in 1946-47 to a maximum of 16 per cent of university income.⁹ However, as the federal financial involvement also included the payment of the fees, both payments on average made up more than half of the university’s operating income during that year. Because of such figures, the political scientist Peter Leslie (1980: 146) concluded “that there must have been several universities which were very largely financed in this way”. However, Leslie in his study for the Association of Universities and Colleges of Canada (AUCC), goes beyond this observation by arguing that the above described situation represented “a prototype of one form of university financing” (Ibid.):

When government grants, federal or provincial, are closely related to enrolment, their impact on universities is similar to that of a fee supplement scheme. It leaves the university entirely in charge of their operations while augmenting the demand for their teaching

⁹ This share declined again in the following years as the number of veterans attending university went down (Leslie, 1980: 146).

services by reducing the tuition charges they must levy (if they have any choice in the matter) in order to remain solvent.

The degree of autonomy of the institutions receiving this financial support would be quite high in such a financing scheme. Canadian universities, though, were probably not able to enjoy this autonomy as much under the Veterans Rehabilitation Act. Although they received extra money, the sudden and dramatic increase of enrolments (they almost doubled) represented also a considerable challenge to the universities.¹⁰ In addition, it was clear from the beginning of the program that it would be short-lived. It was pretty predictable that within a few years of the running of the scheme, the numbers of veterans enrolment would substantially drop again. In addition, Leslie summarises another essential reason for the predetermined end of the policy (1980: 146-7):

[T]he federal government had moral and political reasons for recognizing a special obligation to the war veterans and therefore for supporting their university education in a way which it might find less easily justifiable in the case of other students

Despite the limitation of the program, it can be portrayed as a milestone in the development of federal involvement in higher education in the immediate aftermath of the war. Michael L. Skolnik (1997: 329) characterised this phase as “an important watershed in the evolution of Canadian higher education” whereas Cameron (1997: 11) describes it more enthusiastically as a period “which opened the floodgates to the federal invasion of provincial jurisdiction over higher education”. Whatever way one describes the time, it marked a change in the balance between the governmental actors involved in higher education. And one of the two actors – the federal government – was influencing this balance even without the support of a federal ministry of (higher) education (a fact which has remained unchanged even today).

Most of the veterans had graduated by the beginning of the 1950s but it already had become apparent earlier that the growth in student numbers could not exclusively be attributed to veterans entering university. After the war there was a

¹⁰ These challenges included for example: finding temporary classrooms and laboratories, and sharply increased teaching load for professors (Neatby, 1987: 24).

general trend amongst young people to attend university. This could at least partly be related to the changing role of the university.

The First World War and especially the Second World War proved the importance of science research for the nation. The university stepped in to fill the gap in this field and also demonstrated – by supporting Canadian war efforts – its new role of contributing to the social and economic development of the nation. The university had finally made a decisive step into becoming a public utility, leaving behind not only the dominance of the denominational private institutions but also the former consensus on the role and function of the university. For Jones (1998: 8), this was a ‘dramatic shift’ and its resulting “change was evolutionary, though the effect was clearly revolutionary”.

In any way, even without the veterans, student numbers grew by nearly three quarters within a ten-year period (1941-42 to 1951-52), from about 36,400 to about 61,600 (Cameron, 1991: 45).¹¹ Under these circumstances and with the diminishing amount of veterans money, the universities were about to face some financial difficulties. They tried to counteract this development by approaching the provincial governments for help, but many university leaders (fewer in French-speaking Canada) were investing more hope in the federal government to solve their financial difficulties. The hope was based on and stimulated by the special relationship which had developed between the NCCU and the federal government during the war. Lobbying efforts aimed at finding a more permanent policy arrangement than the veterans act (by using the argument of higher education being of national importance), eventually focused on the Royal Commission on National Development in the Arts, Letters and Sciences (established in 1949 by the federal government). Also known as the Massey Commission (after the chairman Vincent Massey), it seemed to offer some prospect of success regarding a recommendation for further federal financial commitment (Jones, 1996: 349-50; Cameron, 1991: 45-6). And indeed, the commission lived up to the hopes of the lobbyists, as the next section will show.

¹¹ The population of Canada grew in the same period by less than a quarter, from about eleven and a half million to just over fourteen million (Sautter, 2000: 118).

2.3.2. The Massey Commission and the consequences of direct grants

The final report was handed over to the federal government in 1951. Although the commission expressed its respect for the provincial authority over education, it nevertheless recommended financial support by the federal government in the form of direct grants to the universities based on the size of the population in each province. The federal government under the Liberal Prime Minister Louis St. Laurent did not show any hesitation, immediately implementing the recommendations of the report by increasing subsidies to the universities (Cameron, 1991: 47).

The amount initially made available for the first year (1951-52) of the new policy was calculated on a 50 cents per capita basis applied to the whole population of a province. The resulting *unconditional* entitlement was then divided amongst those institutions which were members of the NCCU, based in relation to their proportion of enrolments within the respective province. Yet, as the money allocated was not based on a per student payment, the resulting amount per student varied from province to province depending on the share of students as a proportion of the total population. One of the obvious consequences was that “universities located in a province with a relatively high university student population were, so to speak, shortchanged” (Leslie, 1980: 147). In the concrete case it meant that the universities of Nova Scotia received \$92.45 per student in the first year of the running of the program (1951-52). In contrast to that, at the other end of the scale, the only university in Newfoundland (Memorial University) collected \$483.15 per student which was well above the national average of \$120.08 (Cameron, 1991: 66-7).

Another problem was that rising student figures meant a decline of the money available per student from the federal level. For P. Leslie (1980) both of these reasons also represented important differences to the former fee supplement scheme of the veteran’s act. Still, Leslie did not see the option of going back to the principle of the earlier program adjusted in a way that it would have been applied to all students. He points out that such “a fee supplement scheme would arguably have been inequitable because educational structures differed among the provinces; Quebec especially would have been discriminated against because of

the role played by its classical colleges” (Ibid: 147). The recommendations of the Massey Commission might have taken this potential problem into consideration (and therefore preferred the per capita approach) but the sensitivity of the commission towards the constitutional dimension did not appear to be all that distinctive.

To justify the federal participation, the commission used the already known argument that universities, despite being provincial institutions, do serve a “national cause” and are therefore important for “national strength and unity” (quoted in: Cameron, 1997: 11). As this argument had been used during the more extreme time of the war as well, it might just appear as an argument put forward as an excuse by members of the commission. And indeed, four of the five commissioners had close ties with universities (Ibid.) and were therefore probably not entirely neutral. A conclusion shared by Cameron, as he even identified “aggressive ... pressing for a recommendation in favour of federal operating grants to universities” amongst individual commissioners who were therefore “prepared to turn blind eyes to the constitutional sensitivities of Quebec” (Ibid.). In contrast, the Prime Minister St. Laurent seemed to show more awareness with respect to the provincial authority over educational policy. When the grants to the universities were introduced he tried to disclaim any federal interest in interfering with provincial educational policies (Leslie, 1980: 148). Such a position might be underlined by the fact that there were no conditions attached to the grants.¹² Nevertheless, it did not stop Quebec from expressing its disagreement with the federal initiative.

Although some of the university leaders in Quebec were originally willing to accept the grants, opposition to the Massey recommendations rose amongst their ranks. Hence, a year after the inception of the program, the universities accepted the demand of the Premier of Quebec, Duplessis, not to accept the subsidies from the federal authorities anymore.¹³ The resulting loss in revenues for the

¹² Although Leslie (1993: 30) makes the argument that there was at least one condition attached to the grants in the way that “it was generally known that the federal government would react strongly if a province were to impose, or through its system of grants to universities and colleges were to encourage or allow the institutions to impose, higher fees on out-of-province students.”

¹³ It might be worth noting that not only Quebec felt affected by the federal policy. As the grants were paid to universities and colleges without considering their denominational status, it

universities was to a certain degree compensated by increased provincial financial support, but they still “suffered the fiscal consequences” (Cameron, 1997: 12).¹⁴ The federal-provincial impasse lasted until the end of the decade but not without intensifying even further¹⁵ as will be shown below.

The Massey Commission and its resulting direct federal grants to universities sounded the bell for “the modern era of federal support for postsecondary education” (Cutt and Dobell, 1992: 16) as it was more extensive than any other policy before.¹⁶ In this light, Quebec’s strong reaction does not represent a ‘disturbance’ of the higher education system but rather proves the point of the dimension of the federal move, as Quebec felt that its constitutional authority was threatened. It was therefore not just about Quebec, it was, according to Cameron (1997: 12), the beginning of a general development in the federal-provincial relations concerning higher education:

In taking this step [direct grants] the federal government not only provided a much needed infusion of cash for hard-pressed universities but initiated an intergovernmental tug-of-war that may only now [1996/7] be reaching its denouement.

The next step towards intensification in this tug-of war – or the search for a new balance in the policy field – was just around the corner.

3.3. Growth towards a turning point

It has been said above that the number of students after the war was growing rapidly even discounting the war veterans amongst them. This growth had not yet

manifested a breach of Ontario’s policy of not supporting church-related institutions (Cameron, 1991: 47-8). However, it did not lead to the refusal of the federal grants in Ontario.

¹⁴ The kind of positive effect for the other provinces was that on average they received substantially more per student in the second year of the federal grants program – despite the predicted decline of the amount but because of the withdrawal of Quebec.

¹⁵ One intensification was marked by another withdrawal of Quebec in 1954: the Dominion-Provincial Student Aid Program (Cameron, 1991: 47).

¹⁶ It is still worth noting, though, that the direct grants represented – for example for the first three years 1952-54 – only between about an estimated 12 per cent and 15 per cent of the total University operating income. In contrast to that, the estimated figures for provincial grants were between 38 and 40 per cent (Cameron, 1991: 61). It is also the case (see above) that during the peak years of the veterans act, the federal contributions were higher. Yet, as this was a subsidy for a specific group and only for a certain period of time, it can still be argued that the direct grants which started in 1951 were more comprehensive.

reached the end. In 1955 at a symposium of the NCCU, E.F. Sheffield gave a presentation about enrolment projections for Canadian universities and colleges for the next ten years until 1965. The projected figures were so dramatic that Cameron was speaking of 1955 as the year that “Canadians were awakening to a crisis in their universities” because of “growing evidence of an imminent explosion in enrolment seemingly beyond the capacity of existing institutions to accommodate” (Cameron, 1991:3).¹⁷

Sheffield based his projections on two established facts: the post war baby boom and a gradual increase of the proportion of 18 to 21 years old who went on to attend university. Given this situation he estimated that full-time university enrolment would nearly double between 1954-55 and 1964-65, from 67,500 to about 128,900 (Ibid.: 3-4). The reason why these figures “constitute a crisis in higher education” was relatively straightforward, at least in the words of Cameron (Ibid.: 4): “What made this prospect so dramatic, indeed frightening, for Canada’s university leaders was their certain knowledge that existing institutions had nothing remotely approaching the capacity to absorb so great an increase in enrolment.”

The projections were taken seriously and to face the coming years more money was needed for the universities to cope with the growth of student numbers. The universities themselves were at the forefront of action and they turned to the same actor again in order to get financial support:

What is perhaps most significant is that the whole issue of how and to what extent universities would respond to the crisis of numbers was seen as a matter for resolution primarily by the universities themselves. Certainly this was the view of most presidents, and their collective judgement was in favour of growth. What they needed to do was to convince the public, and through the public their governments, that more money was urgently required. Moreover, they had convinced themselves that the principal target should be the federal government. It had worked in 1949-1951 via

¹⁷ Cameron’s evaluation of the importance of the situation is emphasised by the fact that his extensive and influential book of 1991 (*More than an academic question: Universities, government, and public policy in Canada*) which looks at federal and provincial government policies, as well as at university governance and labour relations, uses 1955 as a starting point. For him the year and its aftermath had “long term effects [that] would prove to be little short of revolutionary” (Ibid.: 4). From an institutionalist perspective as has been outlined in the introduction, this statement appears to be far too strong. As the further development will show, 1955 did not represent a critical juncture. Applying this view, it hardly justifies the term ‘revolutionary’.

the (Massey) Royal Commission on National Development in the Arts, Letters and Sciences, so why not again?
(Cameron, 1991: 62-3)

The representative of the universities, the NCCU, despite the action taken by Quebec in response to the direct federal grants earlier, still did not take the constitutional implications of direct federal involvement seriously. On top of that there was the danger of further isolating Quebec by increasing the role of the federal level. As a consequence, the NCCU “simply avoided the issue in Quebec” (Ibid.: 63).

In order to reach their goal to get the federal government involved even further in the financing of universities, the NCCU organised a national conference on “the crisis in higher education” in November 1956, bringing together university, government and business leaders and focusing mainly on the need for more staff for universities. The outcome was predictable: more money was needed. Less predictable, however, was the contribution made by Prime Minister St. Laurent at the end of the conference. Showing again a quick response to demands made by the universities, he announced a doubling of the funds (from 50 cents to \$1 per capita)¹⁸ available for operating grants to universities and the establishment of the Canada Council with an initial endowment of \$100 million. The Council, which was eventually created by an act of parliament in 1957, was originally proposed by the Massey Commission and was aiming at the support of the arts, humanities and social sciences whereby 50 per cent of the money was supposed to be for capital construction. The formula used for the distribution of the money was the same as in the case of the federal operating grants. (Cameron, 1991: 63-71).

The difficulty of accommodating Quebec led St. Laurent not only to justify again the federal involvement, he went even further this time by instructing the grants not to be paid directly to the universities but to the Canadian University Foundation (CUF) which was essentially a branch of the NCCU.¹⁹ Thereby a buffer agency was positioned in between the federal government and the

¹⁸ However, the rise in support still did not address the problem of unequal per student payments amongst the provinces (see above).

¹⁹ The money was supposed to be paid to the NCCU but it lacked the legal status. Hence, the CUF was created. It was also at the same time that the NCCU changed its name to NCCUC – National Conference of Canadian Universities **and** Colleges (Cameron, 1991: 65-6).

universities, avoiding the prospect for the universities of accepting the grants from the federal authorities directly. The 'trick' did not work and the constitutional deadlock between the governments of Quebec and Canada continued. Yet this time the entitlements for Quebec's universities were paid and held in trust by the CUF (Ibid.: 64-6).

From today's perspective Quebec's constitutional sensitivity probably does not surprise that much. What is more surprising, is that there was little response from the other provinces concerning the constitutional issue especially after the creation of the Canada Council with its implicit effect on "social values and cultural identity" (Neatby, 1987: 24). Neatby expresses his scepticism quite directly (Ibid.): "Spending money on science or even on health might have been tolerated by most provincial administrators but to fund the liberal arts was almost provocative." Yet, no constitutional crisis arose and considering this argument, even Quebec's reaction was relatively modest.

An explanation can at least partly be found when looking at the external environment of Canada at that time. In this environment, Neatby (1987) identifies two related problems which served as reasons and justification for federal involvement in higher education: the emerging Cold War and living in the neighbourhood of one of the dominant superpowers, the USA.

One of the underlying forces of the Cold War was the perception of communism as a threat to democracy. Canada was no exception when it came to this view of communism. Nevertheless, despite this belief, the action taken against this perceived threat never reached such an extreme stage as it did in the US for example in the form of 'McCarthyism'. However, one consequence of the Cold War was also accepted in Canada: the need for education in the light of democracy. For higher education this meant a renewed focus on the humanities and social sciences as a source for democratic and cultural education. Yet, it was not only the 'danger' of communism that Canadians had to face. Neatby (1987: 26-7) argues that actually the USA constituted "the real threat to Canadian identity":

Canadians could never focus their undivided attention on the Cold War because they also worried about the United States. In addition

to the threat of Communism, there was the threat of crude materialism associated with American society.

The Massey Commission, while taking these views and arguments into consideration, saw Canadian universities and especially the humanities as assuring “Canada’s cultural survival” (Neatby, 1987: 27). Hence, it recommended the creation of the above mentioned Canada Council, further emphasising the role of the humanities which “had to protect us against American as well as Russian materialism” (Ibid.: 28). The (perceived) need for guidance was so strong because, according to Neatby’s observation, the “dangers were so diffuse that neither government nor public opinion had a clear definition of what was disloyal or un-Canadian” (Ibid.).

The more exclusive look at the humanities as ‘saviour’ of the nation suffered a setback in 1957 when the Soviet Union launched the first artificial satellite, Sputnik. This added a further dimension to the communist ‘threat’ but also led to a “post-Sputnik enthusiasm for science and technology” (Naimark, 1987: 3). Again, universities were seen as an essential instrument to face this strategic challenge. It was generally accepted that they were important for Canada’s security and economic prosperity which in turn – because of Ottawa’s competencies regarding security and economy – almost asked for an increased federal role in higher education. Hence, the universities took into account federal money when they began to plan their expansion in order to fulfil their new role (Cameron, 1991: 68).

3.4. Towards a federal peak in higher education policy

Further planing was certainly needed as already soon after Sheffield presented his figures, it became clear that his projections underestimated the increase in enrolments.²⁰ The figures were revised a couple of times but still did not match the actual growth (also as a result of an underestimation of the rising participation rate for women). As a consequence the federal per capita grant rose for 1958-59 to \$1.50 per capita and was increased again for 1962-63 by another 50 cents.

²⁰ Already in the first projected year, 1955-56, the actual enrolments (72,737) were about four per cent higher than the estimated enrolments (69,900). By 1959-60, the difference had grown to over fifteen per cent: 101, 934 compared with a projection of 88,300 (Cameron, 1991: 82).

However, because of the above described distribution formula, the resulting funding per student did not rise that much, as the number of students grew much faster than the population.²¹ It is also worth remembering that despite the increases, the federal contributions to the operating costs of universities were still lower than the provincial grants. On the other hand the share of federal money in the total of university operating income was growing. In 1955 this share represented 14.2 per cent but had grown to 23.3 per cent in 1959 (with ups and downs in between). The share of the provincial grants in contrast had steadily fallen from 40.7 per cent to 35.2 per cent in the same period. The result of an increased dependency on federal financial support must have had especially negative implications for Quebec's universities. And indeed, despite the attempt by the province to compensate for the lost revenues, the intergovernmental 'problems' fundamentally disadvantaged higher education institutions in Quebec in contrast to the other universities in Canada. From this point of view, it therefore did not come as a surprise when the intergovernmental deadlock between Quebec and the federal government was eventually solved in 1959 (with the resulting arrangement being translated into action in 1960). The way this was done proved to be important as it paved the way for further development in the policy sector (Cameron, 1991: 83-5, 91, 117).

The time to solve the impasse seemed to be right after the death of the Premier of Quebec, Maurice Duplessis, and before the election of the new Lesage government. The negotiations between the federal government and Quebec led to an arrangement which included the transfer of tax points to Quebec as a central element. In the concrete case this meant that Ottawa would not offer to pay any direct grants to the universities of Quebec anymore but would instead lower its corporate tax rate in Quebec by one per cent which in turn would allow Quebec to raise its provincial tax by one per cent point. The resulting revenues were supposed to be adjusted each year through the equalisation transfer system. By

²¹ Over a period of 15 years (1951-52 to 1965-66), the value of the per capita grant had increased by 300 per cent, from 50 cents to \$2, whereas the actual average per student amount rose by a less impressive 75 per cent, from \$120 to \$210 (Cameron, 1991: 119). Cameron's figure for the per student increase is even lower: 43 percent. Assuming that the other figures were right, it is probably just a miscalculation (using 210 as the basic figure for the calculation: $210 - 43\% = 119.7$). The conclusion remains the same anyway.

doing so, it could be ensured that Quebec received the same amount of money that would otherwise have been paid directly to its universities. The arrangement effectively meant a ‘contracting out’ of the federal program which added not only a new term but also a new dimension to intergovernmental relations in higher education policy (Stevenson, 1982: 143; Cameron, 1991: 85-6; Leslie, 1980: 148). If one wants to think in terms of a winner or a loser, this arrangement seemed to have a clear winner, at least as indicated by Peter Leslie (Ibid.):

What made this more than a purely symbolic victory for Quebec was the fact that the province thereby gained unique control over the distribution of funds among universities, and among various institutions of post-secondary education including the classical colleges. In my opinion, the 1960 agreement was basic to giving the province full power to redesign the structure of its educational institutions during the 'sixties, and to establish ultimate financial control over the universities.

Furthermore, it eventually proved – even if it took some time – that federal involvement in a policy field of provincial jurisdiction could in the case of higher education only be based on voluntary co-operation and participation of the provinces and by providing them with an exit option (transfer of tax points instead of more direct federal funding). This principle – while at this stage only visible in the form of the opposition of Quebec – became more obvious in the further development of the higher education field, though not immediately after Quebec’s contracting out.

Although the deal with Quebec indicated a shift in the financing of universities towards more provincial responsibilities, it did not stop Ottawa from putting money into the higher education system. Within certain fields, the federal involvement further intensified.

One of these fields where Ottawa got involved was the financing of loans for student housing. It was not only the result of continued lobbying by university presidents and the NCCUC but it was also influenced by an expected stimulation of the construction industry which would thereby reduce unemployment which was high on the agenda at that time. In any case, it led the federal government in 1960 to add a program which allowed the universities to gain subsidised loans

from the Canada Mortgage and Housing Corporation (Cameron, 1991: 120-1).²² The program was effected by various changes over the next years, but the most interesting one, at least in terms of intergovernmental relations, occurred only a year later – in Quebec (Ibid.: 121):

Quebec established a unique provincial arrangement by which its universities and colleges might take advantage of the scheme. In Quebec's case, the loans would be guaranteed by the province, and responsibility for repayment of both principal and interest would be assumed by the province. By this device, Quebec had cleverly transformed federal loans into provincial program for student housing.

Quebec also played a role in another program which actually represented an intensification of federal involvement: student aid.

It has been said before that the Dominion-Provincial student Aid Program of 1939 was not particularly substantial in financial terms and in the number of students affected. Hence, all provinces had in the meantime developed student aid programs, most of them including some sort of subsidised student loans. It did not stop the Liberal party, probably also because of ever rising student numbers, to promise in both federal election campaigns of 1962 and 1963 to introduce national student loans. Keeping this promise eventually led to the adoption of the Canada Student Loan Plan/Program²³ (CSLP) in 1964, the federal government's "first substantial commitment to institutionally-based student aid as matter of policy" (Kucharczyk, 1984: 87). It is not essential to go into all the details of the program here, but the basic functioning of the system is certainly worth a short explanation: The money²⁴ itself was lent by chartered banks and credit unions with the federal government taking over the role of a guarantor for the repayment including the coverage of all interest charges until six months after graduation of the respective student (Ibid.: 87-8; Kucharczyk and Monette, 1981: 228-9).

²² The original fund was limited to \$50 million but got increased twice over the next 4 years to \$150 million in 1964 (Cameron, 1991: 120-1).

²³ The spellings and terms used vary considerably amongst the different authors.

²⁴ In 1965 a total of \$39 million was available as result of federal and provincial assistance programs, for the 1999-2000 term the sum provided had grown to \$914.2 million (Kucharczyk, 1984: 89; Treff and Perry, 1999: 10:19).

The general system represented already a certain sensitivity towards the constitutional issue. Further aspects of the administration of the program underlined this in the eyes of D. Cameron (1991: 122):

Not only would banks make the actual loans, but the provinces would administer the program, facilitating integration with existing provincial loan and bursary programs and avoiding cumbersome definitions of eligibility. ... It was a remarkably clever arrangement, easily defined under sections 91(15) and (19) of the Constitution Act respecting federal authority over banking and credit.

This new kind of federal approach in terms of financial involvement can probably be seen at least partly as a result of the earlier experiences with Quebec and the recognition of the importance of provincial autonomy. In the case of another element of the CSLP, this connection is pretty obvious: the provision of a contracting out clause. The clause allowed those provinces which did not want to join the CSLP but which had a comparable provincial program, to receive financial compensation in order to provide financial support for students in their province. The only province which took advantage of the provision was, not surprisingly, Quebec.²⁵ Nevertheless, for Cameron, the CSLP represents a success as it “stands as model of intergovernmental cooperation and accommodation” (Ibid.). He further explains this argument by stating:

Federal funds have ensured a substantial degree of interprovincial equity and mobility, while decentralized administration has recognized different provincial circumstances and priorities. Quebec’s operation of its own program has been associated from the outset with an equivalent federal fiscal transfer, but without sacrificing intergovernmental consultation and substantial coordination. It certainly represented a more sophisticated accommodation of the realities of Canadian federalism than the extra-constitutional program of direct federal grants to universities, even with the belated contracting out provision for Quebec.

The program has since then gone through some revision but it still exists which perhaps supports Cameron’s argument.

In contrast to the seemingly developing sensitivity of Ottawa towards provincial authority over higher education in some programs, the area of federal support of research seemed to be less affected by such intergovernmental shifts of

positions. Such a low profile in intergovernmental business after the Second World War simply could have been attributed to the relatively small amount of money involved (\$1 million). Yet, this sum, which went mainly to university based research and almost entirely in support of natural and related science,²⁶ grew quite quickly, reaching \$10 million in 1959. By 1966 the amount involved had grown to nearly \$42 million. The financial expansion was accompanied by new structures. To strengthen medical research a new Medical Research Council was created in 1960, independent of the National Research Council. The NRC itself received some criticism as it had turned away too much from parts of its original task of acting as advisory body on broad national policy to a nearly exclusive focus on support of research. As a consequence, a science secretariat was formed in the Privy Council Office in 1964 which was two years later followed by the Science Council of Canada in order to fulfil the role of providing the government with advice on science and its long-term objectives (Cameron, 1991: 117-9). Both moves marked for Cameron (1997: 12) a confirmation of the “preeminence in the area of scientific research” of the federal government.

The importance of the provincial governments in comparison was pretty small, at least when looking at the pure figures. Whereas federal support for university research accounted consistently for 60 per cent or more of the total, the respective figure for provincial support grew to about 15 per cent in 1965-66, after only 4.6 per cent in 1963-64 (Cameron, 1991: 118). Overall, research did not appear to represent a provincial priority. This is probably not so surprising, considering that after all, research is not such a constitutionally challenged field, as it is probably not perceived as being as close to education as is teaching students.

Scientific research was not the only field of higher education where some of the actors involved wanted to see a more dominant or at least an increased role of the federal level. Three major reports which were released in 1964-65 aimed at this direction: the Hall Commission Report, the Bladen Commission Report and the annual review of the Economic Council of Canada (Ibid.: 122-30).

²⁵ Quebec has since then been joined by the Northwest Territories which operates its own plan, too (Treff and Perry, 1999: 10:19).

²⁶ Support for research in the humanities and social sciences from the Canada Council had only reached \$412,800 by 1965-6 (Cameron, 1991: 130).

The report of the Royal Commission on Health Services (Hall Commission) was released in 1964. With its focus on universal access to prepaid medical services, the commission suggested grants for a substantial expansion of health related facilities. Given that the education of physicians was seen as being in the interest of the nation, the logical conclusion was to ask for national financial backing for the provinces to fulfil the task. Ottawa eventually followed the central recommendation by creating the Health Resource Fund in 1966 equipped with a sum of \$500 million for the period up until 1980. Most of the money (\$300 million) was distributed in proportion to the population with the requirement that all projects were incorporated in a provincial five-year plan. Also interesting is that a considerable amount of the fund - \$175 million – “was available at the discretion of the federal government” (Cameron, 1991: 128). This added further federal control to some of the grants, which were conditional anyway. On top of that Cameron points out that although the fund was successful in achieving the desired and needed expansion of university programs in medicine, it nevertheless “stands as a monument to the propensity of conditional grants to distort provincial and institutional priorities and to blur expenditure accountability” (Ibid.). This was because the “provincial and university priorities were skewed in favour of by far the most expensive professional programs” (Ibid.) and because after the accomplishment of the expansion, “the provinces and the universities would be left to manage expensive capital facilities with no provision for maintenance or eventual replacement” (Ibid.: 128-9).

These problems were probably not anticipated by the Bladen Commission on university finance, which was appointed in 1964 by the executive arm of the NCCUC (the CUF) and in addition financially supported by the Ford Foundation and by Canadian businessmen.²⁷ Beside its own contributions, the commission also included (and thereby approved) the general recommendations of the Hall Commission in its final report, released in 1965.

The Bladen Commission focused on the enrolment projections which were still expected to rise considerably. The associated costs for further expansion were expected to be even higher than the projected increase in student numbers. To

²⁷ Both contributed \$100,000 (Cameron, 1991: 124).

meet the financial demands of the imminent job, the commission looked at both levels of government. Because of financial restrictions on the provincial governments and because the commission assumed that it was still possible to separate federal support from federal control of higher education policy, the ultimate answer, following the tradition of the AUCC²⁸, was to point at Ottawa for assistance. Hence, the AUCC put forward the central recommendations of the report to the federal and provincial governments. Prime Minister Pearson, as ‘the one to suffer’ reacted positively, accepting the (high) estimated costs. A federal-provincial conference was supposed to work out the details for a new arrangement but as the conference took time to take shape, Ottawa moved ahead by adopting the central recommendations. That meant that for 1966-67 federal grants would rise by 150 per cent to \$5 per capita. The distribution formula was modified by a weighting formula, taking into account different programs and different degree levels. Further more, 70 cents of the \$5 were held in reserve for those universities in provinces that had a net in-migration of students (Cameron, 1991: 123-30).

Finally, another study strongly advocated a greater federal role in higher education, extending to postsecondary education more generally. It was the annual review of the Economic Council of Canada which was released at the end of 1965. To justify its open demand for federal involvement, the Council employed the human capital theory which basically provides “an argument that higher education should be regarded as state investment” (Jones, 1998: 9). Based on that principle, the Council estimated that a continued investment in higher education would result in a return rate of between 15 and 20 per cent per year and deserved therefore highest governmental priority (Jones, 1996: 351). The other two reports were not as enthusiastic in their view of the role of Ottawa but the Economic Council presented its review in a climate in Canada that was receptive to its demands, at least if one accepts the evaluation by Slaughter and Skolnik (1987: 130):

The early 1960s in Canada were characterized by an almost unlimited belief in the contribution of post-secondary education to the economy, supported by studies which attributed the productivity gap between the United States and Canada to the lower levels of educational attainment in the latter. The expansion was stimulated

²⁸ By that time the NCCUC had changed its name again, to the Association of Universities and Colleges of Canada (AUCC), a name by which it is still known today.

also by a liberal climate in which increased post-secondary accessibility was viewed as a privilege which the national could afford and should extend.

H. Ian MacDonald in his function as president of York University and former government official did not argue against the liberal climate but he found it hard to accept the human capital theory in relation to universities and its promise of “an ever expanding gross national product” as he stated in his article in 1976 (54):

The economic justification was of the same character as investing in a factory or, for that matter, in a super highway. I remember arguing rather forcefully against that proposition because, first of all, I believe that education is more than an economic process, more than a means to an end, and more than mere occupational training. It is prerequisite of a civilized society

Beside this more philosophical argument he made another point which certainly had some more concrete relevance: “It also seemed to me that, if the great hopes for high economic returns to education were unfulfilled, then there would be a very strong reaction against expenditure on education” (Ibid.: 54-5). The problems of higher education in the 1970s, as will be shown later, seemed at least partly to prove this observation.

Nevertheless, there are certainly economic advantages in a well educated population. One does not have to go to the more extreme human capital theory to realise that. Hence, the federal involvement from this perspective is understandable. Such an involvement was also supported by the universities, and especially by their representative, the AUCC. They left not doubt about their preference for an additional source of funding located at the federal level. This way the universities (at least those outside Quebec) were able to minimise to a certain degree their dependency on both levels of government. After all, in the eyes of Neatby (1987: 30) having “two paymasters” resulted for the universities in two positive effects “because having two patrons would mean more money and would contribute to university autonomy”.

The combination of these conditions and the external environment, are certainly not exhaustive arguments but they contributed to a remarkable increase of federal commitment to higher education. A commitment that reached in the year 1966 a highpoint, or more negatively, “witness[ed] the furthest advance of the

federal government in its assault on provincial constitutional responsibilities for education” (Cameron, 1997: 13). Another turning point was on its way, initiated by the provincial governments. They finally started to take on a more prominent role in higher education policy, filling in the space the constitution (and the interstate model) provided for them.

4 Formation of higher education policies in the provinces

It would go beyond the scope of this study to look at the individual development of each province towards taking a stronger position in higher education policy. The Canadian way of employing Royal Commissions was also successfully applied in the provinces and hence, to look at them alone would be worth a study of its own.²⁹ This, however, does not mean that it is not possible to examine the situation in the provinces more generally and evaluate its relevance for intergovernmental relations.

4.1. The higher education ‘awakening’ in the provinces

Given what has been written above, one would probably think of Quebec first when it comes to a more distinct provincial approach to higher education policy. After all, it was Quebec which opted out from federal programs and thereby brought up the constitutional issue. It would be too easy and simplistic, though, to reduce Quebec’s attitude to federal involvement in provincial higher education merely to a more general, underlying struggle between Quebec and the rest of Canada. Instead, the situation in Quebec at that time has to be seen within the context of the transformation of the whole society affecting its political and social institutions. This process, which became known as the ‘quiet revolution’, obviously also transformed the higher education system in the province. As Jones (1996: 353) points out clearly:

It is difficult to overstate the breadth of social, economic, and political reforms that took place in Quebec in the 1950s and 1960s.

²⁹ For such a detailed approach of provincial higher education policy, see: Cameron, 1991.

The reawakening of francophone interests, the shift in the role of the Catholic Church in Quebec society, and the growth of nationalist sentiment including, in some sectors, support for separation or even liberation through revolution ... transformed Quebec society. In many respects, therefore, the challenge of reforming and restructuring Quebec higher education was a subset of a much broader socio-political agenda.

As a result of the quiet revolution, higher education was not the responsibility of the church or private groups anymore but of the government (Cameron, 1991: 86). Hence it was the government's task to restructure and reform the system. Such changes were noticeably not restricted to the internal provincial environment.

The changes might not have been as drastic, but it was not only in Quebec that the government found itself in a more central role concerning higher education, associated with greater responsibilities. It was part of the more general trend towards 'province-building' within the Canadian political system, as all provinces started to establish provincial bureaucracies aimed at the coordination of higher education.

The development towards more prominent provincial higher education actors was a process which did not happen from one day to the other. Hence, it is not possible to determine a clear starting point but it is possible to approach its origin which the following observation by M.L. Skolnik (1997: 329) attempts to do:

The precise dates varied, but commencing anywhere from the 50s to the early 60s, and lasting as late as the early 70s was a period of identification and elaboration of provincial needs, innovation and expansion, and the establishment of what might be described as provincial systems of postsecondary education.

The more concrete process of establishing provincial coordination within higher education is easier to locate in terms of its beginning. It actually did not start before the 1960s (Jones, 1998: 14). At that time, though, the motives for the establishment of provincial bureaucracy did go beyond the reasons mentioned above in the case of Quebec (Ibid.: 16):

Higher education was becoming an increasingly complex and expensive area of provincial public policy, and there was a perceived need for the development of structures and mechanisms

designed to ensure that governments would be able to exercise some control or influence over the growing systems.

At the centre of such coordination efforts were originally so called buffer or intermediary agencies. Every province with the exception of Newfoundland and Labrador (which had only one university) had experienced at one stage with such agencies. They varied considerably amongst the provinces in terms of structures and history (Jones, 1996: 354-5). Yet, they had in common that they were supposed to act as ‘buffers’ between universities and provincial governments, by acting as advisory bodies to the governments “while at the same time functioning as a barrier to prevent unnecessary government intervention in university affairs” (Ibid.: 354).³⁰

It is of some importance here to recognise that the degree of governmental intervention resulted only in ‘some control’ of university affairs. Although the provinces started to influence the internal activities, there was (and still is) quite some agreement on the relatively high level of autonomy for universities and their

³⁰ The intermediary bodies were also central to the development towards what Jones, Skolnik and Soren (1998) call a sectoral approach of provincial higher education policies. In their article about ‘arrangements for co-ordination between university and college sectors in Canadian provinces’, they generally define a sectoral approach in the following way (Ibid.: 17):

“With the sectoral approach, component parts of the postsecondary enterprise are treated differently by the state. These component parts may be defined by institutional type (for example, university vs vocational institute), funding source (for example, private vs public) or some other characteristic. There may be tremendous differences in the approach to co-ordinate by sector, such as a highly autonomous, little-regulated university sector and co-ordinated technical institutes. Co-ordinating mechanisms, policies and funding approaches will be sector specific.”

As a result of the expansion of the 1960s, Canadian provinces moved to a sectoral approach to accommodate the university sector *and* the new institutional type of community colleges. The sectoral approach in the provinces followed an institutional approach which emphasised the independent and self-regulating ability of the universities together with limited or minimal state co-ordination. The other extreme to the institutional approach would be a system approach “which treats all parts of the postsecondary enterprise as a whole” (Ibid.). According to the authors, none of the Canadian provinces experimented “with system-level planning or create[d] system-wide co-ordinating or governing boards” (Ibid.: 26). About the reasons for the non-emergence of the system-level approach, the authors are only able to speculate (Ibid.): “One factor likely is the great deference to university autonomy shown by governments of all provinces since at least the 1960s.” Community colleges, in contrast, were from the beginning created as instruments for policy purposes. In addition or indeed even underlying this situation is the fact that both sectors enjoy a considerably different relationship with government including a major difference in prestige. These observations combined make it look rather unlikely for a system-level approach to be applied (maybe with the exception of Manitoba, where the authors consider the possibility of the emergence of this approach for coordination purposes).

internal affairs (Jones, 1998: 10).³¹ This autonomy is of some relevance for this thesis as it had an influence on intergovernmental relations as well.

It has been shown above how much influence the NCCU/AUCC was able to practice by dealing with the federal government directly and thereby bypassing the provincial authorities. Similarly as regards federal grants, the position of the universities in the form of the AUCC was strengthened by the fact that these grants were paid to the AUCC which again distributed it amongst its members (by respecting the distribution formula). It might therefore not come as a surprise that this was one point of criticism from the provincial side (Cameron, 1991: 129) after they had created more articulated and competent provincial bureaucracies.³²

It was not only the way of distributing the grants that started to concern the provinces. Quite a few followed – to a certain degree – the example of Quebec, by reacting in a way “to the increase in federal operating grants [that] offered clear evidence of their growing concern with direct federal support to universities” (Cameron, 1991: 129). On top of that, a more general, ultimate evidence for the awakening of provincial higher education policy was stimulated by a move of the federal government that provoked concerted provincial action.

The above mentioned Bladen Commission not only recommended a substantial increase in federal financial support but went one step further by proposing the creation of a federal ministry responsible for higher education. Clearly, such a proposal must have rung the ‘constitutional alarm bells’ not only in Quebec. Hence, when the federal government in 1966 employed the registrar of the University of Toronto for one year to advise the government on the

³¹ It should be pointed out though, that the autonomy was certainly not undisputed. The move away of the universities from the private sector towards becoming a public issue resulted in a policy involvement of both levels of government. As Jones (1998: 9) observes, this had various consequences for the universities. One of these consequences he identifies as a central problem underlying the general relationship between universities and governments:

“The issue which began to emerge, though it has never strayed too far below the surface of university-government relations, was the apparent contradiction between the notion of institutional autonomy, often viewed as a basic presupposition of the university in the Canadian context, and the notion of the university as public utility, a tool of public policy. This basic dilemma is the root question in much of what has been written about university-government relations in Canada.”

³² The first two to set up units within their public services that dealt exclusively with university issues were the two largest provinces Quebec and Ontario in 1964 (Cameron, 1991: 168). For a more detailed account of provincial development towards higher education bureaucracies, see *Ibid.*: 168-70.

establishment of an education support branch within the Department of the Secretary of the State, the alarm bells rung in the provinces and forced them into taking “defensive action”. This action resulted in the formal establishment – after years of informal coordination – of the Council of Ministers of Education of Canada (CMEC) as an interprovincial organisation (Cameron, 1991: 130).³³

The federal government must have been aware of the tension it created by getting more and more involved with higher education. Hence, it did not take long before Ottawa sent out a sign of change. It happened at the federal-provincial conference which was finally arranged and took place in 1966. The outcome would mark the beginning of the decline of federal intervention in higher education.

In the meantime, the federal support of research did not seem to be affected by these rapid developments. On the contrary, the amount of money available from Ottawa was still growing without causing intergovernmental disturbances (Ibid.).

4.2. A new federal role: the end of the direct grant policy

The increase in federal involvement up until 1966 was not undisputed within the federal government itself. On the one hand there was for example the Department of the Secretary of State which advocated a firmer federal role in education in general and in postsecondary education in particular. Partly this stand might have been based on the human capital theory or simply on a economic policy to manage the national labour market. On the other hand, there was the Department of Finance which was worried about a potentially unrestricted financial commitment (Cameron, 1997: 13).

It appeared that the financial sceptics in Ottawa eventually gained upper the hand after Prime Minister Pearson announced at the federal-provincial conference in October 1966 a new financial arrangement which from 1967 introduced a new cost-sharing program. This program was aimed not only at universities but at all

³³ According to Cameron (1992: 34-5), the Council with its subcommittee has actually at least partly been modelled after the German ‘Permanent Conference of Ministers of Culture’ (*Ständige Konferenz der Kultusminister*;) which was established in 1948 (Laufer and Münch, 1998: 258). However, the Canadian version, as will be shown in the chapter on German higher education policy, “has not acquired a similar capacity to coordinate regional policies” (Cameron, 1992: 35).

forms of postsecondary education including technical and vocational training, and the new systems of community colleges that started to appear in many provinces (Goodings, 1992: 40). More generally, the new deal ended a phase of “direct grants to universities from 1951 to 1967” by starting a new phase of “cost sharing with the provinces of all post-secondary education from 1967 to 1977” (Dobell, 1992: 16). Cameron quite emphatically (1991: 130) summarises the termination of the former support system:

Gone were the federal per capita payments to universities; gone was the associated contracting out provision for Quebec; and gone were a host of categorical conditional grants for technical and vocational education and capital facilities.

Not everything was ‘gone’ as Cameron (1997: 14) outlined himself, but “the only significant survivors were grants to university researchers administered through the granting councils and the intergovernmental Canada Student Loans Program”.

The new federal policy that replaced the former arrangement and was translated into action in 1967, consisted of various changes. The most fundamental modification intended to show new found respect for the now more visible provincial role in higher education, was that payments were made to the provincial governments instead of directly to the universities. A further change was that it was not based on a per capita basis but rather on the offer by Ottawa to share half of the cost of operating expenditures of postsecondary institutions.³⁴ The money was made available by a transfer of tax points. All provinces benefited from a reduction of the federal personal income tax by 4.357 points and all but Quebec, which had already received it, took advantage of the transfer of an extra tax point on corporation incomes. The resulting revenues from the tax transfer in the provinces were included in the equalisation provisions to make sure each province would at least receive the national average per capita revenue. On top of that, to make sure the 50 per cent promise was fulfilled, Ottawa made – where necessary – adjustment payments. (Leslie, 1980: 149; Cameron, 1991: 130-1)

³⁴ Goodings (1992: 40) emphasises an aspect of the 50 per cent offer by the federal government that seems to be misunderstood regularly: “Note that this was *not* 50-50 federal-provincial cost sharing as is often thought. The non-federal 50 per cent was made up of provincial funding, student fees, and private sources, with the exact proportions varying quite a bit from one province to another.”

In order not to disadvantage those provinces which had below average expenditures on postsecondary education, another provision was introduced. Newfoundland and Labrador, Prince Edward Island and New Brunswick were able to take advantage of an alternative formula that originally offered a fixed sum of \$15 per capita³⁵ instead of using the expenditures of postsecondary institutions as reference point. This is an aspect which is hardly mentioned in most articles, dealing with the general field. As it does not appear to be a well known fact, Leslie (Ibid.) seems to be especially keen on emphasising that “at no time was the grant to these provinces in any way related to university costs or to provincial educational policy”, i.e. the autonomy of those provinces was not weakened.

The cost sharing arrangement did over the years develop its own dynamics. Yet, as it is not only the content that counts but also the path which brought it into existence, an initial evaluation of the federal move is helpful.

It has been outlined above that there were two views represented in the federal government about how to proceed with the involvement in higher education. It looked as if the cost sharing would eventually offer a more calculated and limited financial commitment. Although the initial offer appeared not especially mean, Ottawa’s hopes – as will be shown later – proved soon to be illusory which led Leslie (Ibid.) to make this sardonic comment: “The announcement of the new federal policy had the appearance of generosity, and actually was rather more generous than anticipated.”

Despite the expected financial relaxation, the program was in the view of Neatby (1987: 30) seen as being “still consistent with the assumptions about economic growth”. He explains this standpoint by arguing that “federal funds were still being directed to higher education and so to increased productivity; the inclusion of post-secondary technical and vocational training was a logical extension of this policy”.

Indeed, the Prime Minister when announcing the program at the conference, made sure that it was not only the increased awareness of provincial constitutional responsibility that shaped the new policy but also the federal responsibility for economic (and social) growth in the whole of the country

³⁵ The amount grew annually in line with total national expenditures on postsecondary education (Cameron, 1991: 131).

(Simeon, 1972: 79-80; Cameron, 1991: 131). Yet, the execution of the policy by using tax transfers and no direct payments to universities anymore and by substituting various specific programs with one unconditional approach, Ottawa certainly gave up a considerable amount of control. However, this did not seem to be a problem, at least according to Cutt and Dobell (1992: 17) who saw that “both major levels of governments in Canada accepted responsibility as partners in funding Canada’s colleges and universities”.

Both levels of government seemed to have benefited from the new policy – at least initially. The universities, in contrast, were somewhat dismayed as their special relationship with the federal government looked definitely to be over. Jones (1996: 352) offers a good summary of this and the (more positive) consequences for the other two actors:

The federal government would continue to support the expansion of higher education, but the new arrangements were designed to avoid the acrimony associated with a more direct approach. For the provinces, the arrangement represented a major increase in revenue while reconfirming their constitutional jurisdiction over the sector. For the universities, however, the new arrangement represented a shift from two paymasters to one and asserted the importance of the relationship between the university and their provincial governments.

From this perspective the future looked quite bright for intergovernmental relations – but not for the universities – with an acceptable balance established between Ottawa and the provinces. However, unexpected financial developments changed the outlook again.

4.3. Unpredictable? The financial burden of cost sharing for Ottawa

The cost sharing agreement, as has been outlined before, turned out to be more costly for Ottawa than was initially calculated. Ottawa’s assumption of a reasonable financial commitment was somehow understandable, as it was expected that the provincial revenues from the transferred tax points would grow faster than the 50 per cent share of university expenditures. This expectation was based on progressive personal income tax rates which led in the late 1960s to an increase of yields from this source at about twice the rate of the growth of the GNP (Leslie,

1980: 149). The conclusions drawn from this situation by Ottawa, is described by Leslie (Ibid: 149-50) in the following way:

With any luck, federal officials seem to have calculated, university expenditures would rise at less than twice the growth rate of GNP. Soon the federal government would be “riding free” on its commitments regarding post-secondary education, meanwhile having responded to provincial demands for a larger proportion of shared tax fields. It could also continue to claim that it was carrying half or more the cost of post-secondary education.

It turned out that the federal officials were quite wrong about their assumptions. One aspect that invalidated the hopes of Ottawa was rooted in the intergovernmental negotiations that took place between the announcement of the initiative and the actual act. After hints of being too moderate about the declarable costs of postsecondary education, Ottawa gave in and agreed to include a wider range of postsecondary institutions as part of the cost-sharing scheme. This led, for example, to the situation that some of the provinces – applying conditions defined by themselves – listed the last year of high school as part of their expenses which qualified for cost sharing. Given the expansion of community colleges at that time, a general remarkable growth amongst the age group involved and a considerable expansion of (more expensive) graduate studies in the universities, the actual expenditures were far higher than originally anticipated by Ottawa. In the first five years of the running of the program, the qualified expenditures grew by over twenty per cent every year. Even more remarkable, the years 1970-71 and 1971-72 witnessed adjustment payments that were higher than the value of the transferred tax points (Leslie, 1980: 149-50). Expenditures for universities alone rose in the period between 1960-61 and 1970-71 by nearly 400 per cent – and that figure is adjusted for inflation. The contrast to the originally estimated figures by federal officials was even more striking. Already in the first year, the actual cash payments were 40 per cent higher than anticipated (Cameron, 1991: 170; 1997: 15).

Faced with such enormous and unexpected expenditures by the postsecondary institutions, the federal government looked – after the original five year agreement had expired – for a change in this “virtual blank cheque” situation that manifested “an open-ended obligation to transfer to the provinces half of

whatever was spent by provincial universities” (Cameron, 1991: 207). However, some of the provinces wanted a change, too, because the value of the transferred tax points was diminishing and because at least the adjustment payments were to a certain degree conditional. Nevertheless, the resulting intergovernmental discussions to find a solution failed. Thus the federal authorities simply extended the existing agreement by another two years to gain time to find a solution. In the meantime, though, making the only substantial change³⁶ to the original scheme, Ottawa put a cap on the growth of its annual expenditures (tax points and adjustment payments) limiting it to 15 per cent for the country as a whole. (Cameron, 1991: 207-14; Leslie, 1980: 152)

This move by the federal government probably does not surprise given the dramatic increases of federal spending each year. That, however, is only true if one includes the transferred tax points as still being part of the annual federal transfer. In the first years of the running of the program, the idea and the actual functioning of the transfer of the tax points might still have been part of a ‘public’ awareness but after some more years this situation changed as Leslie (1980: 151-2) pointed out bluntly:

Henceforth only avid statute-readers with an actuarial cast of mind as well as a retentive memory would be likely to think of the fact that a portion of their provincial taxes constituted a “federal revenue reduction in aid of higher education”.

Twelve years later, Cameron (1992) makes a similar argument and emphasises that the question of whether transferred tax points are still federal or provincial contribution is still a source of disagreement (which will be shown later). Yet he explains, referring to legislation introduced in 1984, that “by law, the federal Secretary of the State is required to report annually on federal and provincial expenditures on post-secondary education, including the imputed yield from the tax transfer *as a federal expenditure*” (Ibid.: 54).³⁷

³⁶ There were also changes as a result of a general tax reform at that time which also affected the general fiscal transfers to the provinces (see Leslie, 1980: 152).

³⁷ More recently, though, his emphasis seemed to have shifted: “It might seem to be a neat trick to be able to turn provincial tax revenues into federal grants, but it is still a trick.” (Cameron, 1997: 18)

Leslie, while writing prior to the introduction of this legal requirement, looked at the situation differently. He concluded, in terms which have not been invalidated by later developments, that (1980: 152):

It is ... reasonable to ask whether the tax points should not be regarded as having become general provincial revenue, and whether the federal contribution to post-secondary education did not consist in the adjustment payment alone.

Applying this argument, the evaluation of federal contributions to the cost-sharing program for the first period (1967-72) but also for the second five years (1972-77) will lead to a different result. Based on the calculation of adjustment payments only, Leslie (1980: 152-3) produces results that show that the federal contributions never reached more than 28 per cent of the total institutional operating expenditures for one year and were even declining considerably after 1972. With these results in mind, Ottawa's federal contributions suddenly did not look as generous anymore.

Whatever amount of federal expenditure one uses as a basis, one could probably argue that even considering the higher amount, it still could be seen as being in the national interest by serving the economic growth. After all, the 'economic growth' argument had been employed and emphasised before by the federal government. If one excludes the questions of accountability and efficiency of the higher education system, it leaves open the question why the federal government tried to retreat from its original financial commitment.

One important reason could be found in the changing economic environment. Economic problems which ultimately led to the world-wide oil crisis in 1973, also had an effect on the general perception of universities contributing to economic growth. Suddenly, advocates of this view and even more so those of the human capital theory, seemed to have a problem in validating their arguments as "they lost favour with those who found that the presence of skilled manpower could not compensate for a shortage of oil or the problems caused by inflation in a global recession" (Jones, 1998: 22). Such an unfavourable environment was reinforced by demographers who predicted a decline in university enrolment, if only for a restricted period of time (Ibid.).

The consequence for the universities eventually was that they found themselves in a situation that was not comparable anymore with earlier periods where expansion and growing governmental support of universities could be taken for granted. The substantial expansion efforts were over as a result of the crisis of the 1970s. It resulted in an end of an era of what MacDonald (1976: 54) called “quantitative revolution” in education, the seemingly unquestioned and unchallenged expansion of higher education.

4.4. The changing climate for the universities and the lack of coordination in Canadian higher education

The role of the provinces

Ottawa was certainly not alone in its attempt to cut back costs for higher education. The changed circumstances resulting in different policy priorities led the provincial governments to take action as well despite the restoration of their role in higher education. The more general consequences for post-secondary education (PSE) are highlighted by Bakvis and Cameron (2000: 46):

After peaking in the late 1960s, the proportion of provincial budgets devoted to education has steadily declined relative to spending on health and social services. And within the category of overall spending on education, PSE has suffered compared to elementary-secondary education and vocational training.

Nova Scotia, for example, used the introduction of the federal-provincial cost-sharing to reduce its net contribution from \$5.7 million in 1966/67 to \$2 million in 1967/68 even if the overall provincial grants (including federal contributions) rose by 150 per cent. Nova Scotia was by no means alone in this. Other provinces pursued this approach and reduced their financial contributions. They again followed the example of Nova Scotia when it became the first province in 1970 to temporarily stop further capital construction (Cameron, 1991: 139-40, 188-9).

The declining priority of higher education policy or more specifically its financial aspect, was obvious. Nevertheless, even considering this point and the somehow connected ‘accountability of public expenditure’ argument, such provincial attitudes might have come as a surprise. After all the provinces were

still in the process of finishing the establishment of bureaucracies to administer the individual university systems. Other moves that were also in the process of developing included generally measurements aimed at the manifestation of the provincial role in higher education policy but also interprovincial coordination for the purpose of taking a (stronger) common position in negotiations with Ottawa (like the CMEC).³⁸

As part of the coordination efforts and to prepare for the intergovernmental negotiations to replace the 1967-72 agreement, the CMEC commissioned “a major study of the magnitude and implications of federal involvement in the financing of postsecondary education” (Cameron, 1991: 208). Without going into the details of the final report (entitled: *Financing Postsecondary Education in Canada*) which was released in 1971, it is nevertheless worth repeating the central theme here: The report disproved former enrolment projections by presenting its own prognosis which actually indicated an increase in the number of students. The resulting costs for universities were expected to be even higher than the expected student numbers would suggest because of more graduate students and because of more expensive programs (Ibid.: 208-10). Yet, at the time of the release of the report, the priorities of higher education demands, as described above, did not give the impression that such projections would find a ground already prepared for them. Neither federal *nor* provincial ground as the author of the study, Stephen Peitchinis, an economist from the University of Calgary, critically emphasised:

There is no evidence in the historical record of any consistency in government policy relating to universities. Both the federal government and the governments of the provinces appear to have responded to events and pressures as they arose, and at such times usually responded with hastily formulated programmes, without any apparent consideration of the implications for the institutions and for federal-provincial relations. (quoted in: Cameron, 1991: 209)

Given this evaluation and considering the desire of Ottawa to restrict or at least control its financial involvement and the demand of the provinces for more money

³⁸ Interprovincial coordination was not only focusing on the federal level. A successful example of coordination aimed at provincial policy was and continues to be the Maritime Provinces Higher Education Commission (MPHEC). It was founded in 1974 to replace the intermediary bodies in New Brunswick, Nova Scotia and Prince Edward Island. (Jones, Skolnik and Soren, 1998: 21) For a more detailed account see Cameron, 1991.

with no conditions attached to them, the next attempt to renegotiate the 1967-72 arrangement after the two year extension period was bound to fail again – and it did. Neither of the actors involved presented an alternative which would have been acceptable to the other side. Hence, although the program still proved to be very expensive with its 15 per cent annual growth, the federal government extended the current arrangement again, this time by three years until 1977. The situation in research, in contrast, was less problematic but also offered room for criticism.

Research and development between 1967-77

The field of research and development in the period between 1967 and 1977 was in contrast a haven of peace, at least in terms of its effects on intergovernmental relations. However, what research and development had in common with the cost-sharing program was its lack of coordination. Yet, because of the dominant role of the federal government in this field, the criticism was mainly directed at the uncoordinated federal research policy. The financial commitment as such was not questioned as the amount was if not dramatically but steadily increasing every year.³⁹

The state of the federal research policy was the central topic of the Macdonald report which was launched by the Science Council and published in 1969. One of its focuses was on the problem of indirect costs. The federal support of research included only the direct costs which left the universities to pay for the indirect costs. The problem was that under the cost-sharing agreement Ottawa paid half of the expenditures anyway. However, as the money did not go to the universities directly but to the provinces, which again had no provision to take account of such indirect costs, universities which were successful in research were actually penalised. The more grants they got the heavier was the financial penalty. It is understandable that Cameron (1991: 175) expresses his amazement about such a situation by writing that “a more counter-productive arrangement could hardly be envisaged”. Macdonald did therefore, unsuccessfully, demand to include indirect costs in the federal grants for research (Ibid.: 175-6).⁴⁰

³⁹ For detailed figures for the period between 1971 and 1990, see Bélanger and Lacroix, 1992.

⁴⁰ By no means a new demand, according to Cameron (1991: 176) as it had been on the agenda since 1949.

Another study, the Lamontagne report launched in 1970 by the Senate of Canada, was also highly critical of the federal research policy and pleaded for a more comprehensive and co-ordinated approach from the federal authorities. The new government under Prime Minister Pierre Trudeau did show some comprehension, which eventually led in 1971 to the creation of the Ministry of State for Science and Technology as the first of a new kind of government portfolio, the ministry of state (Ibid.: 177-8).

The OECD report and the upcoming end of cost-sharing

The state of Canada's education policy in general was the topic of a report published in 1976 by the Organisation for Economic Cooperation and Development (OECD) as part of a series on individual member states. Higher education policy was also looked at and indeed the strongest critique in the report focused on the lack of federal-provincial but also interprovincial coordination in higher education. The report therefore recommended a national forum for educational policies and generally a more prominent role of the federal government to remove the vacuum created by the absence of a federal department of education (O.E.C.D., 1977: 416-29; Rompkey, 1986: 2).⁴¹

When the OECD report was published, it was already clear that a new federal-provincial arrangement would take over from the former one which proved to be unsatisfactory for both sides. It was also clear that there was no arguing anymore about the provincial primacy in higher education as it was no longer only Quebec that raised its voice in defence of its constitutional rights. It also became obvious that the priorities in public financing had changed and that the universities were facing a tougher climate to get their share of the funds. The direct route to the federal government was not really an option anymore, with the exception of research policy.

Ian MacDonald offered in 1976 an evaluation of the situation which, although from the perspective of the universities, did characterise the change

⁴¹ For Leslie (1980: 366-8), the recommendations of the OECD for a national dimension in education went too far. He emphasises the role of education as reflecting and respecting diversity. He therefore titled the section in his book about the OECD report uncompromisingly: "The O.E.C.D. recommendations rejected"

which had appeared in higher education and tried to prepare the universities for the upcoming negotiations (MacDonald, 1976: 60):

The universities should have a strong positive position on their educational needs to place before the federal government and the provinces. Twenty years ago, universities were in position to speak with a direct voice to the ministers and to the political men and women who ultimately were responsible for decisions about higher education. Since then strong and powerful bureaucracies dealing with university and educational matters have been built up in both the provincial and federal governments. It is not only strong university presidents or influential faculty groups who make their presence known to politicians, but there are also very strong counterbureaucracies, as it were, that are also advising governments and with which universities must deal and reckon.

The upcoming period new federal-provincial arrangement, the Established Program Financing (EPF), might have disappointed MacDonald in terms of the role of the universities but he was right that universities had to deal with bureaucracies, but it turned out to be more and more the provincial bureaucracies (with the exception of research). This is unsurprising given that the provincial constitutional supremacy and the implications of the interstate model became more and more visible.

5 Established Programs Financing: Failure or the beginning of a change?

The period since the end of the Second World War has witnessed a gradual decline in the influence of the federal level in the general higher education sector. As this influence was mainly centred around financial aspects, it made it less resistant towards constitutionally based claims by the provinces as the following developments would prove.

At an intergovernmental conference in June 1976, the federal government outlined its plan for a new fiscal arrangement with the provinces. The new policy, called Established Programs Financing (EPF), started a new phase of federal support of post-secondary education. In the classification of Cutt and Dobell (see

above) it was the third phase after the Second World War: a phase of unconditional transfers (1992: 16).

The reason for defining this period as being characterised by unconditional transfers lies in the changed nature of the federal fiscal transfers. Those payments turned into a transfer of lump sums without particular requirements attached to it concerning how to spend it – hence, the labelling of them as being unconditional transfers. EPF not only replaced the old cost sharing agreement in 1977 but, as became obvious later on, also further accelerated the federal withdrawal from the general financing of higher education.

5.1. The ‘formalities’ of the new arrangement

EPF was not simply imposed on the provinces. It was the result of intergovernmental negotiations which, in the opinion of Terry Yuk Shing Wu (1985: 13), “resulted in a satisfactory funding formula” which led to an “arrangement [that] marked a new era of federal-provincial co-operation”. After all, as has been mentioned earlier, there seemed to be an interest on both sides to change the former system. Not surprisingly, Ottawa wanted an agreement that was more predictable in terms of costs. The provinces, in contrast, perceived the conditional grants as still penetrating too much into their jurisdictional territory. Furthermore, “[t]hey also complained that the shared-cost programs caused them to spend more than they needed to spend in order to provide a given level of services” (Ibid.: 20). Together with the jurisdictional aspect, it represented for them “an intrusion which distorted their spending priorities” (Ibid.). Hence, both governmental levels seemed to be willing to change the current system and they even shared some common ground as to the reasons. At the time it probably appeared to be a good starting point for a new intergovernmental deal.⁴²

The new arrangement brought together the financing of three ‘established programs’ (hence the name EPF) – hospital insurance, medicare and postsecondary

⁴² The next paragraphs draw on: Leslie, 1980: 156-9; Wu, 1985: 12-4; Cameron, 1991: 215-9, and Snoddon, 1998: 50-1.

education⁴³ – under one single scheme. The calculation of the entitlement for each province resulting from the block funding was fairly complex and consisted of both cash transfers and transfers of tax points. The initial sum available was based on the federal payments made to the provinces (independent of individual program costs) for the three programs⁴⁴ in the fiscal year 1975/6 as “a hypothetical ‘base year’” (Leslie, 1980: 156). The resulting sum was divided up into two equal parts, serving as the base for the cash transfers and as the base for the transfer of tax room. This arrangement, according to Wu (19985: 13), was in fact based on a compromise among the provinces:

Initially, British Columbia and Alberta wanted the transfers all in tax points while the Atlantic provinces wanted the transfers all in cash. As a result of the compromise, the actual transfers were paid partly in cash and partly in tax points.

The different attitudes of the provinces become understandable when one looks in more detail at the EPF provisions.

The 50 per cent share for tax points initially meant a reduction of federal personal income tax by 8.143 per cent in addition to the 4.357 per cent already transferred to the provinces in 1967. On top of the resulting 12.5 per cent personal income tax, the one per cent tax point transferred to the provinces in 1967 (to Quebec in 1960) was also still considered and therefore added. This 13.5 per cent was topped by another tax point of one per cent which was included as a result of intergovernmental negotiations. The reason for that extra transfer was to compensate, at least partly, for the termination of a revenue guarantee program which originated from a tax reform in 1972. The actual negotiations resulted in two extra tax points. The other one, applying the 50/50 approach of EPF, was calculated as a cash value and added to the cash transfers.⁴⁵

⁴³ Wu interpreted the use of the term ‘established programs’ in a sense that it “suggested that these social programs were by then well-established and the provinces were not likely to make major changes in their structures” (1985: 12).

⁴⁴ In the case of PSE that included the value of previously transferred tax points (Leslie, 1980: 156). That rose the sum available to the provinces but was only logical from a federal perspective as Ottawa treated these formerly transferred tax points as still constituting federal contributions.

⁴⁵ Originally, the provinces asked for four tax points but eventually settled for two. For more details, see Wu, 1985: 12 and footnote 4.

The revenues from the tax transfers were expected to grow annually. Yet, as the actual value of the tax points was higher in the wealthier provinces, the tax transfer was subject to adjustment under the equalisation program bringing those provinces with below average tax revenues up to the national average (without, which needs to be emphasised, bringing down the provinces with above average revenues). Hence, wealthier provinces like Alberta and British Columbia (see above) would have benefited from a program based on the transfer of tax points only.

The annual cash transfers, in contrast, were connected to the growth of the nominal per capita GNP. Transfers on a basis of cash only would therefore have been an advantage to the poorer provinces (like the Atlantic provinces, see above). They would have benefited from the national allocation. However, in case of the revenues from the tax transfers growing less rapidly than the cash transfers, the federal government provided a 'transitional adjustment payment' in the form of the difference being handed over to the respective provinces as additional cash payments. This way, no province would lose out on the transfers in the form of tax points in comparison with the cash transfers.

Another provision which was made under the new EPF scheme was the 'levelling adjustment payment'. As a result of the former cost sharing arrangement, the actual per capita federal contributions varied widely across the provinces. As there was a need to adjust this, a transition period was provided to avoid dramatic changes from one year to the other in the payments. Provinces with federal per capita payments below the national average (in the base year) would be brought up to the national average within three years and provinces with transfers above the average would be brought down to the national average within five years.⁴⁶

EPF was a block grant that replaced three individual fiscal arrangements. However, using as a guidance the individual fiscal contributions to each of these

⁴⁶ This five year period also represented the minimum life span of the original EPF agreement. Then again there was actually no termination for it provided at all. However, its legislation determined that any proposed change would need to be announced three years in advance. Together with the federal governments commitment of not announcing any change in the first two years, this resulted in the minimum five years period. Any proposed change in between by Ottawa would only have been possible under a voluntary acceptance of all provinces. (Cameron, 1991: 236)

arrangements in the previous year, the federal authorities actually argued that the new EPF transfers were allocated to each program according to the share they represented in the base year: 50.5 per cent for hospital insurance, 17.4 per cent for medicare expenditures and 32.1 per cent for postsecondary education. As a consequence, Ottawa nominally administered the transfers according to their share. Yet, as these shares were based on a national allocation, it could not be expected that the provinces would actually use the lump sum they received in accordance with these shares. The share figures have to be taken even less seriously, if one considers that the payments, at least in relation to PSE, were entirely unconditional.⁴⁷

5.2. Intentions and consequences

The consequence for giving up any conditions in relation to the transfer meant that the provinces were able to spend the money they received in any way they wanted. It was just another source of revenue. Hence, the federal government was not able to have any influence on provincial higher education policy – at least not as a result of their financial transfers under EPF. Originally, Ottawa probably thought, according to Peter Leslie (1980: 377), that it would still have an impact on higher education, even under EPF as the federal government “seems to have expected to have a hand in certain aspects of provincial policy regarding post-secondary education, in return for its rather significant cash outlay”.

To support his argument, Leslie also refers to a statement made by the Prime Minister of that time, Pierre Trudeau. And indeed, Trudeau (1977: 257) argued in 1976 at the Conference of Federal and Provincial First Ministers:

So far as post-secondary education is concerned, the federal government has a common interest with the provinces in achieving certain broad objectives. Indeed, it is in recognition and support of this common interest that the federal government believes it should continue to make contributions to post-secondary education costs.

More generally he also appealed to the provinces (Ibid.: 258):

The Government believes that the Established Program Financing Proposals will provide the basis for useful discussions between

⁴⁷ There were, in contrast, some conditions attached to the payments of the other two programs.

governments, and hopes that it will constitute an important step forward in federal-provincial co-operation to the advantage of the people of Canada.

To put the common interest into practice, Trudeau suggested “[t]he establishment of a continuing federal-provincial forum at the ministerial level [that], in the Government’s view, would provide an essential vehicle for realizing common objectives in this field” (Ibid.: 257). Although some progress had been made in this direction⁴⁸, Trudeau’s goal remained unfulfilled. The problem was that under EPF Ottawa might have indirectly supported programs, but it did not bear direct responsibility for them.⁴⁹ The provinces therefore resisted the creation of a new intergovernmental forum based on the existing CMEC:

The CMEC quite simply, and on occasion rudely, rebuffed any and every attempt by the Secretary of State to transform that body into a federal-provincial forum for the consideration of national post-secondary policy issues. Federal ministers and officials were invited to meetings of the CMEC, but only to discuss specific items and only for the duration of those specific discussions.
(Cameron, 1991: 235)

Not only was no forum created, EPF – as a result of the unconditional transfers – offered the provinces the opportunity to free themselves even further from attempts by Ottawa to influence their higher education policy. On top of that and because of the lack of conditions, the provinces saw no need to spend the share of EPF earmarked for PSE on the sector.

A second federal assumption was also to prove ill-founded. According to Cameron (1991: 234), Ottawa assumed “that provincial expenditures on postsecondary education would increase roughly in proportion to increases in federal transfers”. This proved to be unrealistic right from the beginning of the program. Leslie, for example, calculated (1980: 379):

Between the fiscal years 1978 (the first EPF year) and 1980, seven of the provinces reduced their own (current-dollar, not constant-dollar) contributions out of the provincial tax revenues, to the support of post-secondary institutions. This statement is based on my calculation of the “net cost to the province” when federal cash

⁴⁸ see Cameron, 1991: 217-8

⁴⁹ This obviously does not exclude other financial federal activities in the field of research and student assistance, which will be dealt with later.

transfers are subtracted from provincial operating grants to institutions.

This tendency itself does not say anything about how much the federal transfers ‘dedicated’ for PSE contributed to the operating costs of universities. Leslie looked into that as well and came to different results, depending on whether tax points are still considered as representing federal transfers (1981: 196):

If they [tax points] *are* regarded as part of the transfer, as Ottawa insists, then in fiscal 1980 the federal government contributed – depending on the province – between 120% and 57% of the cost of making operating grants to universities and other institutions at the post-secondary level. The cash payment alone contributed between 72% and 25%.

Whatever way one calculates the figures, the federal contributions were quite significant. And they were growing all the time as “the trend has been for the federal grants to cover an increasingly large proportion of the provincial operating subsidies” (Ibid.).⁵⁰ This fact did not appear to be public knowledge as the federal contributions were not paid to the universities (and other PSE institutions) directly. Both consequences, Leslie (Ibid.) assumes, were realised in Ottawa in the sense that “provinces [were] not pulling their weight in post-secondary education, while getting all the political credit”.

Despite the ‘hopes’ outlined by Trudeau before the introduction of EPF, it appeared that the federal involvement in higher education moved in the opposite direction: no policy control and no credit for its (large) share of financial contributions. To at least counteract the lack of political credit received for its financial commitment, Ottawa not only pointed at this aspect but also emphasised the inclusion of tax points when calculating its fiscal commitment (which, of course, made the contribution appear even larger).

The problem with the view of transferred tax points as still being considered federal has been outlined above in connection with the earlier transfers of tax points. EPF brought the topic back on the agenda without really changing anything. For Leslie (1980: 159) it was therefore clear already a few years after the

⁵⁰ It was a general trend but there was an exception: Quebec. According to Decore and Pannu (1986: 43-7), applying figures from Statistics Canada, Quebec was the only province where the federal share of expenditures for PSE actually had fallen after the introduction of EPF and was the only one where the federal share in 1977-78 was below 50 per cent.

introduction of EPF: “The tax points are clearly provincial property now ...”. In a different approach, Stefan Dupré even denies strongly that tax points represent a transfer at all (1994: 250):

To me, it is crystal clear that the tax points do not represent a transfer. The tax points historically vacated by the federal government do not yield provincial revenue. What yields provincial revenue is the personal income taxes that provinces levy as a matter of their own political responsibility. Had the federal government chosen to continue to levy higher personal income taxes as a matter of its own responsibility and then transferred the yield of whatever tax points it wished to forego to the provinces in cash, the notion of a tax point transfer would have retained its relevance. As matters turned out, the assertion that the tax points represent a transfer from the federal government comes at the top of my list of the *Big Lies* of Canadian public finance. (own emphasis)

Considering these views, Ottawa certainly had problems getting credit for their part of the agreement with the provinces. Another effect of the dispute over what and how much constitutes a federal fiscal contribution was that figures produced in connection with the funding of higher education were contested. That situation was made even more complicated by the nature of the block transfers. Michael Skolnik (1992: 19) argued: “Because the grants are not tied to post-secondary education, it is impossible to produce definite estimates of the federal contributions for post-secondary education”.

Still, attempts to estimate federal contributions have been made (see above).⁵¹ To generally deny their reliability would be wrong. It is, however, necessary to keep in mind the problematic nature of these figures. Sometimes they are best seen as only expressing a tendency (which can vary, depending on the perspective).

When it comes to such a tendency, there seems to be widespread agreement in the literature about the funding commitment of the provinces after the introduction of EPF. The figures produced by Peter Leslie already indicated the

⁵¹ Skolnik also does not totally reject any estimates but he points at the fact that they are often contested (see Skolnik, 1992: 19). It is not unusual that figures are contested especially when they are used to support a controversial argument related to a more complex topic. And it also happens that one side provides figures to make an argument and the opposing side produces different figures, seemingly using a similar basis, to produce a counter argument. To look at all the different figures related to the financing of higher education in Canada would lead to far away here.

general direction: downwards.⁵² Since the provinces felt that they could do whatever they wanted with the EPF money, “many provinces gave preferential allocations to health care which had a higher level of political priority than that of higher education” (Naimark, 1987: 5).

Was the federal government caught by surprise by this attitude? Not entirely according to the bureaucrat Stewart Goodings who has worked on both sides of the intergovernmental field. He argues (1992: 41) that Ottawa, before the start of EPF, was aware of the possibility that provinces would use the money quite flexibly:

What happened was not only predictable, it was predicted. Provinces were freed from the artificial inducement of cost sharing and chose to shift their resources, including EPF revenues, to suit their changing priorities. The federal government was well aware of this likely sequence of events and even encouraged it at the time of proposing EPF.

Cameron (1991: 234-5) points in the same direction by arguing that there was a provision in the EPF agreement that allowed provinces, which saved money by exercising restraint because of fiscal pressure, to use the savings for whatever they thought was useful (Ibid.: 235):

For its part, the federal government, ... could not be blamed for seeing this as the purposeful diversion of federal transfers to other provincial purposes. This possibility was clearly envisaged in the original design of EPF, and the federal government had explicitly accepted that any savings generated by reduced provincial spending would accrue entirely to the provinces.

Considering this information, why then did “[t]he federal government [complain] about the approach to funding universities taken by the provinces under EPF” (Naimark, 1987: 5)? And why did Ottawa argue “that the provinces were not living up to the spirit of the legislation by reducing the relative share of support being given to universities” (Ibid.)? One answer might be that the federal planners did not expect the provinces to save so much the first few years but also in the years to come, and thereby take advantage of the EPF provision. The provinces, on

⁵² Despite this general trend *after* the introduction of EPF, it is worth noting that at least at Ontario universities ‘real operating grants per student’ had fallen already earlier (1973/74 and 1974/75) although only temporarily (Slaughter & Skolnik, 1987: 130-1).

the other hand, rejected the federal complaint and argued “that after all it was the basic intent of EPF to permit them to adjust relative expenditures according to provincial priorities” (Ibid.). In an even clearer statement, the CMEC stated that “EPF is a fiscal transfer to the provinces *in respect* of health and postsecondary education, not *for* health and *for* postsecondary education” (cited in Cameron, 1992: 55). An economic recession at the beginning of the 1980s probably made it easier for the provinces to underline their argument as there was even more need – and justification – to use their money more flexibly and thereby invest less in higher education. In any case, the hopes expressed by Trudeau before the start of EPF seemed to have failed already in the first few years of EPF. And it was also clear that this outcome could hardly be reversed.

Not all federal expectations have failed to be met. After all, the main reason for the new EPF agreement was to get out of the spiralling costs of the unpredictable cost sharing programs. In this sense, EPF was successful. Ottawa was now able to calculate its transfers on a much more stable basis and was therefore more in control of its expenditures and also more in control about calculating expenditures for the following years. Given the constitutional priority of the provinces, there was not really more it could ask for – at least not when it came to general operating costs of higher education institutions.

In this light, EPF might still not have looked like a perfect agreement for the federal government, but it was nonetheless better off than the higher education institutions, and especially the universities, which seemed to have gained nothing. They even lost out on the new deal, both financially and in terms of influence on federal higher education policy. The situation for the universities was worsened by an (again) unpredicted growth in enrolment figures. Governments, universities and academics writing about higher education were actually expecting declining enrolments.⁵³ As a consequence, universities were – not for the first time – especially hard hit by the increasing student numbers. Not only did they have to accommodate the ‘additional’ students, but they also had to do this in a financially more competitive and restrained environment. The result of these conditions was that real operating grants per student started to decline in 1977/78 (Skolnik, 1992:

⁵³ For a more detailed account and examples of the ‘failed projections’ and the actual development of enrolments, see: Leslie, 1981: 192-3; Decore and Pannu, 1986: 32-5; Cameron, 1991: 227-30.

19-20) with the trend to be reversed only many years later (see below). Arnold Naimark offers a summary of the dilemma of Canadian universities (until 1987 but also including the years before EPF) as a result of the financial situation and its implications (1987: 6)

All in all, the 1970s proved to be an extremely difficult decade for Canada's universities. Staffing levels declined by about 10 percent and the purchasing power of non-salary budgets was halved. Turnover of academic staff slowed and openings for new faculty members dried up. In the early 1980's grants to universities were at first sufficient to halt the decline in purchasing power but this was offset by the fact that enrolment which, as you will recall the experts said would decrease, instead increased sharply and reached its current record levels. This has meant that the amount of funding available per student has continued to decrease in real terms.

The universities found it hard to accept this new situation. The time of the direct federal grants to the universities had already ended earlier with the shared cost program, but the fears of the university sector at that time that the system of federal grants to the provinces would undermine their autonomy were weakened by the increased revenues. The EPF program went a step further by leaving it to the provinces to determine how much money they would give to the universities. This marked another step in the withdrawal of the federal 'paymaster' and had, according to H. Blair Neatby (1987: 31-3), critical consequences for the universities. Neatby, although recognising the difficult situation of the universities, does not seem to be sympathetic towards the attempts of some university members to save (financial) privileges by giving them clear advice in his 1987 article (Ibid.: 32):

The "Established Programs Financing" was a ... serious blow to the universities because, in effect, it meant the end of federal contributions to their operating costs. Indeed university administrators and academics are not yet reconciled to the new situation. They regularly calculate what portion of the federal transfer would have been attributed to post-secondary education under the previous arrangement and vociferously protest if the provincial contributions do match this sum. They are wasting their time. Operating revenues now come out of the provincial budgets and have done so since 1977.

It is almost self evident from this description that the time of the special relationship between the federal authorities and the AUCC and its forerunners was

long gone. Hence, the AUCC did not take part in the intergovernmental negotiations at the forefront of the EPF deal. Attempts by the AUCC to exercise some influence by offering their assistance for certain questions were clearly rejected by Trudeau (Cameron, 1991: 217-9).

At the end, or rather at the beginning of EPF, the universities were left without any special relationship with the federal government, with less money available per student but with a still expanding higher education system. EPF also meant for the universities that the advantage of having two paymasters was diminishing. At least when it came to the general operating grants the universities became more and more dependent on the provincial governments and therefore more vulnerable (Prichard, 2000: 17). From this perspective, the move of the provinces towards more policy autonomy (and thereby towards a more interstate characterisation) fundamentally weakened at least one non-governmental actor in the policy field. This might indicate that higher education more generally is less favourable regarding external actors as they lack the opportunity of playing one governmental level off against the other for their own purpose. External institutions and groups, for example, can still try to influence the provincial policies. Yet, they cannot strengthen their position fundamentally by supporting the federal government if Ottawa has hardly any policy impact. Policy support and help from other actors simply does not have the same value for the governmental levels as in a situation of policy confrontations based on shared competence.

5.3. Responses and changes

The universities were probably not satisfied about the new roles taken by the two levels of governments and Ottawa did not agree with the provincial response towards EPF. The provinces, however, did not break any legal requirements. They only used the freedom and the flexibility granted by the new agreement. But it was this reaction to the “guaranteed, unconditional federal transfers” that, on the federal side, “created a climate of frustration and mistrust and a commitment to finding ways of changing the system” (Cutt and Dobell, 1992: 18).

Although the federal government was financially on more stable grounds than before with cost sharing, it was obvious that it had lost heavily in terms of

policy influence. As a result of this situation and considering the problematic budgetary conditions, Cameron (1991: 235-8) identified two alternative approaches for Ottawa:

- 1) As there was no particular purpose associated anymore with the federal transfers, it was more tempting to cut them back and use them as a source for savings.
- 2) It could be attempted to reverse the process and reintroduce the federal policy influence back into the intergovernmental arrangement.

Both alternative approaches had supporters in the federal government. Within it, those actors which were principally responsible and which could clearly be linked to one of the approaches were the Finance Department (first alternative) and the Secretary of State (for the latter one). However, Cameron points out that there were more federal actors involved, which did not help to clarify the situation (Ibid.: 236):

At the same time, the participation of other departments and ministries, along with task forces, commissions, committees and advisers at times gave the impression of federal policymakers galloping off in all directions.

The only thing which seemed to be clear from a federal perspective was the view that changes had to be made. And that was made clear already shortly after the introduction of EPF and long before the guaranteed five year running period was over.

And it also became clear which alternative approach Ottawa would follow: it wanted to reduce its financial commitment under EPF. The second option outlined above would probably have been doomed to fail anyway. When looking at the general development of the sector it appears highly unlikely that the provinces would have accepted a reintroduction of federal policy influence.

In 1980, the minister of finance announced that he would expect to achieve savings from a reduction in the transfers to the provinces. Following the statement, several parliamentary task forces looked at the issues. Not all recommendations of these task forces were accepted by the federal government.⁵⁴ Some of the ideas,

⁵⁴ For more details on these task forces and their proposals, see: Cameron, 1991: 237-40.

though, in one form or the other, made it into the budget proposal of 1981. For example, two task forces came to the conclusion that there was more need to invest in labour market training than in university education. Hence, Ottawa demanded that the provinces should readjust their spending priorities and consult with the federal authorities. In case of failure to fulfil these demands, Ottawa threatened to freeze EPF payments. In any case, Ottawa suggested changes to EPF which were legislated in 1982 (Cameron, 1991: 237-9; 1997: 18-9).⁵⁵

The changes made had the effect of simplifying the original EPF agreement. This was achieved by strictly applying an equal per capita basis for the transfers. This led to the elimination of the 'levelling adjustment payment' and of the 'transitional adjustment payment' schemes. The formula for calculating the provincial entitlements remained the same. This time, however, the resulting cash grants were simply the difference between the annual provincial revenues from the transferred tax points (including associated equalisation) and the calculated entitlement. The changes actually resulted in a loss only for Alberta. Ottawa in contrast gained in at least two ways. On the one hand, the new formula made it easier to cap spending, which Ottawa was quick in applying as will be shown below. On the other hand, by emphasising the role of the earlier transferred tax points, the economist Tracy R. Snoddon (1998: 51) points out that "the federal government treated the tax point transfer as if it was, in effect, transferred anew each year", a move which is only logical if one considers the federal view on this. However, for Snoddon "[m]uch of the provincial discontent over fiscal arrangements has been rooted in these changes" (Ibid.).

The modifications made to EPF had another effect that did not please the provinces. The new arrangement resulted in the abolition of the revenue guarantee provision which represented two tax points (one in the form of a cash transfer). A 'simple' return of the tax points "would have been beyond the reach of the federal government to obtain unilaterally" (Cameron, 1997: 19) but the adjustments to EPF had the same effect. The move was met by strong provincial opposition, but they could not stop it. They also could not stop the next move of the federal

⁵⁵ The following paragraphs dealing with the changes to EPF is based on: Wu, 1985: 13-4; Cameron, 1991: 237-40; 1997: 18-20; Snoddon, 1998: 50-1.

government. Shortly after the introduction of the revised EPF formula, Ottawa started to apply the first of a series of caps to the cash transfers.⁵⁶

Under the so called '6 and 5' program, Ottawa introduced anti-inflation measures in 1982 to limit increases in the wages of all civil servants and employees of the Crown corporations to six per cent in 1982-83 and five per cent in 1983-84. The same measure was announced in 1983 for the provincial cash entitlements under EPF – but *only* for the PSE share and not for health. This resulted in a limit to the growth of cash transfers under EPF for PSE, to six per cent in 1983-84 and to five per cent in 1984-85 (Wu, 1985: 14).⁵⁷

The consequence of applying these changes only to the PSE share was the need for further modifications to the legislation. The amendments, as part of an all-party compromise, were made in 1984.⁵⁸ It led to a formal separation of transfers for health and PSE, applying the original split of 32.1 per cent (PSE) and 67.9 per cent (health), which was already recommended in 1981 by the Parliamentary Task Force on Federal-Provincial Fiscal Arrangements. This split represented not only a formal change. Together with an annual report which the Secretary of State was required to make to Parliament (outlining the federal cash contributions and total equalised tax transfers for PSE to each province together with an outline of the expenditures of each province for PSE) it implied a (re)introduction of conditionality for the transfers. And Ottawa did, in its reports, annually emphasise the federal view of transferred tax points representing federal grants. (Cameron, 1991: 239-40; Cutt and Dobell, 1992: 18-9). The intention was obvious. Even if the transfers were legally still unconditional, it was a “clear suggestion ... that the provincial governments were morally, if not yet legally, obliged to spend the

⁵⁶ It is not possible here to look in depth at the Canadian economic situation or indeed the state of the global economy at that time (generally, it was a time of crisis). However, it is necessary to remember, that the federal government was under economic pressure and its action was sometimes more driven by such a factor than by attempts to shift the balance in intergovernmental relations (see for example: Decore and Pannu, 1986: 28).

⁵⁷ However, as the limits were applied to the GNP escalator and as the provincial population continued to grow, the actual increases were slightly higher than provided for under the '6 and 5' program (Cameron, 1991: 284, footnote 30).

⁵⁸ The changes to the legislation of EPF also led to it being re-titled: Federal Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1977 (Hum and Strain, 1988: 25). However, in the literature it still seems to be more common to refer to it as EPF.

federal transfers, including the proceeds of the transferred tax room, on postsecondary education” (Cameron, 1991: 240). It comes as no surprise that the provinces did not appreciate such attempts at putting ‘moral’ pressure on them. As a result, intergovernmental relations became more difficult.

Despite the provincial disapproval, the changes to EPF also did not entirely meet Ottawa’s expectations. A former federal deputy minister, A. W. Johnson, was therefore asked to prepare a report on the federal role in PSE (including research) and outline alternatives to EPF. His report, entitled *Giving Greater Point and purpose to the Federal Financing of Postsecondary Education and Research in Canada*, was finally published in February 1985. One of his main focuses in the report was on the increasing federal share of the provincial grants to universities and colleges. He calculated that this share had risen from 69 per cent in 1977-78 to 80 per cent in 1984-85 and that in five provinces the federal transfers represented more than 100 per cent of the provincial grants to universities and colleges. The basic idea of his solution to this ‘problem’ was to make the EPF payments conditional again and to limit annual increases to the increase in the expenditures of the provinces on PSE (Watts, 1985: 1-2; Cameron, 1997: 20). By applying this modification, Ottawa would ‘stay on the field as a major player’ and thereby reject the alternative of “getting off the field as a major player” (Watts, 1985: 3).

By the time the report was published, a conservative federal government under Brian Mulroney had taken over from the Liberals. The first budget in May 1985 under the new government effectively marked the end of Johnson’s proposal for bringing the federal player back into the game again. The new Finance Minister, trying to save on federal expenditures, announced instead a further cap on federal cash transfers. Under the new formula, the per capita cash entitlement would increase annually at a rate of GNP growth minus two per cent. As the entitlement would now grow at less than the rate of GNP growth, it could be safely assumed that tax revenues would increase faster than the entitlements which eventually would lead to a situation where there was no entitlement for cash anymore. Other steps were to follow, which further accelerated the gradual disappearance of a cash transfer under EPF for PSE (Cameron, 1997: 20-1).

There were more reports to come which dealt critically with the EPF funding arrangement: the Macdonald commission report in 1985, the report of the

Nielson Task Force education and research study team in 1986, and the report of the Senate standing committee on national finance in 1987. Most strikingly, the Senate report not only outlined different options, but made the recommendation of terminating the EPF payments for PSE altogether and replacing it with a further transfer of tax points (Cutt and Dobell, 1992: 18-9) – a step which appeared to be logical when considering the previous developments.

It was not only the lack of connection between the transfers and the programs they were suppose to finance which made the Senate committee take this point of view. It was furthermore the potentially damaging effect of EPF on federal-provincial relations – where each level blamed the other for insufficient funding for PSE – that affected the Committee's opinion. It is not difficult to understand why there was a potential for conflict. Ottawa demanded that the PSE portion of EPF (whatever one thinks it consists of) is spent for that purpose (without any legal requirement) while on the other hand it constantly reduced its contributions under the program which the provinces were quick to point out. That again led to the federal government response that it is not spent on education anyway (Cameron, 1991: 275-6).

In a journal article Jean-Yves Desrosiers (1986), a bureaucrat and economist from the Quebec Ministry of Higher Education and Science, disputes this accusation. Placing his argument within a much broader context Desrosiers writes (Ibid.: 11):

An analysis of the evolution of provincial funding of the entire sector of postsecondary education clearly reveals that the provinces have invested considerable resources in this sector, even if the relative growth rates have varied greatly from one year to another, for the past twenty years. Even today, they have maintained their contribution in this sector, and there is nothing to indicate that they will withdraw it.

Desrosiers, who appears to defend provincial positions more generally and not only the position of the Quebec government, was especially critical of those who, because of the assumed lack of funding commitment on the provincial side, wanted to see the transfers to the provinces cut in order to finance direct contributions to higher education institutions. He calls them intervenors and accuses them of having

clearly not understood that any decrease in transfers will inevitably make itself felt by a lowering of provincial contributions toward postsecondary education. ... the “new” money which will thus be forthcoming from Ottawa will only serve to compensate for the losses incurred by the institutions at the provincial level. Furthermore, there is no guarantee whatsoever that the “new” funds invested will return in the same way to the postsecondary institutions. Each “master” will want to impose his own conditions. Answering these real questions will bring us closer to reality. (Ibid.)

Besides this question of the source of funding, Desrosiers ends his argument by relating it to the generally negative economic situation and its implications. He categorically and emphatically denies that the source of funding makes a difference to the amount of money available and to the chance of solving the problems (Ibid.: 11-2):

It is foolish to delude oneself into believing that the governments will yet again add substantial amounts, or to think that changing the source of funds (federal instead of provincial) will increase the level of resources and lead to better results. How could anyone be convinced that the only real problem is one of financing, and believe that miracle solutions will come from outside of the postsecondary institutions?

It has been said above that there was a common theme amongst the two levels of government despite their mutual recriminations – the necessity of dealing with restricted revenues at that time. It is obviously difficult to sell the need to save money to the voters without getting accused of any failures that made this step necessary. Blaming another actor involved might help to avoid getting all the blame for decisions that restrict expenditures. In this light Desrosiers not only seems to defend the provinces when he argues (Ibid.: 12) that “[w]e can certainly ask governments to make their budgetary and financial decisions in a transparent and democratic framework, although this will not prevent them from having to make difficult choices in a context of major deficits”.

5.4. Improved federal-provincial relations? The National Forum and its aftermath

It was not only the overall economic situation that caused difficulties. It also became apparent that there was a lack of communication about higher education policy in the relationship between the provinces and Ottawa. The implications of this lack of communication were obvious: problems, conflicts and a lack of coordination of higher education policy. The new federal government was certainly aware of this and although the initial action of reducing its financial commitment under EPF did not sound promising, there were signs of a more constructive approach by Ottawa. This led finally in the October 1986 throne speech to the announcement of the federal initiative of organising a national forum on PSE. This move was first met by opposition by most of the provincial ministers. However, they were not able to resist the idea as they faced the possibility of being left behind and leaving the stage to Ottawa. Hence, the CMEC eventually even agreed to organise the forum together with the Secretary of State of Canada. It finally took place in October 1987 in Saskatoon as the National Forum on Post-Secondary Education. For two and a half days, it brought together about 550 participants not only from both orders of government but also from other interested parties to discuss important issues in PSE (Skolnik, 1992: 20-1; Cameron, 1991: 276-7).

In the forefront of the forum, Stewart Goodings returned to Ottawa after working for nine years for the government of British Columbia (see above). His initial optimism towards working within federal post-secondary education policy was soon muted after arrival. His observations can be seen as a good example of the underlying communication problem of federal-provincial PSE policy (Goodings: 38):

It came as a bit of a surprise, ... to learn that federal and provincial governments did not meet routinely to discuss important educational issues, did not prepare joint background papers, and only rarely agreed to talk about the same topics on the same day in the same room.

However, although he perceived this as a shock, things started to look better to his mind as the co-operation between the governments improved as part of the preparation process for the National Forum.

In the end the forum was a rather remarkable event. Its outcomes, though, were more modest. Cutt and Dobell (1992: 19) summarise the results of the forum as follows:

[T]here was broad agreement on the need for a continuing partnership of the federal and provincial governments in addressing post-secondary education, but also an unwillingness on the part of the federal government to increase its contributions without some role in determining how the money should be spent and some accountability for that spending.

Specific outcomes or great solutions were not the aim of the forum anyway, according to Goodings (1992: 38). He argues that the forum was “not designed to generate a consensus”. Its purpose was rather to “generate pretty widespread agreement on the need to raise the profile of PSE on the public agenda, on the value of more and better research on higher education, and”, emphasising the same point as Cutt and Dobell, “on the critical importance of better inter-governmental collaboration” (Ibid.). It was especially the last point that needed some attention. Goodings described the negative intergovernmental higher education working environment before the forum took place. As someone who is directly involved as practitioner, he is probably well suited to judge on whether the “forum broke the federal-provincial ice” (Ibid.: 44):

Before the forum, we couldn't even talk seriously about working jointly on the issues. Now we are gradually finding ways to view things from a pan-Canadian perspective without threatening the legitimate role of the provinces in education.

Yet, while trust is important, this statement does not reflect all aspects of higher education policy as Goodings realises himself: “The “spirit of Saskatoon” was infectious, but a federal election [November 1988, though providing no change of government] soon intervened. By the time that was over, people and priorities had changed for both orders of government” (Ibid.: 38). Nevertheless, there were, as implied by Goodings, some promising signs as result of the forum. In 1988, the CMEC finally accepted to establish a ‘Ministerial Postsecondary Committee’

which would consult with the federal authorities on certain aspect of PSE. In 1989, another move towards more federal-provincial co-ordination was less successful. A national task force on human resource development, was ended by the failure of the Meech Lake Accord (Cameron, 1997: 20-4).

Despite such positive steps, the federal government went on reducing its financial contributions under EPF. The process of eventually disappearing cash transfers was further accelerated. In the budget of 1989, the cash growth was reduced by another percentage point to GNP minus 3 per cent and in the 1990 budget the cash transfers were frozen. This was a clear indication of the federal government withdrawing from the core funding of universities (Ibid.: 20-1). And it imposed more financial pressures on the provinces. It also offered them a line of 'defence' against the accusations of not spending enough on PSE.

In a discussion paper prepared for the representative of the provinces, the CMEC, David A. Wolfe (1998) indirectly outlined such a defence line. When talking about the spending cuts under EPF of the various federal governments in the 1980s, he argues: "While the provinces compensated for some of this reduction with their own revenues, part of the reduction was inevitably passed on to the PSE sector itself" (Ibid.: 6).

There was still also another (old) problem according to Goodings. Despite the positive aspect of the National Forum that had led to more trust amongst the two levels of government, the budget decision and the general fiscal situation of the universities represented a potential for a crisis. And it revealed the communication problem again (Goodings, 1992: 38):

A crisis seemed to be occurring, or about to occur, but we talked to the universities and colleges, they talked to the provinces, and the provinces occasionally talked to us, but we never all talked together.

This sounded as if it would have been useful to have another kind of National Forum. Skolnik (1992: 21) identified such a demand at the time amongst the members of the higher education community as there was the "perception ... that some type of national agency or permanent forum is needed to address pressing national issues in post-secondary education."

Before there was any major change in the EPF system, there was another national election in 1993 with the Liberals coming back to power under the new Prime Minister Jean Chrétien. Initially this had no major impact on the higher education policy. However, the EPF agreement was still under pressure as the federal fiscal crisis of the early 1990s focused on it again as a potential source for further savings. After all, EPF as a whole still represented one of the largest federal expenditures. As a consequence, the new federal government continued with the freeze on EPF until the fiscal year 1995-96 when the escalator reverted to GDP minus three per cent.

A first attempt to review the federal policy more generally led to the Axworthy Green Paper, which was released in 1994. It suggested the abolition of EPF altogether, as the cash payments would disappear anyway, and replace it with a loan scheme for students, thereby shifting resources from one field of federal support (universities) to another (student aid). The paper did not receive great support and it “was almost completely unsuccessful with respect to higher education” (Prichard, 2000: 18). Yet, its achievement was, that “[i]t did succeed ... in uniting virtually all interested parties in opposition to its proposals” (Ibid.).⁵⁹ It was obvious that the paper did not have any chance for realisation and that was manifested by the 1995 budget of the Finance Minister Paul Martin which introduced a new program replacing EPF: The Canada Health and Social Transfer or CHST (Prichard, 2000: 17-9; Snoddon, 1998: 68).

Before focusing on this new program, it is necessary, in order to get a more complete picture of federal policy involvement, to look at the development of other aspects of higher education in the period since 1977. The main emphasis will thereby be on research.

5.5. A different picture: Research as an increasingly important element of federal higher education policy

Research, as a more ‘quiet’ part of federal higher education policy, was also, and still is, in need of more co-ordination. In order to achieve this goal, the federal Ministry of State for Science and Technology together with the CMEC,

⁵⁹ For detailed explanations for the papers failure, see Prichard, 2000: 18-9.

established a task force on research in 1974, which eventually led to the creation in of the more formal Canadian Committee on Financing University Research (CCFUR) in the same year as EPF. It was made up of ten representatives from the federal authorities and ten from provincial governments (five of whom were from universities). It looked like a promising line up for improving this specific aspect of intergovernmental policy co-ordination. However, already by 1980, it had stopped meeting altogether (Cameron, 1991: 217-8, 278). Another move by the federal government to reorganise its research policy had a more lasting outcome.

The 1969 Macdonald study (see above) dealt not only with the question of the indirect cost of research, but also made recommendations about restructuring the funding councils. The recommendations were also integrated into the second volume of the Lamontagne report. Ottawa finally acted on the proposals although it only led to the recommended restructuring of the funding councils into a three-council structure in 1976.⁶⁰ The new structure consisted of the new Social Sciences and Humanities Research Council (SSHRC), the new Natural Sciences and Engineering Research Council (NSERC) and the expanded Medical Research Council (MRC) (Ibid.: 219). Their general internal organisation has been described by an ‘insider’, Robert Hanson (1994: 109) of the SSHRC, in the following way, emphasising a certain independence of the councils:

Each of the three organisations is guided by a government-appointed council, but operates at “arm’s length” to the government. That is each Council devises and administers its own funding programs and the President of each organisation has ultimate authority for approval of individual grants and fellowships from his or her organisation.

The councils, however, still were not able to cover the indirect costs of their sponsored research, despite demands by a majority of actors involved in higher education.

The subject of indirect costs, which has already been mentioned earlier, remained a ‘popular’ topic. It also led to one of the more important studies

⁶⁰ Macdonald and Lamontagne went further in their recommendations but financial restrictions left the federal government with little options (Cameron, 1991: 219).

sponsored by the CCFUR.⁶¹ Furthermore, the Johnson report of 1985, too, dealt with the issue by recommending the coverage of the indirect cost of research as part of the strategy to give more meaning to federal higher education funding again. The Senate Committee on national finance followed this route in 1987 and recommended strongly that the budgets of the funding councils should be extended in order to cover the indirect costs. However, not much had changed over the years in this regard. Ottawa was arguing that the general transfers for universities under EPF partly already covered indirect costs. Increased or full coverage of indirect costs, especially in a difficult economic environment, would therefore, as emphasised by Cutt and Dobell (1992: 19), have a negative side effect. This was in particular highlighted in the respective reports in 1985 of Macdonald and Johnson which “noted that increased federal funding for sponsored research would probably have to be financed at least partly at the expense of general core funding through EPF grants” (Cutt and Dobell, *Ibid.*). Furthermore, the “diversion of federal support from core funding grants to sponsored research would represent essentially the functional earmarking of a larger portion of federal contributions to post-secondary education” (*Ibid.*: 20).

Would this not have been an option for the federal government? After all, it wanted its PSE share under EPF to be spent on PSE. Shifting its indirect cash contribution from operating grants of universities (tax points could not have been part of it) to a direct and more specific funding of all research costs, might have offered the solution to this problem. Yet, to change the system completely within a short period of time would have caused difficulties without even considering the opinion of the provinces towards such a scenario. It would in any event have required a high degree of co-ordination between the two levels of government to avoid scenarios like the one described by Naimark (1987: 7) in terms reminiscent of Cutt and Dobell:

When the federal government decided to increase its support for university research, it found the money by restraining fiscal transfers to the provinces, which in turn restrained general operating

⁶¹ The actual study was published in 1982 by the Canadian Association of University Business Officers and was entitled ‘Report of the Study on the Costs of University Research’ (Cameron, 1991: 278).

grants to the universities, thereby weakening the ability of universities to provide appropriate indirect support for research.

Simply including the indirect costs in federal transfers would not have solved the underlying problem of what Naimark called the “debilitating lack of harmonization of federal and provincial policies” (Ibid.).

Another difficulty of an abrupt change in federal funding policy might have been similar to the case of the former cost sharing program. It could have led to an uneven distribution of the funding (unless there would have been some provision made for that) as research activities varied across the provinces and amongst the universities. Nevertheless, there appeared to be a shift in federal higher education policy towards the support of research in general even if the problem of indirect costs as such has not been dealt with adequately.

One of the signs that indicated such a shift was a program announced in the 1986 budget. The ‘matching fund’ program started in 1987 and was aimed at getting additional funding from the private industry. To achieve this goal, the funding councils were offered additional resources (\$369 million) to match contributions from the private sector. The resources were increased over the next four years to \$380 million but this still would have not been enough if all the funding that qualified for the program would have been ‘matched’. The rules for the program were simply too loose. Because of that, there were actually doubts whether the program attracted any additional funding from the private sector at all (Cameron, 1997: 21).

More successful was another move by Ottawa to raise its profile in research funding. Following the examples of Ontario and Quebec, Ottawa created the ‘Networks of Centres of Excellence’ (NCE) in 1988 as a result of recommendations by the National Advisory Board on Science and Technology⁶². The Board initiated a research program with a funding of \$1.3 billion⁶³ over a five year period. The whole sum was a result of various projects, but there were three

⁶² It was established only a year (1987) before the announcement of the research initiative and was “nominally chaired by the prime minister and made up of cabinet ministers, officials, the heads of the granting councils, and representatives of universities and the private sector” (Cameron, 1997: 21).

⁶³ In comparison, the ‘regular’ federal support for research in 1987-88 was \$561 million and \$594 million in 1988-89 (Bélanger and Lacroix, 1992: 69).

major components: \$200 million was additional funding provided to the funding councils, \$80 million was for scholarships for science and engineering students and \$240 million was for the NCE. The NCE were designed on the model of Ontario's centres of excellence program and supported research projects that were first chosen by a panel of international scholars and then further evaluated by a Canadian advisory committee. At the end fifteen projects were funded (announced in 1989) involving over 30 universities and researchers not only from universities but also from public agencies and private firms, thereby justifying the title 'Networks' (Wolfe, 1998: 6; Cameron, 1997: 21-2).

The NCE program was (and is) quite successful, especially in terms of federal-provincial relations as Cameron (2001: 150) points out. One of the reasons for that is that the NCE "have come to channel federal support for research in ways that are consistent with provincial priorities and jurisdiction". He goes on to explain (Ibid.):

Spearheaded significantly by Quebec, a pattern quickly emerged in which provincial governments cleverly used their more limited research dollars not to compete with Ottawa but to invest in research infrastructure, to build research teams and to generate competitive proposals, all of which enable their universities to increase their share of federal dollars. That is an example of federalism that works.

Wolfe, in his paper for the CMEC, does not seem to be so sure about that. Although he does not deny the academic value of the resulting research, he argues that NCE did not fill a gap but rather represent a further increased overlap with provincial research policy efforts. The provinces stepped in earlier to fill a perceived gap of targeted research by programs such as the *Action Structurante* in Québec or indeed, Ontario's Centres of Excellence. Although confusing from a policy perspective, he still identifies some clarity in this overlap as it "is a classic example of the kind of spillovers from one level of government to the other that Canadian federalism has witnessed for many years" (Wolfe, 1998: 6).

A further move by Ottawa to raise its profile in research was expressed by a reorganisation of the federal bureaucracy. This led in 1987 to the announcement of the merger of the Ministry of State for Science and Technology with the industry branch of the former Department of Regional Industrial Expansion which

eventually resulted in the new Department of Industry, Science, and Technology. In the eyes of Cameron (1997: 22) this represented “in many ways ... the culmination of a new federal emphasis on research, designed to harness it to the agenda of enhanced economic competitiveness”.

The potential economic benefit of scientific research was, and still is, one of the major driving forces behind the involvement of the federal government in research. The disputed and controversial EPF program might have contributed to more commitment towards research on Ottawa’s side. Yet, in financial terms the direct funding of research was still relatively small in comparison with the transfers under EPF.⁶⁴ Nevertheless, in comparison with the previous cost sharing agreement (see above), there was certainly a growth of activity within the field of federal research policy.

Concluding remarks on EPF

The period described in this section was the period of EPF. It dominated, though not in a positive sense, federal higher education policy. Federal engagement in the field of research was not able yet to act as a counterweight and strengthen federal influence on higher education.

There seems to be agreement in the literature that, especially from a federal perspective, EPF was a clear failure. The law and public policy scholar, J. Robert S. Prichard (2000: 15-6), a former president of the University of Toronto, also takes this position and summarises the effect of EPF for Ottawa:

The federal government was faced with rising costs, particularly in times of high inflation; no capacity to influence provincial policy towards higher education ...; no ability to even insist that the federal transfers be spent on higher education ...; no credit on campus or in the general public for the increasing transfers as provincial treasurers claimed these funds as *provincial* transfers by the time they reached the colleges and universities; and finally, from a political perspective, increasing blame and criticism for the inadequate financial resources available at colleges and universities even as the federal transfers continued to rise.

⁶⁴ In 1988-89 for example, federal transfers to the provinces under EPF accumulated to \$5.4 billion, made up of \$2.2 billion cash and \$3.2 billion as result of the controversial tax points. The direct federal spending for research resulted only in about \$0.6 billion (Maxwell, 1994: 221).

The initial federal responses to the situation, such as limiting its financial contributions, did not change the situation fundamentally. They contributed even further to the federal-provincial confrontations about fiscal arrangements which some observers referred to as ‘share wars’ (Goodings, 1992: 42).

The question therefore arises why the federal government manoeuvred itself into this situation? For Leslie (1993: 28), the answer is clear: “EPF was based on a massive political miscalculation, betraying surprising political naïveté.” Ottawa wanted to reduce its financial commitment but believed that it could keep the influence it had under cost-sharing. Yet, Leslie concludes “that without financial rewards and penalties commensurate with the objectives sought, and specifically designed so as to promote them, federal influence will be nil” (Ibid.: 31).

This quote could be the concluding remark of the chapter on EPF. However, a look beyond the higher education arena in Canada might be especially useful in this period. Canada not only witnessed the repatriation of the Constitution in 1982 but also the subsequently failure of two attempts at constitutional reform: the Meech Lake Accord and the Charlottetown Accord. On top of that, the Parti Québécois was (re-) elected in Quebec in 1994 after campaigning for a referendum on separation, which eventually took place in 1995. The simple conclusion of these circumstances is for Glen Jones (1996: 359), that “[t]he problems of higher education have been overshadowed on the national agenda by constitutional issues”. Higher education simply did not play the same important role as it did in earlier times.

6 The establishment of a new federal strategy in higher education policy

Higher education on the national level has not only been overshadowed by constitutional issues but also, for some time already, by more demanding topics like health care. In addition, federal higher education policy was still not comprehensive at the time of the end of EPF. This was, for example, reflected by

“responsibilities for PSE [being] fragmented across a number of departments” (Bakvis and Cameron, 2000: 48). Yet, to conclude from these facts that federal-provincial relations concerning higher education were purely focussed on a discussion or conflict about higher education being underfunded would be wrong. Despite declining funding (which continued for some years to come after the change to CHST), OECD data from 1995 showed that Canada was (still) ranking first in comparison with other industrialised countries in terms of proportion of public expenditures spent on PSE (Ibid.).⁶⁵ That did not stop some actors within higher education, for example representatives of the universities, from pointing to a lack of funding and demanding more money. Such demands can certainly not be generally dismissed as unjustified. General funding figures do not say much about individual programs or specific aspects of higher education financing. Nevertheless, the main problem, at least in terms of intergovernmental relations, seemed to have been a different one, the lack of conditionality of federal transfers under EPF. Judith Maxwell (1994) characterised the resulting environment at the end of EPF, more generally for education and training, as a ‘permissive kind of federalism’ which did not meet the requirements of a new knowledge based-economy (Ibid.: 243):

The central problem with the fiscal arrangements for education and training is that the federal government has been writing cheques for services without specifying or monitoring the desired outcomes. This is a permissive kind of federalism. It may have solved jurisdictional debates in the mid-1970s when the EPF and other arrangements were renegotiated, but it left us with an education and training system that has failed to adapt to the needs of the new economy.

Ottawa seemed to have realised that as well, as it was about to further change its higher education policy towards a probably less ‘permissive federalism’. The move towards CHST, though, might have appeared originally as another step in the direction of a more ‘permissive’ form.

⁶⁵ The figure for Canada was 4.8 per cent in comparison with an average of 2.7 per cent for all OECD countries.

6.1. Canada Health and Social Transfer: The end of federal aspirations

EPF was not working and there had been various suggestions to change it or to replace it. The coverage of indirect costs of research as an alternative has already been mentioned. Another proposed solution, representing a rather different approach, was the introduction of vouchers for students to replace the direct funding of universities, i.e. students would be funded, not institutions.⁶⁶ Less drastic ideas focused on the reform of EPF itself.⁶⁷ Ottawa finally went for a system that replaced EPF by incorporating it into a new arrangement.

The new program, after the failure of the Green Paper, was mainly a result of policy efforts by the Minister and Department of Finance. It resulted in a unilateral move by Ottawa, which was announced in the 1995 budget. By combining EPF and the Canada Assistance Plan (CAP) it replaced them under one transfer program: CHST, which took over in 1996-97. However, it was not only a new program that was introduced, the budget also revealed a sharp cut of transfers under CHST (Prichard, 2000: 14-9). Together with reductions announced to other forms of federal support for higher education, and with effective reforms not successfully translated into action yet, it represented for Prichard (Ibid.: 17-8) “arguably the lowest point in the fifty-year history of federal support for post-secondary education and research”. However, this did not start with the 1995 budget, as figures from the Canadian Association of University Teachers (CAUT) show. They identify 1993, when the Liberals came back to power again, as “the year in which the federal government began its systematic reduction in transfers for post-secondary education, health and social assistance” (CAUT, 1999: 12). Prime Minister Jean Chrétien (1997) in an address to the AUCC, defended these cuts by blaming the former government for a rather drastic economic situation that made spending restriction essential (Ibid.: 1):

Our government faced a number of serious challenges when we took office, and none more serious than the fiscal challenge we inherited from our predecessors. The ability of government to act to meet the challenges of a changing world was severely restricted.

⁶⁶ For more details on such an alternative approach, see: Hirsch, 1994.

⁶⁷ See for example: Leslie, 1993: 31-5.

The deficit was \$42 billion, and growing. Canada was close to losing its economic sovereignty. The future of our cherished social programs was threatened.

These circumstances required acting “with determination – but also with compassion – to restore the nation’s fiscal health” (Ibid.).

Whether the economic situation was really that dramatic and who, if any particular actor at all, was to blame for it, will not be answered here. Yet, it was clear that CHST in general was a further step backwards in the transfers to the provinces.

CHST entitlements for the first year running (1996-97) represented a total of \$26.9 billion which was reduced to \$25.1 billion for 1997-98. In comparison, the last year of the separate programs (1995-96) saw provincial entitlements under EPF (including associated equalisation) of almost \$21.8 billion and under CAP of about \$7.8 billion (Snoddon, 1998). The combined total of EPF and CAP in 1995-96 of around \$29.6 billion was about \$2.7 billion more than in the following year under CHST and around \$4.5 billion more than two years later.

The effect of reduced transfers was even greater if one considers that CHST initially worked in a similar way to EPF, i.e. CHST cash grants were calculated as the difference between entitlements and provincial tax revenues resulting from transferred tax points and associated equalisation. That resulted in cash transfers, in terms of percentage, being reduced even more than the general entitlements (Cameron, 1997: 26-7).

The allocation formula applied in the first year of CHST represented no difference to the former year, i.e. each province received the share it would have got under EPF and CAP. From the second year onwards this changed however, towards an equal per capita entitlement in order to reduce disparities. One of the more obvious differences between CHST and EPF (and CAP) is a guaranteed cash floor, i.e. total cash transfers to the provinces cannot fall below a certain limit. Originally set at \$11 billion this cash floor was raised to \$12.5 billion for 1997-98 (Snoddon, 1998: 52).

A new five year funding arrangement introduced in the 1996 budget for the period 1998 to 2003 originally applied a GDP based escalator for the first three years. Various changes and increased funding finally led to a total of \$34.4 billion

of aggregated entitlements (\$ 18.3 billion of which are cash transfers) under CHST for the year 2001-02 with an expected growth to \$39.8 billion (\$ 21 billion cash transfers) by 2005-06 (Institute of Intergovernmental Relations, 2002).

The question arose, even more than under EPF, whether CHST, if only partly, still represents a federal transfer for PSE. After all “CHST is even more comprehensive and unconditional than EPF” (Prichard, 2000: 14). The federal government itself expressed that in a kind of way when it introduced CHST by “arguing that block funding offers provinces more flexibility in the provision of social assistance ...” (Snoddon, 1998: 52). In addition, the name itself – Canada *Health and Social* Transfer – represents a statement. Cameron (2001: 148) rates this aspect quite highly:

The most remarkable feature of the CHST was perhaps its name that pointedly omitted any reference to postsecondary education. In hindsight, that was probably not a coincidence. The CHST is now considered by most Canadians – and their governments – for all intents and purpose to be a transfer for health.

A similar point had been emphasised earlier by Bakvis and Cameron (2000: 47), using the example of extra funding for CHST in the 2000 budget:

In the 2000 federal budget, Finance Minister Paul Martin committed an extra “one-time” payment of \$2.5 billion under the CHST for PSE and health care, an amount the provinces regarded as negligible. Provincial premiers say it will have a minimal impact in reducing their health-care costs. None has mentioned that any of the \$2.5 billion will flow to the PSE sector.

For these reasons and although CHST formally still also includes transfers for higher education, it can hardly be described anymore as a defining instrument of federal influence in the policy field. Cameron (2001: 148) expresses this by arguing that “the federal government has essentially given up on its longstanding claim to partnership with the provinces in providing operational support for universities ...”.

What implications did this have for the universities? Following the tendency under EPF where the provinces took advantage of their freedom and contributed less towards the operating grants of the universities, a further federal withdrawal under CHST might have worsened the funding situation for the universities. And indeed, the CAUT (1999) supported this argument with figures.

Although their analysis of the relevant figures showed that the provinces had avoided cutting the funding to the universities to the same extent as Ottawa reduced its transfers to the provinces after 1995-96, they argued, in 1999 (Ibid.: 6):

It is clear, ... that the cut in federal transfers put serious downward pressure on provincial per capita expenditures for post-secondary education. In the absence of a restoration of federal transfers to the 1993-94 levels, provincial funding for post-secondary education will likely remain depressed.

Harry Kitchen (2000: 330) also points at the federal reductions by revealing that provincial transfers to the universities in the 1990s have declined by nearly 40 per cent in constant dollars. On the other side, this tendency seemed to have changed at the end of that decade. The president of the AUCC, Robert J. Giroux (1999) remarked in a speech in October 1999 that “[p]rovincial operating budgets for higher education increased in every province this year for the first time since the beginning of the decade” (Ibid.: 1). Even if not all institutions benefited in the same way from this change, it still showed that the federal policy withdrawal from operating grants did not permanently worsen the situation of higher education institutions. It certainly helped that the overall national economic environment had improved to the extent, that budget surpluses arose. Furthermore, the idea and implications of a knowledge based economy became widely accepted also amongst provincial governments. That benefited the universities and raised their importance again. Ottawa expressed the acceptance of this importance by further moving towards more targeted funding and thereby avoiding the underlying conflict over general funding for higher education.

6.2. Towards more direct and targeted federal funding

It has been outlined before that federal support for research (mainly in the form of the research councils), especially in comparison with the former transfer arrangements, “was blessedly free of federal-provincial controversy, reflecting the widespread acknowledgement that research is a national responsibility, an acknowledgement common to most federal nations (e.g. USA, Germany, Australia)” (Prichard, 2000: 14). Yet, the financial dimension of this federal involvement was still quite limited. The NCE, introduced in 1988, marked a step

towards the expansion of federal research support. Although originally only granted funding for five years, the program was renewed in 1994. In the 1997 budget finally it became a permanent feature of the federal investment system. The reason for that seemed to be quite simple, at least when looking at Chrétien's (1997: 3) explanation:

When something works this well, we think we should keep it. The Networks link post-secondary researchers, governments and the private sector. They are unique in the world, and they are proving that, even in a country with such a dispersed population, we can create critical mass in some important research areas.

Consequently, the basic funding was substantially increased in the 1999 federal budget which made a further expansion of the program possible (Prichard, 2000: 21).

The Networks, though, marked only the beginning of a rather extensive expansion of federal financial support devoted to research. It was followed by three more federal research initiatives which for Prichard (Ibid.: 19) created a new paradigm which “dramatically enhanced the federal role and reinvigorated our national capacity for research”. He was not the only one who considered the new federal approach as representing a fundamental step. Cameron (2001: 150) also saw the federal initiatives as going beyond the usual changes as “the federal Liberals ‘got religion’ in promoting the knowledge economy, and the research that drives it”. Such engagement was possible because of the improved economic situation, but also because of the realisation (again) of the importance of research and development for the national economic well-being. In any case, the new epoch began with the 1997 budget and the launching of the Canada Foundation for Innovation (CFI) which was followed by the Canadian Institutes of Health Research (CHIR) in 1999 and finally by Canada Research Chairs (CRC) in 2000.

Canada Foundation for Innovation (CFI)

The CFI was established to provide more fundamental support for major research infrastructure and equipment. Its initial endowment was \$800 million but has been increased a few times to \$3.5 billion in 2001. The money is used to provide up to 50 per cent of a project by basically applying the same principles as the funding

councils. The rest of the funding for the project has to come from private or provincial sources. Hence, the total amount of money involved in the financing of the projects is much higher (Prichard, 2000: 20-1; Cameron, 2001: 150). The considerable increase of the original endowment already indicated that “the CFI appears to have been transformed from a one-time initiative to repair a deficit in research infrastructure to a permanent feature of federal support for research” (Prichard, 2000: 21).

The Prime Minister in his speech to the AUCC revealed an interesting aspect of the CFI, shortly after the launch of the program (Chrétien, 1997: 2):

The creation of the Canada Foundation for Innovation is the result of collaboration before the budget between the Association of Universities and Colleges of Canada and the ministers of finance and industry. You deserve congratulations on a job well done.

Whether this collaboration marked a (partial) re-establishing of the AUCC’s long lost special relationship with the federal authorities is not clear. After all, the nature of direct funding of projects makes a direct contact between the two actors – Ottawa and the AUCC – more likely and even necessary if only for the purposes of coordination. Nevertheless, the involvement of the AUCC appears to have been going beyond aspects of coordination which might have made it possible to exercise some influence.

The collaboration of Ottawa with the AUCC seems to have been at the expense of the coordination of the new program with the provinces. David A. Wolfe (1998: 7) in his paper for the CMEC, points to not only the lack of coordination between the federal and provincial levels but also to the negative effects resulting from provincial responses to the CFI:

The federal government, under the authority of its constitutional spending power, has moved directly into the funding of research infrastructure, but in a manner that has compelled, at least some of the provinces, to respond. The end result is that there is no longer a clear delineation of roles and responsibilities in the area of PSE research policy, nor is there an institutionalized mechanism for monitoring the consequences of the kinds of duplication and spillovers that inevitably result. This area of jurisdictional responsibility seems marked by little advance consultation between the two levels of government, nor efforts to anticipate the consequences of new initiatives by one level for the other.

By moving more into the direct support of research, Ottawa might have attempted to avoid the problems with the general funding of universities. Yet, this does not mean that the field of research does not create any difficulties at all.

Canadian Institutes of Health Research (CHIR)

The CHIR appears to cause hardly any controversy. A simple reason might be that it was not really a completely new program. When it started in 1999, it rather represented “a major reorganization and expansion of the Medical Research Council, now extending to almost every nook and cranny of what touches health, organized into 13 virtual institutes” (Cameron, 2001: 150).

The reorganisation, according to Prichard (2000: 22), became necessary because of competitive reasons. The equivalent of the MRC in the US, the National Institutes of Health, received a massive increase in the 1990s. Hence, it posed a threat to the competitive abilities of the Canadian health research, including the generally often quoted danger of ‘brain drain’. To counteract these negative implications, the CHIR started with a budget of nearly half a billion dollars, double the former budget of the MRC.

Canada Research Chairs (CRC)

The next step in the expansion of the federal research policy was the announcement in 1999 of the introduction of the CRC program. The program was influenced by the discussion about the brain drain to the USA, but it also more simply represented the reaction towards an anticipated need to replace a large number of faculty members. To hire new faculty members or to stop the most able researchers from leaving Canada or to bring them back, the program is designed to hire 2000 university professors over a period of five years. To achieve this goal \$900 million are provided. Six per cent of the chairs are reserved for the support of smaller institutions. The other chairs are distributed roughly in proportion to the share of the funds of the three funding councils (Prichard, 2000: 22-3; Cameron, 2001: 151).

Of the three federal initiatives, the CRC is probably the most controversial one because of the nature of the program. It has been called a “smashing success” (Smith, 2002: 8) in the AUCC publication ‘University Affairs’ because the first

years showed that the program was able to live up to its expectations not only by keeping the best professors in the country but also by bringing back those who had emigrated and attracting foreign researchers (Ibid.).

The CAUT in contrast appears to be less enthusiastic about the CRC. In various publications (2000, 2000a, 2001) they point at those aspects which they think require a critical evaluation. They argue, for example, that the funding arrangement, especially in connection with the CFI, leads to an emphasis on doing research for industry, with all the expected negative side effects: lack of independence, possibilities of vetoes from private investors and a shift away of resources from other research fields.

The CAUT also expects that, despite the provision for smaller institutions, the program will basically lead to a widening of the gap between institutions, as some will benefit more from the program than others.

Finally, the CAUT criticises the number of chairs available for the social sciences and humanities. Twenty per cent are devoted for these research fields although 42 per cent of all university graduates are active within them and over 53 per cent of the full-time faculty are employed there.

The program has only been running for a few years. Some of the anticipated problems might therefore not become a (major) issue at all. It is nevertheless worth mentioning here because of its federal-provincial relevance.

While being aware of the uncertainty of future developments, Cameron (2001) identifies a question which he describes as “whether the federal government, in its administration of the chairs program, will succumb to the temptation, once again, of encroaching on what is properly provincial jurisdiction” (Ibid.: 153). His concern is related to an aspect of the CRC that probably was not particularly relevant for the creation of the program itself. Although the focus is on research, the holders of the chairs are also expected to spend a considerable amount of time on teaching. The nature of the selection and distribution of the chairs is likely to have an effect on the research and teaching agenda of the universities. On top of that, each university applying for research chairs must submit a strategic research plan which has to be approved by the College of Reviewers which again is federally appointed. Cameron (Ibid.) therefore wonders

“if the federal government is not wielding what could prove to be a rather big stick in shaping the future of postsecondary education in Canada”.

Cameron also reflects on the potential gap between those universities which especially benefit from the program and those which do not. Yet, his emphasis is less on poor versus rich, but rather on the negative aspect for both groups (Ibid.):

The question also arises here as to whether we are headed toward a new kind of binary or two-tiered system, ... between research-intensive universities, heavily dependent on federal funding, and another set of essentially provincial institutions.

Time will show in which way both ‘questions’ will be answered, if there is going to be any clear answer at all.

The three programs described above represent the three main research funding initiatives by the federal level. However, Ottawa did also develop some activities within the field of student financial support. Probably the most important outcome of these activities was the Canada Millennium Scholarship Fund (CMS), which was announced in 1998 and started in 2000 with an initial funding of \$2.5 billion in order to support more than 100,000 full- and part-time students every year. Although administered by a private foundation, not every province welcomed the program. Some reacted in a quite hostile manner. Quebec, for example, resisted it on federal provincial-grounds, as an intrusion into their jurisdiction. And for example Ontario and Nova Scotia used the new resources to compensate for their own provincial student aid and thereby considerably reduced the effect of the CMS. At the end, though, each province signed a separate deal with the foundation in order to integrate the federal funds into their respective student assistance plans. Nevertheless, the program in its first years had a less substantial impact than was originally anticipated (Day and Grafton, 1999: 200-12; Prichard, 2000: 24-5; globeandmail.com, 2002).

The negative outcome was the result of a lack of coordination with the CSL program and the provincial programs. It left Cameron (2001: 148) with this evaluation of the CMS:

The result has led to anger and confusion among students and unproductive conflict between federal and provincial officials, as well as a diminution of the potential benefits of the program. We still have a considerable distance to go in sorting out the disarray in federalism as it applies to student aid.

Potentially, direct funding to students (for example with education vouchers) instead of funding institutions or provinces might offer a solution to the problem of student migration which has already been on the agenda for some time. The implications are summarised by Paul Davenport (1981: 32):

Provincial investment in university education, ... creates intellectual property which belongs to the student, and which he may freely carry to another province. Thus in a particular period if there tends to be migration of graduates from province A to province B, A may cut university spending to avoid subsidizing B, while B may cut spending (or at least not raise it) because it appears cheaper to import graduates from A; the continued imports to B could cause A to make even greater cuts, and so on.

It might be too much of a constructed example, but nevertheless it is a problem for some provinces. Davenport himself was at McGill University at the time when he wrote the paper. His evaluation of the situation might therefore not be surprising, as Quebec is so far the only province that generally charges additional fees for out-of-province students. They were only introduced, though, in 1997 (Day and Grafton; 1999: 195).⁶⁸ But it is not only a concern for Quebec. Dichson, Milne and Murell (1996) calculated that New Brunswick is losing out on its investments in higher education as more people with university education leave the province than enter it, a situation which probably applies to other small provinces too. The authors therefore argue “that there is a disconnection between provincial funding responsibilities and provincial benefits” which further, according to the authors, “defines the need for ultimate federal responsibility for higher education” (Ibid.: 325). This would help to avoid a situation where provinces take advantage of the situation, for example by encouraging students to study in another province and then come back again after they have finished their education.

The aspect of student mobility is also a point that is addressed in broad initiative on the national level: the Social Union Framework Agreement (SUFA)

⁶⁸ In British Columbia there is a similar situation, although there is only “the possibility” for out-of-province students fees (Day and Grafton, 1999: 208).

which is supposed to be “based upon a mutual respect between orders of government and a willingness to work more closely together to meet the needs of Canadians” (Preamble).⁶⁹ The agreement – which was signed by all provinces (and Territories) except by Quebec – explicitly under section 2 (Mobility within Canada) refers to the removal of restrictions for access to (amongst others) post-secondary education. This potentially affects student mobility more generally and out-of-province fees more specifically.⁷⁰ However, despite being mentioned a few times, PSE does not rate prominently in SUFA, as it, for example, is only mentioned in connection with other aspects like health. Therefore, observers of the agreement were cautious about the effect SUFA might have on higher education (Bakvis and Cameron, 2000; Cameron, 2001: 153-4).⁷¹ Such views were probably reinforced by the required review of the program after three years. In the report PSE was just mentioned once and then only as part of a more minor aspect (Federal/Provincial/Territorial Ministerial Council on Social Policy Renewal, 2003: 5).

Not only because of the so far limited impact of SUFA, it might be an elusive goal to expect ultimate federal responsibility in the financial assistance of students. But federal student aid can be seen as part of the strategy for more targeted funding of higher education. The additional funding for student aid supports the payment of student fees which again have increased substantially. For undergraduate students of arts programs, the fees rose by over 90 per cent on average between 1990 and 1998 whereas the cost of living (Consumer Price Index) during the same period rose by only 16.7 per cent (CAUT, 1999: 13). Universities justified such an increase by the need to counterbalance the lost revenues from provincial and federal funding. As a result the percentage of student fees contributing to the total university revenues grew from 9.4 per cent in 1981 to 19.5

⁶⁹ The text of the agreement can be found under: www.socialunion.gc.ca

⁷⁰ The nature of SUFA potentially also affects higher education more generally, for example allowing federal programs in federal jurisdiction if it is justified in the interest of the Canadian nation. However, so far not much can be said about this anticipated effect that could not be explained by previous developments.

⁷¹ For a more general evaluation of the effect – or the lack of it – see: Noël (2001).

per cent in 1998 for the whole of Canada (CAUT, 1999a: 3).⁷² The consequences of these developments are described by Harry Kitchen (2000: 330):

This decline in the funding role played by provincial transfers and the increasing reliance on tuition fees reflects a trend to privatization, or perhaps more accurately, user pay. In an indirect way, this is a form of decentralization.

The targeted funding for student aid by the federal level might therefore also be considered as contributing to the decentralisation of the funding of higher education institutions.

6.3. Summary remarks

The period since 1995 witnessed a shift in the higher education policy approach of the federal government. It was a shift away from the general funding under CHST towards a more targeted and direct funding of mainly research but also student aid. When looking at the policy dimension, CHST can probably be ignored at the moment as a policy instrument because the federal government cannot substantially influence the use of the money. Cameron (2001: 151), for that reason, “applaud[s] the withering away of federal involvement in the general financial support of postsecondary education”. That, however, does not mean that CHST can be totally ignored. In its financial dimension it still has to be considered. After all, even if Ottawa were to stop the cash payments only – and considering that there would be no replacement for it – it can be safely assumed that the higher education sector would also have to contribute to the compensation of the loss of revenues for the provinces.

CHST might be described as the turning point for a new federal policy strategy. However, looking at the general direction of the approach – a move away from general funding towards targeted funding – it can be argued, that the change started already earlier with the introduction of EPF. The switch to unconditional transfers was probably not a conscious move towards a new strategy of direct funding. Ottawa, after all, was itself initially surprised by the provincial reaction towards the new won spending freedom. The effect, though, was the same. There

⁷² In Nova Scotia, one of the smaller provinces, the proportion was as high as 28.2 per cent (Ibid.).

was a gradual policy retreat from the general funding of higher education. Not every actor involved appreciates this withdrawal. Universities preferred to have two paymasters to maximise their autonomy. Yet, it is as regards the issue of general funding of higher education that the provincial jurisdictional responsibility is the clearest. Ottawa appears to have accepted that already some time ago. Besides this constitutional aspect and besides the unconditional nature of the transfers, there was another reason why a different policy focus was sensible. Already during the time of direct grants, federal involvement was questionable because there was no clear policy strategy visible. This has been emphasised by the fact that there was nothing comparable to a kind of federal higher education ministry (the creation of which the provincial governments almost certainly would have opposed passionately – at least after the 1960s).

The situation has changed with the federal focus on research. It still might not represent a coherent (and ultimately complex) higher education policy which probably would require some sort of federal higher education ministry. Furthermore, the focus of the policy is mainly centred around economic developments. In addition, lack of coordination with the provinces remains a problems while implementing the broadly defined federal research policies. Yet, it does not appear that this could turn into a major federal-provincial conflict especially as the federal funding of research is not such a controversial topic as is, or was, general funding grants. Generally, Bakvis and Cameron (2000: 48) identify a situation where “there almost appears to be a conspiracy of sorts between the two levels of government, whereby neither level feels inclined to challenge the other”. That might also simply be because there are still more pressing and controversial topics dominating the agenda such as health care. Or that the amount of money involved in federal research policy is too small to be considered as part of a substantial federal policy ‘threat’ to the provinces. After all, “Ottawa’s increased support for university-based research notwithstanding, the bulk of funding for universities and community colleges continues to come from provincial governments” (Ibid.: 47).

In a comparison of university research funding between Canada and the United States published in 1999 and sponsored by the AUCC, the figures revealed that the average research grant in Canada was, even after adjusting for indirect

costs, three times smaller than the one in the USA (Robitaille and Gingras, 1999) – fuelling further fears of brain drain.

More recent figures by the OECD placed Canada only in 15th position amongst other developed nations in terms of investment in research and development as a percentage of their GDP (Lacroix, 2002: 2).⁷³ In the light of its renewed efforts in research, Ottawa announced its plan to ‘push’ Canada up to 5th place by 2010 (Ibid.), leaving behind the USA and Germany – only, of course, if they do not improve their position. Support for this effort comes, not surprisingly given the extra money universities could expect, from the AUCC, which, as part of an action plan, anticipates that its universities “will at least double the amount of research they perform in order to help Canada rank among the top five countries in the world in terms of R&D performance by 2010” (AUCC, 2002: 3). However, the AUCC is also still constantly arguing for a permanent solution for the indirect costs of research issue (and for a further increase in research funding). There has been some move on the federal side concerning funding of indirect costs. In its 2001 budget, for example, Ottawa provided a one-time investment of \$200 million to cover for indirect costs, but it was not a permanent solution and therefore indirect costs are still on the agenda (Lacroix, 2002: 2).

Where does this leave the provinces? After the Second World War they had hardly any impact in the higher education sector and now they assume a role which sees them in a position of being the dominant actor, at least when it comes to general funding. The controversy in this policy field might not have disappeared completely but it is not such a dominant topic anymore. Federal research funding and other issues also do not pose an imminent threat to intergovernmental relations. Lack of coordination might still affect various programs, but in general the climate has improved in comparison with earlier decades. In a joint ministerial declaration of 1999 (Victoria Declaration) the CMEC seems to prove that point by listing “enhancing CMEC as a forum for effective and fruitful cooperation with the federal government” as one of the priorities for joint action (CMEC, 1999). The declaration is about education in general, but it certainly can also be considered as

⁷³ Canada invested 1.58 per cent whereas the top nation, Sweden, invested 3.7 percent. The USA (2.65 per cent) and Germany (2.38 per cent) were also well ahead of Canada (Markl, 2002).

applicable to higher education in particular. In this light, the following statement from the declaration qualifies the former quote (Ibid.):

We, the ministers responsible for education, unanimously reaffirm our responsibility for providing leadership in education at the pan-Canadian level through the Council of Ministers of Education, Canada.

The implication of this becomes clearer when looking at the provincial policy response to the federal research agenda. According to Prichard (2000: 24), the federal step “has been accompanied by a shift in provincial policies and approaches to higher education and research as well”. The provinces responded, for example, by developing their own programs for university-based research.⁷⁴ Whether the increased federal support stimulated more provincial involvement might be difficult to answer here. After all, the provinces certainly also realised the emergence and the importance of the knowledge society.

The renewed engagement of both actors in the higher education field has, however, led to clearer roles: “The federal role in research support has been expanded while the primary provincial responsibility for post-secondary education has been clarified and exercised” (Ibid.: 26). This should not distract from the fact, though, that it is still a rather complex partnership. A partnership that witnessed a decentralisation process in higher education which was also witnessed, more generally, in the overall development of the Canadian federation – though not in the form of a continuum but rather comparable to the swing of a pendulum. Other national developments, like for example the province building in the 1960s, found its expression in the higher education environment, too.

On the other hand, the emphasis of Ottawa on a stronger research policy reflects more a centralisation process. Yet, not every development in higher education needs to be accompanied by a similar process in the country as a whole. That would be too much to expect from Canadian higher education.

⁷⁴ For more and more detailed examples, see: Prichard, 200: 24-6.

7 Conclusion: The interstate model at work

One of the most obvious observations to be made concerning the development of the higher education policy field in Canada since the Second World War is that it has been a dynamic sector. A snapshot of the current system might reveal a more or less clear impression of an interstate model at work. Yet, the period under observation here shows that this was not always the case and that higher education policy in 1945 looked quite different from what we can see today.

As has been shown, the immediate postwar period witnessed a rather unique situation. The main actors in higher education were Ottawa and the universities (and their then representative the NCCU). The provinces, considering that they hold the constitutional competence, only played a rather minor role.

Ottawa was not able or not willing to take ‘advantage’ of its position and establish more permanently a power base in higher education. Instead, it chose a less secure way for this purpose by funding the universities directly under the ‘Veterans Rehabilitation Act’. The federal government might have initially expected to secure a certain impact with this kind of approach, especially after a more permanent direct grant policy was introduced. Yet, the one-dimensional focus on the financing aspect of higher education had two main effects that prevented such a manifestation of more permanent influence. First, given the strong position of the federal government after a period of centralisation during the Second World War, the chance might have been there to create some sort of a comprehensive national policy – a chance which was not taken. Second, the emphasis on the financial dimension greatly determined the further development in the sector. Ottawa was never able to regain momentum in the general higher education sector. Its attempts at influencing provincial higher education policy via general financing were more and more characterised – in the absence of a constitutional base – by a lack of success. Eventually, Ottawa recognised this itself and more or less gave up on demanding (sometimes underlined by threats) to get some influence for ‘their’ money. The direction of this development, however, was not only determined by the one-dimensional federal approach and the absence of a constitutional base for Ottawa.

In a certain way it could be argued that the interstate characterisation of Canadian federalism – in the absence of more powerful provincial positions – was not clearly visible in the higher education area after the war. But it was still there. After all, the interstate model is mainly a result of constitutional provisions. And these did speak ‘against’ Ottawa. In a sense, the more general province-building which took place starting in the 1950s, only led to the provincial governments – in the form of the creation of administrative systems for higher education – filling the space that was there for them anyway and therefore could only be filled by them. Thus, the visible expression of this took place when they started to institutionalise their autonomy.

The province building itself also highlighted the federal society aspect in Canada, even if the higher education sector initially appeared more like a Quebec – Rest-of-Canada dichotomy. However, after the provinces established their bureaucracies and defended their autonomy, it became apparent that if there was a dichotomy, it was most of the time one between Ottawa and the provinces. This is not to say that the provinces acted like one homogenous actor. Province-building actually emphasised and reinforced the differences and highlighted the federal society aspect. Yet, when it came to their constitutional autonomy, the provinces appeared to at least agree on the basic proposition that general higher education is an essential part of this autonomy and needs to be defended against federal intrusion. Thereby the lack of a vertically integrated party system further underlined this condition. As a matter of fact, the party system is hardly mentioned at all in the discussion of the literature on higher education and federalism.

The above mentioned reasons left little room for the creation of a ‘true’ national higher education policy. Even ‘executive federalism’, which highlights the importance of intergovernmental relations in the functioning of the Canadian federation, could not fundamentally influence the direction of this development. It rather reinforced the autonomy of the provinces as it is basically characterised by voluntary co-operation which eventually led to policy opt-outs and thus provided sector shaping exit routes which became particularly visible in the form of the role of Quebec. Furthermore, communication – as an essential ingredient of executive federalism – was not always well developed as the lack of it between the federal

and provincial governmental actors has been emphasised on a number of occasions.

Ottawa, despite some attempts to gain back some control, had to recognise that there was not much it could do about its diminishing influence in general higher education policy under normal circumstances. Its response by moving towards a more targeted funding of research actually somewhat highlighted the interstate dimension. Research, Ottawa could claim, was lying more in its constitutional responsibility of supporting the national economy. Although there is some overlap between the research sector and higher education more generally, the development in Canada led to a situation, generally speaking, where both actors occupy a certain territory and apply their policies without much influencing each other. From this perspective, the higher education field – at least in its current stage – certainly underlines the implications of the interstate model in Canada.

The argument outlined above implies that higher education in Canada since 1945 has been characterised by a dynamic process and a constant search for balance. A balance, though, that moved more and more towards the autonomy of the provinces. This was partly, as has been expressed, because of the initial lack of provincial institutions to ‘claim’ autonomy but also because there was not much on ‘offer’ in exchange for giving up or claiming less autonomy. Ottawa could not offer them participation in the development of a comprehensive national policy – there simply was and is none. Financial contributions from the federal level in contrast offered little reason for the provinces to open their policy making more towards federal influence. They probably assumed that the money belonged to them anyway. And nowadays it does belong to them, at least those federal contributions that were replaced by a transfer of tax points.

It could be argued, though, that in the case of the Canadian provinces it is for them not a question of a balance of autonomy and influence (which would be pretty one-sided, indeed) but of balance between autonomy and the recognition of national economic needs (which obviously affects them too). Hence, this offers an explanation for the acceptance of the establishment of federal dominance in the research sector. However, it is not completely unproblematic anymore because of the growth of research and because of the related federal ambitions. This has also

in this field led to some tensions with the provinces closely observing their autonomy. Yet, it is unlikely that the federal government could be pushed out of the research field as before as it was pushed out of the general financing of higher education, simply because the constitutional provisions are not that one-sided. In addition, because of its more powerful position in research, Ottawa can use the financial aspect more to its advantage by targeting specific programs. However, also because of that, developments in this regard have shown that federal funding – even more so in the absence of coherent research policy – very much depends on economic circumstances and the recognition of the economic value of research.

From a different perspective, the federal position in research has led to a sort of revival of the federal – universities/AUCC relationship because of the direct funding of research programs. Whether the universities can get back into the same position as in 1945 (and the time before) is, however, rather unlikely because of the manifestation of provincial autonomy that took place in between and because research only offers a limited role in policy terms in contrast to general higher education policy.

In any case, the higher education policy field shows that there actually was not much room for other actors to gain considerable influence and/or to create a policy network. This is because of the provincial autonomy which creates no particular need for further actors on a national level. Especially if even Ottawa finds it difficult to hold on to some rather fragmented influence (as for example in the case of research and student financial assistance) there appears little space for other actors. This is further accentuated by the already mentioned lack of a national policy. If there is no national policy there is not much room for additional actors or even a national policy network. This does not imply that other actors do not play any role at all but it is mainly as a result of sectoral policies. These do allow – like in the case of research – for some non-governmental input.

The lack of a coherent and comprehensive national policy is something which has not changed much over the years – there never really was one. However, when looking at the policy field and comparing it with the constitutional structures, the changes over time are obvious. Initially, as has already been mentioned, the policy sector hardly reflected the polity. Provincial autonomy was not a noticeable characteristic and only gradually developed. Nowadays, though,

this has changed and as a result there is no fundamental discrepancy between policy and polity. Directly connected to this aspect is the question of the balance of the federation within the higher education policy sector. At the beginning there was no balance as such, hardly implying an interstate model. However, after the provinces had institutionalised their authority, the pendulum slowly moved towards the provinces. Nowadays, the policy sector reflects what one would expect from an interstate model with the provinces holding on to their autonomy and the federal government establishing its authority in a niche, itself based on a certain autonomy claim (national economy).

The Canadian case nowadays shows a clear example of interstate federalism in higher education policy. Yet, although this was not always the case, constitutional and institutional conditions, as well as aspects of a federal society, left little room for the policy sector to develop in a fundamentally different direction. Even if Ottawa had chosen to expand its influence after the war and put it on a more solid footing than was provided by its financial involvement, it is difficult to imagine that it would have been able to hold on to a stronger role while facing growing provincial autonomy demands based on the formal constitutional structure.

III

GERMANY

**The establishment of a federal role in higher education
policy in Germany**

1 Introduction

For Germany, unlike Canada, the end of the Second World War marked a fundamental turning point in the history of the state. This is reflected in the balance of this section, which focuses primarily on the post-1945 period. However, some attention is nevertheless initially paid to the development of the German higher education sector before 1945 because, in contrast to the political system of federalism which was (re-) introduced after the war, universities did exist (much) earlier and also did not cease to exist during the war(s). They therefore represent one of the few aspects of constancy in German history.

The initial period after the Second World War in (West) Germany was characterised by rebuilding the state. As such, higher education was not one of the main concerns. Instead of investing energy into reforming the universities, the easier option was chosen of re-establishing the previous (considered to be pre 1933) system. This was – while understandable at that that time – not unproblematic. As no proper restructuring took place, the burden of the Nazi era was also partly carried over into the ‘new’ universities. This fact, amongst others, eventually led to the student revolts of 1968, which had a fundamental impact both on the society of the Federal Republic of Germany (FRG) in general and on higher education in particular.

In 1945 there was no FRG. The first elements of the state to be that came into existence were the Länder. Only in 1949 was the new federal state eventually proclaimed and only then did the question of the competencies for the higher education sector become relevant. The Basic Law (constitution) of 1949 seemed to offer a clear answer by reinforcing the predominance of the Länder in this policy field. Yet, already at that early stage the Basic Law provided some space for future federal involvement in higher education in the form of the ‘uniformity of living conditions’ provision and the establishment of concurrent legislative power for scientific research.

The early years of the FRG still saw higher education being mainly a Länder issue. The first signs of a more prominent federal role started to appear within the research sector. However, at this early stage it was mainly based on

financial support and – despite some initial reservations – not opposed by the Länder. This was also due to the establishment of a national co-ordinating body – the Science Council – which, as a result of its composition and functioning posed less of a threat to the role of the Länder.

The council also highlighted another fact: the need and desire for a national policy. This was only partly because of the ‘uniformity of living conditions’ provision of the Basic Law. The Länder themselves had actually become involved in a national process in order to coordinate their policy efforts.

The growing federal financial contributions, the establishment of coordination processes, the general nature of German federalism and an increased public awareness (including economic aspects) ultimately led to the constitutional amendments of 1969 which formally established a federal role in higher education policy. These took the shape of joint-decision making and the right of the federal level to provide a general framework law for the whole sector. Such drastic changes were mainly possible because of a general agreement amongst the main actors involved about the role and the importance of higher education for Germany. This agreement was part of a wider societal development, which on the one hand was accommodated by a grand coalition (1966 – 1969) and on the other hand was provoked by the student disturbances of 1968 which challenged both the societal establishment in general and the university system in particular.

The consequences of 1969, later to emerge as a clear critical juncture in the policy field, were initially not apparent. The realisation of joint-decision making in areas like construction caused few problems. Yet, already shortly after the constitutional amendments the general agreement about the shape of the higher education sector amongst the main parties started to break up again and eventually led to fundamental ideological confrontations. In this environment, the central piece of federal policy influence based on the 1969 constitutional amendments – the Higher Education Framework Act (*Hochschulrahmengesetz* – HRG) – was introduced in 1976. Not as comprehensive as initially planned, it never the less turned out to be one of the aspects of federal policy intervention that still causes controversy today – and also led to some ‘joint-decision trap’ situations. Thereby, the HRG also represented a rather late confirmation of the critical juncture evaluation of the events of 1969.

More generally the late 1970s seemed to be characterised by an already declining federal influence, again despite its institutionalisation only a few years earlier. While it must be underlined that Bonn had more than just a 'foot in the door' of higher education, this position was weakened by an economic situation that led it to reduce its financial commitments – despite dramatically rising student numbers. The decline of the federal role was also due to a weaker social democratic led government as a result of a stronger opposition in the Bundesrat, highlighting the (negative) effects of joint-decision making. Eventually a governmental change occurred on the federal level, with the Christian Democrats returning to power in 1982. While this had a substantial impact on the content of federal higher education policies, it did not change fundamentally the by then established roles of the Länder and the federal government. The upcoming German unification, though, seemed to promise to upset this relationship and even to produce another critical juncture.

Despite the dramatic events of 1989 – 1990 and despite its deep impact on German consciousness, unification had only a limited influence on the functioning of the higher education sector. After initial adjustments, leading to a temporarily stronger federal role due to the financial requirements of the higher education institutions in the East, the outcome was remarkably unspectacular. Basically the higher education system including its policy dimension was exported to the East without any major changes. From this perspective German unification had little influence on intergovernmental relations. It resulted in the new Länder being financially more dependent on the federal level (which also increased the diversity amongst them) but it certainly did not represent another critical juncture for higher education policy.

More recent developments did not bring any major changes in intergovernmental relations but produced some almost perfect examples of the joint-decision trap – mainly in the run-up to general elections.

One of these general elections, 1998, brought a new social democratic led federal government into office in the new (old) capital of Berlin. Following somewhat the more interventionist role of the earlier social democratic government, the new government produced some controversial policies which seem to point in the direction of a more competitive federalism. This would see a

disentangled higher education policy field with not only less federal influence but also less Länder engagement, leaving more autonomy for the universities themselves. It was an autonomy which they already enjoyed earlier as the next section, starting with the more detailed empirical analysis, will show.

2 Origins of the higher education system and its development in the first decades after the Second World War

It is arguable from when the existence of Germany as *one* state may be dated. The date most commonly referred is the 18th of January 1871 when the German Empire was proclaimed in Versailles after the Franco-Prussian war of 1870/71. From this perspective Germany, despite a ‘German’ history that dates back much further than 1871, is younger than Canada. It can probably be argued that the difference is even more than four years, as Germany went through dramatic transformations since 1871, highlighted by the centralised state of the Nazi era and the existence of two German states from 1949 until 1990. It was certainly everything other than a linear development of one state over the centuries.

Looking at the current German political system it has to be emphasised that the Federal Republic of Germany (FRG) came only into existence after the 2nd World War. However, the roots and the history of the state(s) date back much further than even 1871. And that also applies to the higher education system.

2.1. Some aspects of the origin of the higher education system

The first university on the territory that now constitutes Germany¹ was established in 1385 in Heidelberg as a public institution. It was soon followed by the foundation of further universities in Cologne (1388) and Erfurt (1392). It marked the beginning of the formation of a higher education system that is characterised

¹ The shrinking territory represents another aspect of the transformations Germany was going through (since 1871). The Canadian state in contrast gained considerably in terms of territory since 1867.

by a long, and, especially in comparison with the political development of the territory, stable tradition (Konow, 1996: 50).

Originally universities were founded by royal rulers, later on also by cities. In both cases the founders provided the money for the establishment and the maintenance of the institutions. Although these universities are difficult to compare to modern ones, they nevertheless represented a public system that led to the current structure of public institutions. Private higher education institutions have never figured prominently as part of the system (Klose, 1993: 78). Yet, the absence of a dual system of private and public universities does not imply that the position of the university within the public system was undisputed. One of the debates which stretches over centuries through to the present is concerned with the administration of the institutions. It is a debate that tried and tries to position the universities between a corporate administration and a bureaucratic administration by the state. This debate has left its marks in the current higher education legal system (Keller, 2000: 19).

Another development that had a lasting influence on the understanding of higher education in Germany was introduced by Wilhelm von Humboldt, as portrayed by the foundation of the University of Berlin in 1812. This university was not only a new institution, it also reflected a new understanding of the idea of the university. Humboldt, reflecting a broader Prussian protestant attitude, criticised the teaching and learning reality at the universities as being too school-like in the age of enlightenment. As an alternative, he focussed on an increased involvement in research but not in order to prepare for a profession but for the sake of education itself. The underlying values of this idea are freedom of teaching and the 'loneliness' of the research project. The quintessence of Humboldt's idea was the principle of the indivisibility of teaching and research (*Einheit von Forschung und Lehre*). It is a formula which is still widely used today and it is not only used to highlight the responsibility (or better: freedom) of German *university* professors² but it also represents the way German professors portray themselves.

² The principle does not apply to the same degree to professors of the Universities of Applied Sciences (*Fachhochschulen* - FHs) as their focus is predominately on teaching.

However, for them the emphasis is less on teaching as it is only derived from research (Turner, 2001: 13; Teichler, 1990: 11-2).³

The freedom of teaching and research (and of arts and science) is already expressed in the constitution of 1849 of the *Paulskirche* in Frankfurt (Article 152) and the constitution of Prussia of 1850 (Article 20). It was furthermore guaranteed in the Weimar constitution of 1919 (Article 142) and could consequently also be found in the Basic Law of the FRG in 1949. The relevant Article 5, Section 3, uses partly the traditional words of the earlier constitutions (Badura, 1991: 71): “Arts and science, research and teaching are free. The freedom of teaching does not dispense from the loyalty to the constitution”.⁴

Although the constitution of the Republic of Weimar did not break with the tradition of the freedom of research and teaching, it still introduced a new right in the German higher education landscape: the right of the national government to introduce basic principles for the higher education system as part of general laws (Article 10) – an early indication of what was about to come in the FRG. Until then, the responsibility for the university system rested exclusively with the *Länder*. The new provision did not change the status of the universities, they still

³ This also implies that teaching skills are not essential, to say the least, and that the personal development of the students is not central either (Teichler, 1990: 11-2). These are criticisms which are not new. As José Ortega y Gasset (1992 (first published in 1944): 71) already observed earlier:

“One of the evils attending the confusion of the university with science has been the awarding of professorships, in keeping with the mania of the times, to research workers who are nearly always very poor professors, and regard their teaching as time stolen away from their work in the laboratory or the achieves. This was brought home to me by experience, during my years of study in Germany. I have lived close to a good number of the foremost scientists of our time, yet I have not found among them a single good teacher – just so that no one will come and tell me that the German university, as an institution, is a model!”

Despite such a harsh judgement, though, Ortega did not assume the total absence of good teachers at German universities but he argued “that the combination [good researcher and good teacher] does not occur with any dependable frequency” (Ibid.).

⁴ The constitution of the German Democratic Republic (GDR), which followed on the 7th of October 1949, appeared to have been also influenced by earlier German constitutions – including the Basic Law. Article 34 of the 1949 GDR constitution reads: “Arts, science together with the teaching of these areas are free. The State shares in their cultivation and grants them protection, particularly against their abuse for purposes contradictory to the principles and spirit of the constitution”. The liberal wording of this article, though, was replaced by a new article in the constitution of April the 6th, 1968. In this version of the constitution, Article 17, Paragraph 1 states: “The German Democratic Republic promotes the sciences, research and education with the objective to protect and enrich society and the life of the citizens. This is rendered possible by the unification of the Scientific and Technological Revolution and the advantages of Socialism”. (Hecht, 1997: 85-6)

were institutions of the individual Land. Furthermore, the provision was never used by the national government until 1933 and so it remained of little or no consequence for the Länder (Führ, 1993: 11-2).

The following period of the Third Reich had more influence on the universities and the responsibilities of the Länder. Yet, although in 1934 the whole higher education system was put under the control of a newly formed ministry of the Third Reich, not all universities were financially controlled by the Reich. That task was supposed to take place after the war (Ibid.).

The lack of *financial* control over some of the universities should not give the impression that those universities were not under Nazi observation. There was more than one way of controlling institutions. Many of the professors contributed to that control as they were more than willing to follow and support the Nazis. Not surprisingly therefore, the universities as such were no major source of resistance. The current president of Germany, Johannes Rau, in his earlier function as the premier of North Rhine-Westphalia, therefore commented about the role of the universities during the Nazi era (1998: 70):

And then there was the serious burden of the national socialistic barbarity, of which the higher education institutions also had to carry their own share. German science was not only morally discredited because of the disastrous alliance between the regime and the universities.⁵

These circumstances not only had an impact on the time during or immediately after the war. More than twenty years after the war was over, the lack of enlightenment about the role of the universities and the professors during the Nazi era and the resulting unresolved burden that was carried over by the higher education system into the new state, were important reasons that contributed to the student disturbances at the end of the 1960s. These events again not only influenced the national higher education policy, but fundamentally shaped the further development of the FRG.

⁵ Own translation of: "Und dann gab es die drückende Last der nationalsozialistischen Barberei, an der auch die Hochschulen ihren Teil mitzutragen hatten. Die unglückselige Allianz zwischen dem Regime und den Universitäten hatte die deutsche Wissenschaft nicht nur moralisch diskreditiert."

2.2. The immediate post war years: No federal presence

Germany, particularly its cities, suffered from major physical destruction as result of the war. In addition, the state had lost territory and had been divided up into four zones, occupied by the allied forces.⁶ However, the greater burden was probably the need to overcome the shadow of the Nazi dictatorship and rebuild the German political system as a reliable democracy. As a consequence, there were – in contrast to Canada – more fundamental changes taking place in Germany in the decades after the Second World War. There was simply more to ‘sort out’ as a result of the war and the previous political and societal developments. Germany had to find and define a new role for itself and that obviously had an effect on the universities as well. Yet, it took some time before the effect became visible.

The first situation the universities had to deal with after the war was their closure by the occupation forces. It did not take long, though, before they gradually reopened again under military administration for the academic year 1945/46. Not long after that, in 1946, the responsibility for the universities was handed over once more to the consolidated administration of the Länder (Oehler, 1989: 115). However, this did not solve the fundamental problem: The universities not only had to repair physical damage but also had to repair the ‘damages’ caused by their involvement during the Nazi era. The denazification amongst university personnel aimed at individual supporters of the Nazis (and was only partly successful) but it did not answer the question of how the postwar higher education system should be organised. The choice was finally made not to take the chance of a new beginning and reform the whole system but to rebuild and follow the tradition which was in place until 1933 and which had its organisational roots in the 19th century (Ibid.: 116). Questions of reforms were delayed to a later date.

According to Thomas Ellwein (1992: 243-4), the question of a fundamental reform of the higher education system was initially not even seriously considered in West Germany (in contrast to what became the German Democratic Republic

⁶ The four occupied zones were: the American zone, the French zone, the British zone and the Soviet zone. The first three zones represented what later became the Federal Republic of Germany (FRG) with the Soviet zone forming the basis for the GDR. The following analysis of the situation after the war focuses only on the territory of what subsequently became the FRG.

(GDR)). The view prevailed that the Nazi era was an unfortunate interruption of the old tradition which again implied that there was no urgent need for a reform.

Other authors (Teichler, 1990: 13-4; Führ, 1993: 12-3) in contrast emphasise that there *were* intensive discussions about a reform of the higher education system taking place in West Germany after the war.⁷ However, even the intensive discussions did not change the outcome – a restoration of the system. A system, which at this stage has to be emphasised again, that was not yet exposed to intergovernmental relations due to the lack of a federal state.

The contradictions in the evaluation of the situation at that time do probably reflect the difficulty of the task of the reconstruction of the universities after the war. Ulrich Schneekloth (1990: 66) summarises the problem:⁸

After the Second World War, West German universities were situated in a conflict between a new beginning and a quick ‘reconstruction’. On the one hand, they had to take a nearly irreplaceable loss because of emigration and Nazi terror. In addition, the operation of the universities was discredited because of their active participation in the fascistic execution of power. On the other hand, the opportunities for science and for studying had to be realised as soon as possible to secure the reconstruction. Thereby, the meaning of the university for the economy was still defined narrowly.

Which of these reasons had more impact on the (non-) reform of the universities cannot be answered here. The fact remains, however, that after the war the changes to the university system were not dramatic and were mainly focused on re-establishing the system which was in place up until 1933.

The old tradition might have won over a complete new beginning but there were certainly also attempts – stimulated by the British and American authorities – to give the development a different direction. These attempts – whether they can

⁷ Führ (1993a: 59) goes even further (but by going beyond the period of the years immediately after the war) by emphatically talking about a ‘university miracle’ using the analogy of the ‘economic miracle’. The lack of reforms obviously does not cast a problem for this author.

⁸ Own translation of the original German quote: “Die bundesdeutsche Hochschulen befanden sich nach dem zweiten Weltkrieg im Zwiespalt zwischen Neuanfang und schnellem “Wiederaufbau”. Einerseits hatten sie durch Emigration und Naziterror fast unersetzliche Verluste hinnehmen müssen, außerdem war der Hochschulbetrieb aufgrund der aktiven Anteilnahme an der faschistischen Herrschaftsausübung diskreditiert. Andererseits mußten jedoch schnellstmöglich Wissenschafts- und Studienmöglichkeiten zur Sicherung des Wiederaufbaues realisiert werden. Hierbei wurde die Bedeutung der Universität für die Wirtschaft noch äußerst eng beurteilt.”

be perceived as based on intensive public discussions or not has to remain open here – led to the publication of reports/recommendations in the British zone ('blue report' (*blaues Gutachten*), 1947) and in the American zone ('*Schwalbacher Richtlinien* (guidelines)', 1948). Authors of these documents were German professors and other people from the public life. Both papers presented similar points for a reform of the universities:

- internal democratisation of the universities
- reduction of the possibilities of state intervention in favour of more academic freedom
- definition of sole legal responsibility of the ministers of culture of the Länder

The two documents had little impact. The 'blue report' was even categorically refused – mainly because of the demand for democratisation – by a meeting of the university presidents and rectors in 1949 (Osietzki, 1990: 13-5; Schneekloth, 1990: 66-7).

The reason for the failure of the reform programs, according to another author, Wolfgang Nitsch (1986: 351), was not rooted only in the refusal of representatives of the higher education system who were not willing to accept the need for change. Nitsch argues that the programs failed mainly because of their lack of conception and because of their inconsistency. Therefore and because of the economic pressure to open the universities again, the old universities structures were re-established – despite the burden carried over from the Nazi era.

The (non-) developments in the higher education sector left especially the professors in a powerful position. Carl Friedrich von Weizäcker, philosopher, physicist and co-author of the 'blue report', assumed that the universities had never before been so singularly dominated by professors as in the time right after the war.⁹ Many of them even actively resisted the denazification process by

⁹ Ulrich Teichler, an established researcher on German and international higher education policy, also emphasises the outstanding position of professors after the war. However, he argues that the highpoint of the professorial autonomy and influence on the shaping of the universities stretched beyond the immediate post war period to the 1960s (Teichler, 1990: 13-4). This was also possible because of the support of the West German Rectors' Conference (*Westdeutsche Rektorenkonferenz* – WRK) which constituted itself as a permanent institution in 1949. The WRK took a leading role in promoting an internal university structure, centred around the professors (*Ordinarienuniversität*) (Schneekloth, 1990: 67).

delaying the procedures. Yet, the ministers of culture – remembering the infringement of the Nazis – initially did not interfere much with the governance of the universities as they saw it as an expression of the basic right of the freedom of science. Ironically, this allowed many professors to follow their line of a refusal of a democratisation of the universities and a refusal of re-education (Osietzki, 1990: 14-5).

In contrast to the internal development of the universities the external governmental environment started to change not long after the war. In 1948, before the FRG was even founded, the Länder established a forum, the Standing Conference of the Education Ministers of the Länder (*Ständige Konferenz der Kultusminister* - KMK).¹⁰ Initially only for communication purposes, the conference later on (since about 1955) became “responsible for setting guidelines for minimum conformity in the education system” (Teichler, 1992: 144). Yet, although its recommendations are based on the consensus principle, the Länder are not legally bound to implement any decisions unless they are based on further conditions, like for example ratification by the individual Länder parliaments (Ibid.). Yet, reality has shown that the decisions by the KMK normally are accepted by the Länder governments and parliaments as virtually being binding (Keller, 2000: 187).

Another function of the KMK is based on a resolution from 1949 which became relevant after the FRG was officially founded: the observation of the independence of the Länder in matters of culture and education in respect to measures taking place on a federal level in order to ensure the cultural-political autonomy of the Länder (Briese and Ruffert, 1986: 34). However, for the purpose of higher education, there seemed to be no reason for such a resolution. When the FRG was officially founded by the signing of the Basic Law¹¹ on the 23rd of May

¹⁰ The federal government never became a permanent member of the KMK. It is only able to participate if it is invited for a particular point on the agenda (Maier, 1998: 28).

¹¹ Despite the constitutional character of the Basic Law, the term was used to hint at its provisional character, seen as being valid only for the time before an again unified Germany could give itself a constitution. Therefore, the use of the term constitution before a unification could have been interpreted as establishing the division of Germany. However, even after the unification of 1990 and after revisions of the constitutions, it is still called Basic Law. The GDR in contrast (Hecht, 1997: 85) used the term constitution, but also stated in the first article of the 1949 constitution: “There is only one German citizenship”. These words appeared quite liberal and democratic at that time.

1949, there were no constitutional provisions that specifically allowed a direct federal involvement in higher education. Nevertheless, despite such a lack of direct provisions, the Basic Law did offer some general grounds that allowed a certain federal role in higher education.

Before the constitutional reform of 1994, Article 72, Section 3,¹² required ‘uniform living conditions’ in all parts of Germany. This provision allowed the federal government to supervise Länder regulations and laws (Teichler, 1987: 97-8). However, to assume from this tool for federal intervention that there was already a certain Federal–Länder confrontation might be misleading. After all, it was the Länder that created the FRG. In addition, the KMK itself was interested in a certain uniformity of higher education structures (see above). It does therefore not surprise that the Länder had no objections to financial contributions from the federal government or from other Länder, provided their independence on matters of education and culture was respected. Yet, the resulting financial contributions provided the path for what was about to come. It triggered a system of a mixed financing of projects in the science sector which was eventually formalised in 1969 by a change of the Basic Law (Briese and Ruffert, 1986: 34).

At the beginning, though, the federal government in Bonn did not pose a threat to the competence of the Länder regarding higher education. Indeed, initially it did not play a major role at all – at least not in the general organisation of higher education. In the more specific research environment, already a slightly different picture emerges.

Because of the development after the war with the Länder existing before the federal state, the promotion and support of research was also a Länder responsibility. This soon became a point of intensive discussions and confrontations. The Länder defended their claim to also promote and support basic research. This claim met opposition especially in the form of two large national non-university research organisations¹³, the Max Planck Society (MPG) and the

¹² The article was reworded and renamed Article 72, Section 2 in 1994. Thereby the wording was changed from ‘uniformity of living conditions’ (*Einheitlichkeit der Lebensverhältnisse*) to ‘equal living conditions’ (*gleichwertige Lebensverhältnisse*) (for the implications, see: Laufer and Münch, 1998: 127-33; 327-32).

¹³ The non-university research sector is rather large in Germany, at least in comparison with Canada. However, for the purpose of this thesis, a more detailed description of the non-university

German Research Association (*Deutsche Forschungsgemeinschaft* – DFG) and its predecessors.¹⁴ Both organisations lobbied and argued for an additional federal participation in research policy and especially research financing. The motives that made the MPG and DFG take on this position have been outlined by a social scientist of the MPG, Renate Mayntz (1991: 57):

They both needed a federal involvement in research financing for two equally important reasons: firstly, in order to extend and stabilize the flow of financial resources, and secondly in order to escape the dependence (and in the case of the MPG even the fragmentation) that would result from an exclusive responsibility of the federal states for the public promotion of research. An exclusive responsibility of the federal government would, of course, have meant a similarly high dependence; the aim of MPG and DFG was therefore the joint responsibility of federal government and federal states for research financing – which was also a feasible solution for the power conflict between these political actors.

The efforts of the research organisations had two main effects. First, they contributed to what the Länder perceived as the threat of the establishment of a national research policy claimed by a new federal government. To counteract such a threat, the Länder reached an agreement amongst themselves (*Königsteiner Abkommen*) in March 1949, in which they co-ordinated their activities and arranged a joint financing of research. Second, also because of lobbying efforts of research institutions, the Basic Law established concurrent legislative powers¹⁵ for scientific research (Article 74 of the Basic Law).¹⁶ ‘Culture’ and education, in

research sector is not necessary, especially as, for example argued by Ulrich Karpen (1991: 145), “the line between university and non-university research is not marked clearly any longer.”

¹⁴ The DFG, which came into existence in its present form in 1951, is an organisation that essentially finances research projects. However, its predecessor, the *‘Deutsche Notgemeinschaft’*, was founded in 1920 and re-established in 1949. The MPG, in contrast, is an organisation of research institutes. It was gradually re-established between 1945 and 1948. It followed an organisation called ‘Kaiser-Wilhelm-Society’ which was founded in 1911 (Mayntz, 1991: 50-3).

¹⁵ The legislative power of the federal level is divided up into three categories in the Basic Law. First, there are those areas where the power is solely handled by the federal authorities. Second, areas where the legal power is the prerogative of the federal government. In case it does not use it, the Länder can fill the gap or complete the legislation where necessary (the so called concurrent legal power). And finally, areas where there is a federal right to set general framework laws (Teichler, 1987: 97; for more details: Lichtenthäler, 1993: 74-5).

¹⁶ In the following years, it became clear that the consequence of this legal manifestation for the MPG, DFG and other non-university research institutions was that they – even in an international comparison – enjoyed and still enjoy an exceptional autonomy for publicly financed non-university research organisations (Mayntz, 1991: 57). This allows the organisations to follow largely their own agendas in terms of research activities. This has for them the positive effect that “political

contrast are prerogatives of the Länder (Ibid.: 56-7; Osietzki, 1990: 18-9).¹⁷ From this perspective, the constitutional provisions, even in 1949, did not look as one sided as they initially might have appeared.

Despite a 'stronger' federal dimension in research policy, it did not immediately lead to a prominent role of Bonn in this field. As in the case of higher education in general, the federal dimension was still weak and contested. This was also simply because "[a]ccording to the Basic Law, the promotion of scientific research was initially a federal duty in terms of legislation, but not necessarily in terms of funding" (Teichler, 1992: 151).

The time between 1945 and the beginning of the 1950s was a period of reconstruction, marking the beginning of the immense task of rebuilding German society. It is therefore not surprising that the formulating of a coherent higher education policy was not viewed as a priority. This was true of the Länder and even more so (because of its later appearance) of the federal government. Intergovernmental relations were just about to develop and had not yet left an especially visible mark within higher education.

For the universities, in terms of autonomy, this was probably not the worst time. Despite being public institutions, they enjoyed a great degree of autonomy, partly because there was not much to regulate by governmental authorities and partly because the Länder were careful about their involvement in higher education institutions because of the bad example of state intervention set by the Nazis. The result was (Klose, 1993: 78) that until the end of the 1960s, there were hardly any legal provisions for the internal structure of the universities, admission and examinations. It was all organised by internal university statutes.¹⁸

Nevertheless, higher education was about to become a policy issue again which also began to affect the evolution of intergovernmental relations.

actors must take recourse to the instrument of financial incentives by funding priority programs *in addition* to their global institutional support of the various research organizations" (Ibid.: 58).

¹⁷ This is not explicitly mentioned in the Basic Law. However, Article 30 states that for all those areas which are not regulated by the Basic Law, the general rule applies that these areas are within the competence of the Länder (Lichtenthäler, 1993: 74).

¹⁸ Even more extreme was the example of the Free University of Berlin that did not have any legal basis from its foundation in 1948 until the university law of Berlin came into existence in 1969 (Klein, Schramm and Jähne, 1993: 98).

2.3. The new federal state

The emergence of the federal state in 1949 initially did not have much impact on higher education policy. After all, when looking at the policy field in general, the only legal basis provided in the Basic Law was the ‘freedom of science’ provision of Article 5, Section 3. Otherwise, the system was only based on the brief universities laws of the Länder (Briese and Ruffert, 1986: 49). It is therefore not surprising that various authors, writing from different perspectives about the higher education system in Germany and trying to divide the development into different phases, do not see 1949 as the end or the beginning of a phase.¹⁹ The appearance of the FRG simply had too little an impact on the general development of the sector.

At the beginning of the 1950s a societal and economic consolidation of West Germany became obvious. According to Maria Osietzki (1990: 15), this had no stimulating effect for the willingness of the actors involved to reform the higher education system. On the contrary, the readiness was even reduced. This expressed itself in the form that after 1955 no general conference of higher education institutions involving the relevant actors and interested societal groups took place any more. Yet, that did not imply that there was no discussion going on at all. Pure research, for example, was still a contested area between the Länder and those who argued for a national organisation equipped with the necessary competence. Those arguing for an organisation on the national level gained a decisive advantage when the FRG finally regained sovereign power in 1955 (at least in terms of domestic policies like higher education policy). It also meant that the ban on certain kinds of research was abolished. The implication of the new status was that the federal level was able to engage in large scale research again, such as nuclear research (Ibid.: 19).

A ministry for atomic research had already been established a year earlier, but with the new possibilities, its budget for 1956 reached 44.4 million German

¹⁹ Examples of authors who apply a division into different phases of the development of the higher education system after 1945 without using the time around 1949 as a marker are: Oehler, 1989; Briese and Ruffert, 1986; Teichler, 1987, 1992; Neusel, 1986 and Kadritzke, 1993. It has to be emphasised, though, that none of the above mentioned authors focuses particularly on the role of the federal level.

Marks (DM) – a remarkable amount at that time. The financial involvement in research was further emphasised when in the same year Bonn started to take part in the financing of research bodies (DFG and MPG) (Ibid.: 32; Teichler, 1987: 98-9). This federal involvement would probably have been enough to justify a certain amount of coordination on the national level, especially as the pressure on this level started to grow in the years to come. The reason for that was, as in Canada, the often quoted ‘Sputnik-shock’ but also, again as in Canada, because of the USA which had gained some considerable advantage in terms of research until the end of the 1950s (Osietzki, 1990: 31). In addition, further pressure to establish a national coordination agency came from another direction.

In the middle of the 1950s, the number of students at universities began to expand substantially.²⁰ The need for coordination amongst the governmental actors in order to increase the quantitative capacities became obvious – and not only for the universities. As a consequence of the development, the Länder also argued for a bigger share of the public money as they assumed they were disadvantaged in its distribution by Bonn. The problem for the higher education sector was that in order to distribute additional money potentially available from federal sources, coordination became an even more pressing issue. The Länder and Bonn had to work together to maximise the effect of financial contributions despite the discussions about which level held the principal responsibility for the promotion of science (Neusel, 1986: 69; Osietzki, 1990: 32-5). This was the background that finally led in 1957 to the establishment of the Science Council (*Wissenschaftsrat*), an institution that proved to become an influential actor in the further development of higher education policy in Germany.²¹

The Science Council was the first committee where not only the Länder and the federal government co-operated but also, representing a further dimension, state and science (Neusel, 1986: 72). This co-operative purpose is reflected in the composition of the council and the recruitment procedure. The council is made up

²⁰ The number of students increased in West Germany between the summer semester of 1950 from about 110,000 (without Saarland and Berlin) to 205, 346 (including 20,741 in (West-) Berlin) during the summer semester of 1959 (Ellwein, 1992: 244).

²¹ For a detailed description of the organisation and the role of the Science Council as an institution of co-operation between Science, the federal authorities and the Länder, within a framework of the

of two committees. The Academic Committee consists mainly of academics but also of outside representatives from both the private and the public sectors. The members are appointed by the federal president, following for most candidates the proposal of the science organisations and for some candidates the joint proposal of the Länder and the federal level. This procedure stands in contrast to the second committee, the Administrative Committee. It is made up of representatives of the Länder and the federal authorities, each group casting 50 percent of the votes. The main resolutions are passed in full meetings of both committees, requiring a two-thirds majority (Keller, 2000: 190; Briese and Ruffert, 1986: 35). However, as a rule the decisions are based on unanimity. This, in the view of Torsten Bultmann (1993: 27-8), creates pressure for consent which excludes the possibility of the political or the academic side pushing their agenda through against the will of the other side. The consequence is, according to Bultmann, that a council resolution represents the highest level of the ability to compromise between the political-administrative system and the (influential) science organisations.

It might appear that the Länder lost part of their competence in higher education because of the creation of the Science Council. However, as the Länder did not question the need for increased financial support (particularly as regards research), the focus was on how to organise a more substantial federal contribution. Osietzki (1990: 35) summarises the position of the Länder on this question and its solution:

Generally, they [the Länder] had no objections to the financing of research institutions by the federal government which were under their jurisdiction as long as it did not threaten their competence. The federal government and the Länder therefore agreed to establish the Science Council in an administrative agreement as this was a simple arrangement without legal power. This did not unsettle, in principle, the competence of the Länder.²²

legal environment, see the book (based on his legal science thesis) written by Hans Christian Röhl (1994).

²² Own translation of: "Generell hatten sie gegen eine Finanzierung der ihrer Zuständigkeit unterstehenden Forschungseinrichtungen durch den Bund nichts einzuwenden, solange ihre Kompetenz dadurch nicht bedroht wurde. Deshalb einigten sich Bund und Länder auf dem Wege eines Verwaltungsabkommens über die Errichtung des Wissenschaftsrates, da es sich hierbei um eine einfache Abprache ohne Gesetzeskraft handelte, welche die Länderkompetenz nicht grundsätzlich erschütterte."

The final arrangement of the council was largely based on the proposals of the Länder with the focus on preserving their competence. Yet, although initially the recommendations of the Science Council concerning the development of the higher education system had only an advisory function (given its lack of legal competence), this did not stop the recommendations from carrying a considerable political weight right from the beginning (Keller, 2000: 190; Schneekloth, 1990: 67). One explanation for that central role of the council in higher education planning can be put down, according to Schneekloth (Ibid.), to the composition of the council, with its representatives of the major actors involved in higher education.

The composition of the Science Council, its role but also its authorisation based on an agreement between the governments of the Länder and the federal government, makes the council, for Andreas Keller (2000: 190), an important example of the characteristics of the structures of political joint decisions (*Politikverflechtung*). It also represents an example of how the development of a policy field can create the need for further (institutional) actors.

In 1960, the Science Council, for the first time, published a 'structure-plan' in which it outlined in detail recommendations for the development of the higher education sector in terms of structure and quantitative expansion (e.g. buildings) (Teichler, 1990: 14). At this stage, though, the council did not get involved with more critical questions about higher education policies. Its focus was more on the functional dimension which probably suited those actors which were behind the establishment of the council. The fulfilment of its expected role provided in 1960 and in 1963 the base for a renewal of the administrative agreement between the Länder and Bonn (Osietzki, 1990: 38).

Other developments also began to influence the higher education sector. The lack of a fundamental reform of the universities together with other political/societal changes (for example the outlook of a possible arming of the German military forces with nuclear weapons) led to the formation of student groups actively criticising these situations and developments respectively. These student movements were originally connected to the party system. This, however,

started to change at the beginning of the 1960s.²³ As a consequence, the groups moved away from mainstream politics towards a more extreme political orientation (Nitsch, 1986, 352-3; Neusel, 1986: 70). A few years later, this radicalisation became a fundamental source of ‘disturbances’ not only for the universities, but for German society as a whole.

The political activities of the students, as well as growing sense of the connection between economic growth and educational provision (including a rather simplistic human-capital theory) and the ‘Sputnik-shock’, revealed to the public the shortcomings of the German higher education system. As a consequence, this started to create a greater awareness of the need for more long-term planning (Neusel, *Ibid.*). Yet, not much had changed so far in the organisation of higher education. Aylâ Neusel (*Ibid.*: 81) therefore calls the period until 1960 a phase of ‘quantitative extension without planning as regards content’. (The above mentioned student-critique and the ‘economic awareness’ in contrast already characterised the following phase.)

The universities were obviously also affected by the changing environment. The old ‘reintroduced’ university system was finally about to change. However, George Turner (2001: 15-6), an academic who occupied leading positions in the higher education environment but also in politics, assumes that in the 1950s neither the students who criticised the ‘conservative’ universities and their professors (of whom quite a few carried the burden of an unresolved role during the Nazi era), nor the professors themselves realised that they were experiencing the “sunset of the old German university”²⁴ (Schwarz, quoted in Turner, 2001: 16).

2.4. Coordination on a national level: The first moves

Higher Education started to raise its profile in the 1960s, amongst the public and amongst politicians. Turner (2001: 18) points out that until the end of the 1950s,

²³ The most important student group at that time was the ‘Socialist German Student Alliance’ (*Sozialistischer Deutscher Studentenbund - SDS*). In 1960 it broke away from the Social Democratic Party (SPD) (Nitsch, 1986: 353).

²⁴ Own translation of: “Abendröte der alten deutschen Universität”

the lack of politicians with a focus on education was conspicuous.²⁵ Yet, this started to change as a result of the further development of the sector. This became obvious in the mid 1960s when politicians, according to Thomas Ellwein (1992: 247), decided to pursue an active policy strategy in higher education. This, of course, implies that until then a passive approach prevailed. And indeed, there is not much that could be used to argue against such an evaluation.

It is therefore no coincidence that from about the same time, the mid 1960s, the university sector increasingly became the subject of expansion and reorganisation. The economic factors – which were certainly also one of the reasons for increased political activities – behind that development have already been mentioned above.²⁶ Beside this motivation to provide improved conditions for economic growth – i.e. in the form of a highly qualified labour force – there was also a socio-political dimension. It too was a strong driving force behind the expansion process and the intensified interest of politicians in the field.

The universities still represented a system that was more focused on the education of a small functional elite. Furthermore, the internal organisation of the institutions was more a system for the preservation of the current structures than a system for innovation. This situation was critically highlighted, with particular emphasis on the need for more social justice. This was evidenced by slogans like the one demanding ‘equality of opportunity’ (*Chancengleichheit*) or the plea by Ralf Dahrendorf calling for the recognition of ‘education as a civil right’ (*Bildung als Bürgerrecht*) (Bultmann, 1993: 19-20; Briese and Ruffert, 1986: 26-7).

To accommodate both aspects, economic growth and social justice, the aim was to expand the available places for students.²⁷ To support the growing number

²⁵ According to Turner (Ibid.), five of the eleven ministers of culture (and education) of the Länder were not members of the parliament of the relevant Land. Furthermore, three of them did not belong to a party, which was an exception at that time as it did not apply to any other minister. Even Willy Brandt, the first social-democratic chancellor of West Germany, appointed in 1969 a Minister for Education and Science who was not a member of any party.

²⁶ The discussion about the failing of the higher education sector in support of the national economy was emphasised by the characterisation of further education as being in a state of emergency (*Bildungsnotstand*) or even as representing a catastrophe (Neusel, 1986: 65; Teichler, 1990: 14).

²⁷ This seemed to have been successful. 381,422 students were enrolled at higher education institutions during the winter term 1965/66. Five years earlier (1960/61) the number was something more than 77,000 smaller but five years later (1970/71) the number had risen by nearly 144,000 students (Teichler, 1990: 25).

of students, especially those coming from a less wealthy background, the federal government and the Länder signed in 1965, following earlier programs, an agreement on a financial aid program for students. After Article 74, Section 13 of the Basic Law was amended, establishing financial assistance of education as a concurrent legislative power, Bonn used its legal competence in 1971 to introduce a more comprehensive and nationally standardised law for the financial assistance of students (*Bundesausbildungsförderungsgesetz – BAföG*). The reason for the increased federal involvement (under a new social-liberal government, see below) “is to prevent regional disparities in public efforts to secure equal opportunity” (Teichler, 1992: 151). Based on the BAföG, the grants are need-based and the costs of the program are shared by both levels of government, with the federal level financing 65 per cent and the Länder contributing the rest.²⁸ In addition, tuition fees were abolished at the end of the 1960s, leaving the students to pay fees only for the student union and (where applicable) for health insurance (Teichler, 1992: 145-6, 155; Turner, 2001: 141-3, 176).

The new dynamics were also reflected in the higher education policy of the Länder. They started to take on more responsibility by creating university-laws. At the forefront of this development was Baden-Württemberg which, in 1968, was the first Land to introduce such a law for its universities. This followed the establishment in 1964 of a planning department for its higher education institutions, located in the Ministry for culture and education (Neusel, 1986: 70-1; Klose, 1993: 78).

A more visible change, involving the whole country, was the result of a 1968 agreement between the Länder concerning the official creation of a new type of higher education institution – the University of Applied Sciences (*Fachhochschule – FH*). With this agreement, various higher education institutions were standardised on a national level and placed close to the universities. With their more practical and vocational orientated approach, the FHs aimed at relieving the Technical Universities by providing an alternative for students. Furthermore, the FHs were supposed generally to increase the offer of places available for students to improve the nation’s economic competitiveness (Turner, 2001: 97).

²⁸ The formulas, regarding grants and loans changed various times over the next decades involving intense political discussions as will be shown later on.

Although Bonn was not part of the arrangement establishing the FHs, indicating that its policy involvement had still left no major impact, financially its contributions were growing. In the period between the creation of the Science Council and 1969, “federal expenditures on higher education increased substantially, especially on buildings and facilities, promotion of research, and financial assistance for students” (Teichler, 1987: 99).

In the field of research, the governmental change on the federal level in 1966 introducing a new grand coalition of mainly the conservative Christian Democratic Union (CDU) with the SPD, brought to an end the predominance of the CDU on the national level since 1949. This also resulted in a new research policy. The new engagement, stimulated by the perceived gap in comparison with the US but also Japan, not only meant extra money but also an increased state involvement in the field (Schneekloth, 1990: 77-8). The greater attention to research, though, was counterbalanced by a general perception that in the 1960s and also in the 1970s, “higher education planning was concerned primarily with teaching and study rather than with research” (Teichler, 1992: 159). Teichler does not totally agree with such a view as he argues that more time and resources are dedicated to research because of the duties of the professors which include research for which they are provided with money and staff as part of their basic provision (Ibid.).²⁹ However, research certainly did not get much attention at that time. At least not in the political and public arena. This arena was dominated by issues which were introduced by the student disturbances of the 1960s, reaching their apogee in the events of 1968.

It is not possible here to discuss all the aspects of the student revolt of 1968. Yet, it cannot be ignored here either, as it stimulated reforms and changes

²⁹ This is not the only difference from Canada. While the indirect costs of externally funded research projects are a topic of great relevance in Canada, this does not attract the same attention in Germany. In fact, Teichler’s description of that aspect in Germany reveals that it is no point of discussion at all (Ibid.):

“Where professors compete for public funds, ... it is considered completely normal for higher education institutional resources to be included as a complement to research projects. It does not occur to anybody, ... that it would be an unfair burden on higher education institutions to have to use considerable amounts of their own funds for research projects that are assisted by external grants, the general view being that research would be carried out with insufficient resources and in principle even more internal university funds would have to be allotted for research if no external funds were available.”

within the higher education sector that followed after the revolt.³⁰ The exact role played by the student disturbances, though, was and still is contested. There might be a general perception that the reforms that followed 1968 happened only because of the student revolt. Some, however, argue that this is a 'myth' and that the reforms of the universities started already long before that (Führ, 1993a. 61). Turner (2001: 17) takes a similar stance. He writes that it is simply false to argue that the culture-revolutionary protests of the students revealed the shortcomings of the higher education system and thereby forced a reform policy to take over. He points, for example, at the fact that recommendations of the Science Council concerning a reform of the higher education system were five to ten years older than the protest in 1968. Nevertheless, he argues that reforms were overdue and therefore could only have resulted in a revolution.

Another author, Andreas Keller (2000: 13), also does not give the students exclusive credit for the reforms which were to follow after 1968. Yet, he considers the protests to have been an important factor to provide the ground for reforms. After all, they were aimed at the old university with its central role of the professor, which was not considered to be able to reform itself from the inside.

How much the student protests actually contributed to the reforms that followed might be difficult to answer also because the whole situation was not as coherent as the use of terms like 'student revolt' or just '1968', might imply. The protest, for example, did not simply occur in 1968. Its roots go back further than that and had its origin in a less revolutionary student critique but also in societal conditions more generally. Hence, its target was not only the democratisation of the universities, but was at times aimed at a greater societal change.

One of the factors that contributed to the 1968 event was the new grand coalition on the national level in 1966 that left the parliament without a substantial opposition, as the one non-governmental party in the Bundestag, the Free Democratic Party (FDP), occupied only 49 of the 496 seats. This led to a perception of a lack of democracy. This and other controversial topics, like for example the Vietnam War and not to forget the insufficient debate about the Nazi era (in the universities but also in the society as a whole), led to the formation of

³⁰ The impact was certainly not only restricted to universities. 1968 had a fundamental influence on the German society as a whole and is a topic which causes controversy even today.

an extra-parliamentary opposition (APO). The main force behind the APO was the student alliance SDS. Originally, its goal was a revolution involving the whole society. In order to achieve that goal the movement left the university environment in 1967/68. This attempt to get the entire state involved was – unlike in France – a total failure in the view of Turner (2001: 18-9). The movement went back to the universities where it was the main force behind the protest against the university system and its combination of undemocratic professorial dominance and its stance against changes.³¹

What the student protests achieved, according to Turner (Ibid.), was that they uncovered a vacuum of power. Yet, the main beneficiaries of this revelation were neither the students, nor a more abstract ‘democracy’, but the state or more precisely, bureaucracy. After 1968, the university became truly an institution of the state.

Whatever one thinks of the student protests, it is widely accepted that this period had a major impact. It left its mark on German society as the coming years were about to prove. In terms of higher education policy this meant that a period that was characterised by relatively little federal influence came to an end.

3 A brief encounter? The rise and fall of an interventionist federal higher education policy

3.1. New dynamics: a new federal government and the amendment of the Basic Law

In 1969, for the first time since the war, an SPD-led coalition with the FDP took over the national government from the CDU-led grand coalition. It meant the end of 20 years of conservatism dominating German national politics. Even if the SPD

³¹ The students used slogans which are still well known today. One characteristic one, for example, was: ‘*Unter den Talaren, der Muff von Tausend Jahren*’ (which translates about like that (without the rhyme): ‘Underneath the gowns, the fustiness of a thousand years’) highlighting the system’s lack of ability for renewal.

was part of the former government, it was in particular the 1969 election which resulted in a shift to the left in national politics.³²

The implications of the change of government for the higher education sector were already dealt with in the inaugural speech of the new chancellor, Willy Brandt, in autumn 1969. Centred around civil rights, Brandt announced that his government would focus more on the democratisation of the educational sector including an emphasis on greater equality of opportunity (Oehler, 1989: 196). In a more pragmatic statement he outlined: “Education and training, science and research are at the top of the reforms that we need to get to work on in our country” (quoted in: Neusel, 1986: 71).³³

The consequence of this ‘new attitude’³⁴ and its effect are summarised by Alyâ Neusel (Ibid.):

The entry of the federal government into higher education planning beginning in 1969 and the general planning activities until 1972, mark a new peak of higher education planning by the state. The arguments in favour of the extension of the higher education field in order to standardize the equality of education across the boundaries of the Länder and the arguments in favour of a participation of the federal government in the building up of the higher education sector, gained weight with the formation of the social-liberal coalition. This also enhanced the public awareness towards the importance of long term higher education planning.³⁵

³² Especially considering that at that time the distinction between left and right was much more emphasised and less characterised by a move towards the ‘middle’ of the two main parties (SPD, CDU) which could be witnessed more recently.

³³ Own translation of: “Bildung und Ausbildung, Wissenschaft und Forschung stehen an der Spitze der Reformen, die es bei uns vorzunehmen gilt”.

³⁴ George Turner (2001: 22) does not see the portrayed willingness for reforms of the new government as something particularly unique. It only confirmed an already ongoing process at that time. He further argues that at the end of the 1960s, nearly everybody wanted some kind of reforms. Brandt’s emphasis on education policy only put pressure on the government by raising the expectations. This and the role of education in society led, according to Turner, ultimately to education policy being characterised by ideological and party political dimensions.

³⁵ Own translation of: “Der Eintritt des Bundes in die Hochschulplanung ab 1969 und die länderübergreifenden Planungsaktivitäten bis 1972 markieren einen neuen Höhepunkt der staatlichen Hochschulplanung. Mit der Bildung der sozial-liberalen Koalition gewannen die Argumente zum Ausbau des Hochschulbereichs für die Vereinheitlichung der Bildungschancen über die Ländergrenzen hinaus und zur Beteiligung des Bundes am Aufbau des Hochschulbereiches an Gewicht und unterstützten im öffentlichen Bewußtsein die Bedeutung von langfristiger Hochschulplanung.”

The implication of this more prominent role for Bonn seemed to be obvious – a move in the direction of more centralisation as the federal government started to acquire more competencies.

Despite the association of the increased importance of higher education with the SPD/FDP coalition, the first major step in the centralising process had already taken place under the grand coalition (Turner, 2001: 21). The amendments to the Basic Law, which marked this step, came into effect on the 12 of May 1969. One amendment was Article 75, Section 1a, which gave the federal level in general university matters the competence to create a legal framework to provide guidelines for specific elaboration. This law did not have an immediate effect and it was only some years later that Bonn used the given competence to create such a framework. The other amendments, Articles 91a, Section 1, No. 1 and 91b, in contrast had more immediate consequences. Both articles fall under the heading ‘joint tasks’ (*Gemeinschaftsaufgaben*) of the federal government and the Länder. Under these joint tasks, both levels act together – planning and financing – in matters of expansion and new construction of universities and colleges including university clinics (Article 91a, Section 1, No.1), as well they can act together in the case of educational planning, and in the promotion of institutions of scientific research if they are of national importance (Article 91b). Under the aspect of financing, the changes basically meant that already existing federal involvement was formalised (Badura, 1991: 73; Briese and Ruffert, 1986: 34-5).

The joint task amendments were a necessary step in the light of the responsibilities of the two governmental levels, in the view of Gerhard Konow (1996: 52), writing as a State Secretary in the Ministry of Science and Research of the Land North Rhine-Westphalia. Furthermore, based on its general acceptance, the move did not generate political disagreement:

The joint task of planning and financing investments in the field of higher education assumes public responsibility for the implementation of the individual’s basic and free right to choose to be educated and where. Therefore, the federation and the states must provide quantitatively and qualitatively sufficient study and research opportunities on a regionally balanced basis. The introduction of the joint task was the answer to the massive expansion of the educational system in the 1960s and 1970s and was promoted by all political groups.

This apparently widespread agreement is important for the understanding of the consequences of the constitutional amendments. It still might surprise, though, at least when looking at the situation of the Länder. The amendments to the Basic Law ended their formerly exclusive formal competence within the general field of higher education in terms of legislation, planning and financing. Yet, the Länder did not completely lose their leading role. The situation had changed in a way, that the emphasis was now more on sharing responsibility. The amendments therefore have been described as marking the turning point from a more pure cultural federalism towards the principle of cooperative federalism (Teichler, 1987; Neusel, 1986). Yet, in a slightly different evaluation of the situation, Andreas Keller (2000: 188) takes the stance that cooperative federalism was already quite common before 1969. Still, his view does not differ that much from the viewpoints as he recognises that the amendments to the Basic Law resulted in a constitutional basis for the practice of cooperative federalism (within the area of construction, education planning and promotion of research). In any case, within a short period of time after the changes to the Basic Law, the co-operation (based on Article 91a and 91b) between Bonn and the Länder was institutionalised (Neusel, 1986: 71-2). This became especially visible in the planning and financing of the construction of university buildings.

The more emphasised role of the federal government in the planning of buildings (and investment in major equipment) based on Article 91a, Section 1, No. 1, of the Basic Law is detailed in a federal law, the Higher Education Construction Act (*Hochschulbauförderungsgesetz – HBFG*) of September 1, 1969. Still during the same year the law was put into practice, resulting in the Planning Committee for Construction in Higher Education (*Planungsausschuß für den Hochschulbau*). As a federal-Länder body, it is made up of the federal minister for education and research, the finance minister and a minister from each Land. The decisions of the Committee about the funding of projects result in four-year outline plans which are continued every year and which are binding for both levels of government. The applications for these projects come from the universities and the Länder. The decisions, however, are mainly based on the recommendations of the Science Council which therefore “is the major body in charge of construction planning” (Teichler, 1992: 146). This was emphasised by the fact that the

responsibilities of the council – for the first time ever – were laid down in a law (HBFG). Based on the verdicts of the Planning Committee, the projects receive the necessary investment from both governmental levels based on a fifty percent share each (Ibid.; Keller, 2000: 188-90; Webler, 1990: 78-9; Bund-Länder-Kommission für Bildungsplanung und Forschungsförderung, 1996: 14).

Given the above described arrangement, the federal authorities are not left with much direct influence in the whole process as they, for example, cannot themselves formulate an application for the funding of projects. Their role is therefore limited to financial contributions (Frackmann and de Weert, 1993: 79). Initially, though, there were voices raised that expressed concern about the new constitutional role of the federal government in the joint responsibility of construction. Some even argued that this step also meant a step away from cooperative federalism towards federalism steered from the centre. One scholar, Reimut Jochimsen, already in 1977 (68-73) dismissed these kinds of concerns and argued that the constitution and the HBFG provides a balance that would not allow a dominant federal role, as the example of the federal inability to take the initiative shows. Going beyond arguing against the existence of a ‘threat’ of federal influence, Jochimsen rather saw the danger of the federal level being reduced to a ‘payments office’ only. Furthermore, the author identified institutions that lost power as a result of the new legal arrangements: the parliaments which were, not only in this field, reduced to ‘notaries’ of governmental planning within cooperative federalism.

Concerns about a superior federal influence have not since been raised anymore as a central topic for discussions. Yet, this does not imply that construction within higher education is an undisputed field. In 2000, a commission of experts on federalism from various professional backgrounds released a document on the reform of German federalism (Bertelsmann-Kommission »Verfassungspolitik & Regierungsfähigkeit«, 2000).³⁶ To outline the starting-points for such a reform, the commission, initiated by the Bertelsmann Foundation,

³⁶ The commission included high-profile experts such as Rita Süßmuth (CDU), a former minister in the federal government under Helmut Kohl and a former president of the federal parliament; Klaus von Dohnanyi (SPD), a former mayor of the ‘*Stadtstaat*’ (city state) Hamburg; and Hans Benda, a former Judge at the Federal Constitutional Court.

presented ten proposals to optimise the governance of the system. One of the proposals deals with the joint financing of university buildings as an example for making a point about the reduction of joint financing in general. The commission argues that joint financing restricts the Länder as they cannot plan any projects for which they would have sole responsibility.³⁷ These decisions are made in commissions thereby restricting the independence of the Länder. The costs are also not carried exclusively by those who prompt them, which again slowly undermines the responsibility of the Länder. The joint financing furthermore means that if the federal level reduces its financial commitments, it has a knock on effect with drastic consequences for the universities. In addition, the commission picks up the criticism described and rejected above by Jochimsen: the danger of too much federal intervention because of the financial contribution. However, even in 2000 the authors still speak of a danger without mentioning concrete pieces of evidence for such federal interventions on a larger scale. This could imply that federal involvement in terms of competence has not thus far led to major problems and it therefore constitutes a more theoretical threat. However, the commission nevertheless argues for the abolition of the current arrangement and the transfer of the competence back to the Länder, partly re-establishing the pre-1969 situation. In the case of such a step, the financial compensation for the Länder is basically supposed to centre around a revised distribution of tax revenues (Ibid.: 35-6).

Back in 1969/70, the role of Bonn in higher education was actually further expanding. Given the additional responsibilities of Bonn, the duties of the former Federal Ministry of Scientific Research were increased and it was renamed Federal Ministry for Education and Science (*Bundesministerium für Bildung und Wissenschaft* – BMBW) (Teichler, 1992: 146). The time was generally less problematic as there was a broad agreement on the need for reforms and also a willingness to experiment with different roads to these reforms. The resulting consensus in higher education policy around 1970 was, however, to prove short lived (Oehler, 1989: 20). Further initiatives were taking place at that time that

³⁷ It is possible for the Länder to plan and execute building projects themselves by not going through the joint planning procedure (Rothfuß, 1997: 248). That, however, means that they would receive no federal money which appears to limit the appeal of such an option, at least in the case of substantial investments.

seemed to strengthen the federal influence, but the developments were already mixed with signs of the consensus coming to an end.

3.2. Towards the high point of federal higher education intervention

The diminishing of the consensus in higher education started, according to Turner (2001: 22-3), already in 1970 when education and its role in the further development of the society became an ideological issue. Hence, the decisive dividing line was less between Länder and the federal government but more between the main parties. Turner argues that especially in the period between 1970 and 1973, the bitterness of the debates was mainly rooted in the government and the opposition actively looking for an ideological confrontation.³⁸

Given that confrontations were more party political, the federal government – with the support of SPD governed Länder – was to a certain degree still able to pursue an expansion of its role. To reflect this aspiration, the BMBW published in 1970 the ‘Education Report ’70’ in which it outlined a concept for the expansion of the whole educational sector (Neusel, 1986: 72).

In the same year, a more substantial move took place. With Länder participation, a joint planning agency was founded. The Federal-Länder Commission for Educational Planning and Promotion of Research (*Bund-Länder-Kommission für Bildungsplanung und Forschungsförderung* – BLK), which it was called after being renamed in 1975, was basically a result of Article 91b of the Basic Law. It is made up of representatives of both governmental levels with the votes being shared on an 11 votes per level (16 votes after unification) basis. In contrast to the KMK, decisions do not have to be unanimous. However, a decision is only accepted if the federal government and a majority of the Länder vote in favour. It is mainly a forum for discussions and the decisions are therefore not binding. An exception might be possible if the federal government and (post-unification) at least 13 heads of Länder governments agree on a decision. But even then it would only be binding for those Länder which agreed to the resolution. One

³⁸ After that initial period there was still an ideological division but there were always situations where both sides were willing to compromise. For ten years (mid 1970s until mid 1980s), however, this had to do more with individual bureaucrats involved than with official party politics (Turner, 2001: 23).

of the original tasks of the BLK was to produce regular proposals on long-term planning in the educational sector, including higher education. The proposals were supposed to reflect the common goals of the federal government and the Länder governments. This was probably an insuperable hurdle and it is therefore not surprising that the first of these long-term plans, released in 1973, was already considered a failure. The planning exercise was not, however, definitively abandoned until 1982. One of the long-term consequence for the BLK was that its focus shifted more towards the field of research, which was confirmed by a general agreement about the promotion of research (*Rahmenvereinbarung Forschungsförderung*) between Bonn and the Länder in 1975 (Keller, 2000: 188-9; Teichler, 1992: 146-7; Bund-Länder-Kommission für Bildungsplanung und Forschungsförderung, 1996: 7-10; Frackmann and de Weert, 1993: 80).

It was not only the long-term planning that failed. A Framework Act for Higher Education (based on Article 75, Section 1, No. 1a of the Basic Law) which was planned around the same time, failed to materialise as well (although it was finally introduced in 1976). These kinds of developments showed that the potential role of the federal government, but also the role of federal-Länder agencies, was already gradually starting to erode again in 1972. This was only a couple of years after a period in which there seemed to have been such enthusiasm for reforms (Teichler, 1987: 100).

Looking at the events from a slightly different perspective, Briese and Ruffert (1986: 35), saw the unsuccessful long-term plan – which to their mind also failed because its financing was not secured – and the defeat of the federal government in the *Bundesrat* (second chamber) in 1974 in the case of the Higher Education Framework Act (*Hochschulrahmengesetz – HRG*)³⁹ as representing two different developments at the same time. The content and idea behind both initiatives marked the highpoint of a centralised higher education policy, but because of their failure they both also represented the beginning of the end of this federal push for the framing of *one* national higher education policy.

³⁹ The HRG draft version of 1974 passed the Bundestag based on a SPD/FDP majority. However, it failed in the Bundesrat because of a CDU/CSU led opposition. Only after negotiating another compromise with the christian democrats, was the federal government in 1975 finally able to push the HRG through the Bundesrat. It then came into force in 1976 (which will be looked at below in more detail). (Briese and Ruffert, 1986: 35)

Another event which underlined this development was, as a result of a contract in 1972 between the Länder, the establishment of the Central Admission Agency (*Zentralstelle für die Vergabe von Studienplätzen – ZVS*), located in Dortmund. The task of the ZVS was and still is to allocate university places to students on a nation wide basis within subjects that have a restriction on admission. Equipped with powers that went beyond the pure distribution of students across the country, the ZVS initially symbolised the aspirations of the Länder, according to Keller (2000: 188), to establish an exclusive competence within the important field of higher education admissions. Jochimsen (1977: 73-8) also saw the ZVS as an important institution, although, to his mind, it gained a considerable political weight only after a few years. Originally, the agency was created simply with a view to remedying the shortcomings of the admissions system. Yet, after some years it had developed into an agency that, despite its administrative organisation and purpose, made decisions of the highest importance within higher education policy. Jochimsen therefore summarised the importance of the ZVS in 1977 (74) in the following terms: “One need have no hesitation in calling it [the ZVS] the currently most influential body of national scope in the politics of higher education.”⁴⁰ Because of that, he criticised the growing importance of the ZVS on two grounds. First he highlighted that no parliament is involved in this decision-making process, despite the wide-reaching consequence of its decisions. The second criticism focused on the nearly complete exclusion of the federal authorities from the ZVS, despite its national importance.

There were further moves to follow in the 1970s towards system-wide coordination involving the Länder and the federal level, but the above described situations further indicated the declining federal co-ordinating role. This development was also reflected in the federal budget. The expenditures for education, science, research and cultural matters reached the highest share of the total federal budget in 1972 with 5.7 per cent, which was not reached again in the years to come (Rilling, 1993: 336).⁴¹

⁴⁰ Own translation of: “Man kann es getrost als das in der Hochschulpolitik derzeit einflußreichste Gremium mit gesamtstaatlicher Wirksamkeit bezeichnen.”

⁴¹ In another source (Keller, 2000: 318), quite different figures are used. Keller speaks of 1975 as the year that represented the highpoint of the general financial support for the education sector, representing 5.5 percent of the GNP or 15.8 percent of the total public budgets. Again different

In a different development, the judicial review of higher education cases by the Federal Constitutional Court (*Bundesverfassungsgericht* – BVG) started to become a regular feature of the system. The situation had already in the mid 1970s produced the polemical question as to whether the BVG had become the ‘secret Minister of Culture’ (Kultusminister) of Germany (Jochimsen, 1977: 78). The judicial review of elements of the higher education system was not new. Already in the 1950s, the Federal Administrative Court had to deal with questions related to that field, although normally only with peripheral aspects. The impact of the BVG was different and more fundamental as its judgements affected the higher education policy directly and even imposed conditions on the legislature relating to the legal background of the higher education institutions (Briese and Ruffert, 1986: 50-1).

The role of the constitutional court does probably not surprise given the amendments to the Basic Law in 1969 which potentially created the ground for an increased involvement of the BVG. It is not possible to look at all relevant cases here, but some landmark decisions should be mentioned.

One of the more prominent judgements was related to the democratisation of the internal structures of the universities following the demands of the student (and university assistant) movement. The social democrat-liberal government was about to introduce new structures that basically aimed at a democratisation of the universities by reducing the dominance of the professors. After such a change, professors would only constitute one group amongst others (hence, the reformed university was called ‘group university’ (*Gruppenuniversität*)). Already before the modifications were finalised, the professors themselves appealed to the BVG. The judgement of the court in May 1973 did accept the basic idea of the new structure of the group university. It still ruled, though, that the professors should keep their majority position against other groups involved when it comes to decision-making procedures. The judgement also influenced the discussion between the federal government and the second chamber, the Bundesrat, which at that time was

figures are used by Jürgen Schlegel (1996: 227-8) looking at both education and science as a share of the total public expenditures and GNP and looking at the federal share within the higher education sector. However, even if different figures are used the story is the same: a reduced federal share and a reduced share of higher education as part of public expenditures in comparison with 1975.

dominated by the opposition in the federal parliament, the CDU/CSU. It had the effect that internal university participation became eventually, following the position of the CDU, an area dealt with in the individual university laws of the Länder (Turner, 2001: 82-3; Schneekloth, 1990: 74).

The above mentioned example might give the impression that the BVG was more an institution to review federal policy intervention. Yet, the scholar Peter Badura (1991: 73) makes the argument that in the wider constitutional context, the BVG is actually part of a system to control the higher education policy of the Länder:

The federal constitution, by stating the basic right of free science, research and teaching (Art. 5 sect. 3 GG [Basic Law]), establishes – in addition to the binding force of this guarantee for the federal powers, esp. the federal legislation – a federal safeguard against the powers of the Länder. Combined with the jurisdiction of the federal courts, including the judicial review by the Bundesverfassungsgericht, the constitutional liberty secures a means of surveillance over the legislation and administration of the Länder concerning the universities.

This evaluation appears to be overemphasising the need to ‘observe’ the Länder. However, it has to be remembered that despite the increased federal involvement, higher education basically still falls under the authority of the Länder. Hence, the perspective of the constitutional and judicial checks as being there mainly for the Länder.⁴²

⁴² One example where it was obvious that the Länder, or one Land, received the attention of the BVG was a case against Bavaria. At the beginning of the 1970s the BVG disallowed the Bavarian practice of “giving preference to students from Bavaria when deciding on admission to *numerus clausus* [i.e. restricted entry] study programs” (Teichler, 1992: 161). The former (1970-86) Minister of Culture in Bavaria, Hans Maier (1998: 31), appears to have this judgement in mind when he comments that the role of the BVG (after 1973) in the question of admission to universities had a negative effect. He argues that the resulting situation meant that federalism was not able to prove itself as a system of competition but that it was rather subordinated to a ‘schematic distribution equality’. He further complains that no Land and no university was able anymore to choose its own students. This appears to be a clear indication of his dissatisfaction with the ‘Bavaria-judgement’ of the BVG without actually referring to the main criticism of the preference for Bavarian students, which itself did not really reflect a competition either. In any case, probably because of the BVG and other verdicts, student mobility as such is not a major point of discussion in terms of financially disadvantaging certain Länder. The following statement from Teichler (1992: *Ibid.*) underlines this:

“The principle of unlimited student mobility between the *Länder* has not resulted in individual areas leaving it to the others to pay for higher education enrolment capacities. The Federal Constitutional Court decided in 1972, and in even greater detail in 1976, that the constitutional right of free choice of occupation/profession would be guaranteed only if the total higher education capacities in the Federal

In the BVG judgement of 1973 the focus was less on the role of the *Länder*. The verdict reflected mainly the changing environment of the university. It might have saved a certain dominance of the professors (although the hierarchies amongst them were reduced) but it also emphasised that the universities were objects and means of a publicly controlled education and research policy. The individual autonomy of the researcher was not questioned but the institutions as a whole certainly lost autonomy as a result of increased federal involvement in higher education based on legal provisions (amendments to the Basic Law). Even if the BMBW considered the strengthening of the autonomy of the universities in its education report of 1970, despite the SPD arguing in 1969 more along the lines of the BVG in 1973, these disagreements did not change the fact that the universities lost autonomy (Turner, 2001: 214-5). For various reasons (economic factors, student movements, ideology etc.) they simply had become too much of a public issue. Briese and Ruffert (1986: 32) highlighted the resulting changed environment for the universities:

With the increased meaning of university performances for societal customers and an increased share of public spending on education as part of the total budget of the state, higher education policy is increasingly more included in the infrastructure policy of the state.⁴³

This declining autonomy might imply that the federal government was still increasing its involvement in higher education. However, the federal influence had reached an early highpoint and was already fading again, although not dramatically. Some of the reasons have been mentioned above. Another one occurred in May 1974 when Helmut Schmidt became chancellor of the federal government after the resignation of Willy Brandt. The implications became especially visible after the victory of the SPD/Liberal coalition in the next federal

Republic largely corresponded to the total number of qualified graduates of secondary education institutions wishing to attend university. This requirement by the Federal Constitutional Court for ensuring adequate enrolment capacities applies to all *Länder* [including Bavaria].”

Based on the verdicts of the BVG, it is therefore not allowed in Germany to distinguish between ‘out-of-Land’ students and students from the Land where the respective university is located. This applies generally and not only to subjects with restricted admission (Heidenheimer, 1994: 30)

⁴³ Own translation of: “Mit dem Bedeutungszuwachs universitärer Leistungen für gesellschaftliche Abnehmer und einem erhöhten Anteil der öffentlichen Bildungsaufwendungen am staatlichen Gesamtbudget geht eine verstärkte Einbeziehung der Hochschulpolitik in die staatliche Infrastrukturpolitik einher.”

elections in 1976. The treatment of higher education reforms as mainly dependent on economic matters in Schmidt's inaugural speech was disillusioning for Turner (2001: 25) and marked for him the end of the reform policy.

To blame Schmidt for the declining priority of federal higher education policy would be too easy. After all, other political and economic developments, like for example the oil crisis of 1973, which changed the priorities of the federal government, already occurred during Brandt's time (Führ, 1993a: 60). It might therefore just be the case that changes during Schmidt's tenure at least partly represented the necessity to react to developments which already had started earlier.

3.3. Aspects of a declining federal role?

The first half of the 1970s brought a "flood of laws and decrees" (Briese and Ruffert, 1986: 49; own translation), which also provided the ground for the increased legal proceedings leading to the prominent role of the BVG. However, in the later stages of that five year period a different picture already started to emerge, in the form of failed attempts to add more regulations as part of a system-wide planning exercise. It therefore even appeared that the federal level was already losing some of its influence again. Yet, it would be a misconception to view the federal government as withdrawing from the higher education field at this time.

One of the examples, which appeared to contradict a declining federal interest was the already mentioned Framework Agreement on the Joint Promotion of Research (*Rahmenvereinbarung Forschungsförderung*), signed in 1975 by Bonn and the Länder. The negotiations took some years and during the process quite a few conflicts had to be resolved (Stucke, 1992: 4). Based on the amendment to the Basic Law (Article 91a/b), the agreement itself has been described as "sort of a »Basic Law« for research funding in Germany" (Karpen, 1991: 143). It institutionalised the relationship not only between the two governmental levels but also included the science organisations, leading to a relatively stable political balance (Stucke, 1992: 4). The actual agreement introduced fixed quotas for the contributions by the two levels of government to

the various publicly financed research organisations with an emphasis on the MPG and the DFG, “the two most important corporate actors in the German research system” (Mayntz, 1991: 54). It also meant that the financing of some other research institutions, which until then was based on the *Königsteiner* Agreement of 1949 (without Bonn), was replaced. It might appear that the emphasis of the Framework Agreement of 1975 was on introducing another formalised federal role. Yet, according to Renate Mayntz (Ibid.: 55), the agreement was mainly a result of the need for financing rules as a consequence of scarce public resources that had increasingly become an issue in the 1970s. The resulting quotas were subject to an annual growth rate which, however, had and still have to be negotiated. This has an important consequence for the research organisations, as “[t]he joint financing principle tends to depress growth rates to the contribution level of the economically weaker party” which again “lead at the same time to considerable immobilism and restrict the federal government’s chances to pursue an active research policy” (Ibid.: 55-6). Andreas Stucke (1992: 5), a social scientist from a MPG institute, actually argues that for the federal level one of the advantages of the arrangement is exactly that, together with the Länder, both levels are more capable of refusing demands for more resources by the science institutions. Furthermore, the federal government gained formal competence in parts of the science policy field and also achieved the desired calming down of the conflicts with the Länder as a result of the agreement and its formalised coordination rules. Under these circumstances, Bonn found it probably less disturbing that it gave up its flexibility in the promotion of research.

A less contested and more successful example of a federal-Länder initiative was and still is the Science Council, even if it does not directly represent an intergovernmental institution made up exclusively of members of the governments of both levels. Because of its success and acceptance, the Länder and Bonn agreed in 1975 on a renewal of the agreement that brought the Science Council into existence. Its tasks were reformulated and led to even more responsibilities, especially – see above – in the field of construction (Webbler, 1990: 79).

The main point that seemed to indicate a weaker federal position was the Higher Education Framework Act (HRG). The unsuccessful attempt by Bonn in 1974 to introduce a HRG has already been mentioned above. Yet, in contrast to the

failure of the long-term education plan by the BLK, the HRG was still on the agenda even if the federal government had to give up on some regulations and had to make compromises – more with the CDU than with the Länder as such – to have a chance of getting it through the Bundesrat. The HRG, based on Article 75 of the Basic Law, was finally introduced on January 26, 1976.

Although the HRG at the time arguably indicated a declining federal role – due to its reduced scope and the compromises it was based on – it later turned out to be an important, probably the most important, piece of federal higher education policy, which has continued to have a great impact on intergovernmental relations down through to the present (though with some intervening modifications). Therefore, the stages in the process which led to the formulation of the HRG will be looked at in more detail in the following section.

3.3.1. THE HRG OF 1976

Origin and development

As previously shown, the federal government received as a result of the 1969 amendments to the Basic Law (Article 75) the power to provide a general framework for the general principles of higher education, ensuring that it had a right to say in this matter. The basis for this right – it has to be emphasised again – was rooted in the former grand coalition which certainly helped its acceptance. In any case, the work begun almost immediately in order to produce a framework act. The institution in overall charge of this project was – naturally – the BMBW. Already in 1970, the Minister for Education and Science (Leusink) produced a document presenting fourteen theses, outlining the potential content of such an act. Yet, despite the earlier acceptance of the federal level receiving a formalised role in higher education policy, the positions of the actors involved had already to drift apart.⁴⁴ The aspect focusing on the internal democratisation of the universities was

⁴⁴ Traugott Klose (1986: 79), an administrator at the Free University of Berlin, outlines three main positions – drawing on the work of Margherita von Brentano – within the discussion leading to the HRG:

- A *conservative-reforming* position which was taken over by most of the professors at the time, believing that the German university was basically in a healthy state and had to be protected against rebelling students and against demands of societal forces. Representatives of this position were behind the petition to the BVG.

already subject to the revision of the BVG in 1973 (see above) before the whole framework act was passed. Consequently, the first attempt to pass the framework act failed in 1974. What followed were various drafts by experts and the federal government including long discussions. Eventually, the project was successful, but at the price of many compromises being incorporated into the new draft and the abandonment of some original plans for reform. The version finally adopted in 1975 differed greatly from the original proposal, thereby serving as an example for the drifting apart as a result of ideological positions (Neusel, 1986: 74, 77; Klose, 1993: 78-9). The new HRG, which came into force at the beginning of 1976, represented, according to Klose (Ibid.: 79), “to a large extent an unloved compromise between a SPD/FDP-majority in the *Bundestag* [federal parliament] and a CDU/CSU-majority in the *Bundesrat* [second chamber]”.⁴⁵

Function, content and implications

The underlying concept of the HRG is to provide a general framework – hence the name – for the German higher education system. In the concrete case, that means that generally “the Framework Act determines which matters have to be regulated uniformly by the higher education laws of the Länder and in which aspects the Länder can make their own specific regulations” (Teichler, 1992: 147). The idea behind this was to combine the Länder authority in higher education with the need to establish a certain standardisation or coherence on a national level - with the HRG as its foundation.

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- The *functional-technocratic* position was focused on the modernisation of the management of the university and on the reform of the study programs, especially under the aspect of training for an occupation.
 - The *radical-democratic* position centred around the understanding of sciences as contributing to the emancipation of the individual and the society.

Initially the second position dominated but the nature of the compromise, which characterised the final outcome, makes it difficult to determine which position ‘won’. Nevertheless, Klose concludes that the final product was located more between the first and the second position, in contrast to the original (federal) goal of locating it more between the second and third position.

⁴⁵ Own translation of “... weithin ungeliebter Kompromiß zwischen einer SPD/FDP-Mehrheit im Bundestag und einer CDU/CSU-Mehrheit im Bundesrat ...”

Without going too deeply into the individual points here⁴⁶, the main aspects of the actual content of the HRG can be summarised in the following way (Badura, 1991: 74):

The [HRG] embraces the basic regulations on the duties and functions of the universities, on the access to the university and on the regulation of study and curriculum, on the members of the university and on its administration and organisation.

Furthermore, the HRG provided for long-term education planning to be established on the Länder level, despite the fact that this kind of planning, initiated by the BLK, did not work on the federal level (Frackmann and de Weert, 1993: 80).

Beside the general features, the HRG also contained statements about the goal of development of higher education policy. An example for that is the model of a comprehensive university (*Gesamthochschule* – GSH) that basically combines the FH and the traditional university. In the HRG, it is formulated that courses of studies should, if possible, be brought together to establish comprehensive universities.⁴⁷ Yet, the embedding of these kinds of goals in the HRG remained without a substantial effect in practice (Teichler, 1990: 16-7). Similarly the outlining of possibilities for a reform of the structure of studies in the HRG also had no substantive effect (Turner, 2001: 26).

As part of a reform of the courses of study, the HRG obliged the Länder to establish the so-called Study Reform Commissions (*Studienreformkommissionen*) for all subjects. The creation of such commissions on the Länder level (based on their laws) did not work in contrast to the implementation on the national level, based on the provision of the HRG. The Länder signed an agreement in 1977 about setting up the various commissions for the different subjects, as well as a co-ordinating permanent commission. The permanent commission was made up of representatives of the Länder governments and of the higher education institutions. Furthermore, there were also representatives – without voting rights – of the

⁴⁶ For more information on the content, see: Klose, 1993: 78-82.

⁴⁷ The GSH is also an example for the discrepancy between supporting an idea and supporting the realisation of it (Neusel, 1986: 84). Originally there was common ground amongst the actors involved when it came to idea of the GSH. However, when it came to the point of putting it into practice, an ideological rift appeared, with the SPD still in favour and the Conservatives more against the GSH. As has been mentioned above this drifting apart as a result of different ideologies was not unusual for that time.

federal government and one each for the trade unions and the employers.⁴⁸ This left Bonn with basically only the role of an observer, especially as the recommendations were adopted by an inter-Länder body – the KMK. The concept of the Study Reform Commissions was modified in 1985 (Keller, 2000: 190-1; Teichler, 1992: 147-53).

Another provision of the HRG had a more lasting effect. Each Land created its own higher education act (*Landeshochschulgesetze*) based on the HRG. The timeframe given to the Länder was until the end of the 1970s, leaving them with a certain margin for manoeuvre. Yet, this margin also produced some negative effects. Because of the timeframe, the standardisation of the higher education landscape disappeared temporarily as the Länder incorporated the demands of the HRG into their own laws at different speeds. This in itself might not have indicated a problem. However, the differences appear – not surprisingly – to have been rooted in more fundamental political circumstances. Conservative governments hesitated longer with taking over the principles of the HRG, especially the aspect concerned with the internal democratisation of the universities (which was already diluted anyway). At the other extreme, in the case of West Berlin, the reforms of the university laws had to be withdrawn again – under the protest of the students. Nevertheless, eventually the goal of a certain standardisation of the system was basically achieved (Turner, 2001: 26, 215; Klose, 1993: 79-80).

The effect of having a common legal ground for the higher education sector – one commentator called the HRG the ‘Basic Law of higher education institutions’ (cited in Jochimsen, 1977: 63) – should not distract from a more critical evaluation. Turner (2001: 26) notes that for “critical observers the HRG of 1976 was seen as the lowest common denominator of all political forces and a sign of resignation”.⁴⁹ The question of who was giving up is clear for Turner (Ibid.: 25-6): the federal government, which was withdrawing again from the territory of Länder sovereignty after having only managed with great effort to finish its reform

⁴⁸ For more details about the composition of the commissions and the decision-making process, see Teichler, 1992: 147-8.

⁴⁹ Own translation of: “Kritischen Beobachtern galt das HRG von 1976 als kleinster gemeinsamer Nenner aller politischen Kräfte und als Zeichen von Resignation.”

policy for higher education with the HRG. Teichler (1992: 148) comes to a similar conclusion when he writes:

The eventual enactment of the *Framework Act for Higher Education* in 1976 and the subsequent creation of Study Reform Commissions might create the misleading view that there was a continuous trend towards more nation-wide coordination. It is certainly true to say that the federal government and parliament's role in coordinating higher education was reduced. This was demonstrated most visibly in 1977, when the *Länder* forced the federal government to accept only an advisory role in the Study Reform Commissions.

The HRG might have been an unloved compromise, especially from a federal perspective, but it still also marked an important step in the development of the higher education policy field.

3.3.2. *FACING RISING STUDENT NUMBERS - RENEWED FEDERAL INVOLVEMENT?*

The development of higher education in the 1970s was not only characterised by power struggles or ideological divisions. More and more the rapidly expanding student numbers also became a problem.

It has been said before that their rising numbers were not only expected, but actually wanted. The problem, however, was that there were too many students. Michael Daxner (1996: 34) demonstrates the dilemma rather cynically:

First they were called (1965 until 1975), then one started to realise how many had actually followed the call – the transition from elite education to mass education had succeeded. Now they turned from being the elite of the nation and carrying the hope for a cultivated and an innovative future, to a burden – for the universities, for the national budget, for public support for education policy.⁵⁰

The actual figures prove the drastic development. In 1965/6 the number of students had reached 381,422 which increased to 525,300 in 1970/71, to 836,002 in 1975/6 and finally broke the one million students barrier (1,031,500) in 1980/81 (Teichler,

⁵⁰ Own translation of: "Erst hat man sie gerufen (1965 bis 1975), dann begann man zu realisieren, wie viele dem Ruf tatsächlich gefolgt waren – der Übergang von der elitären zur Massenausbildung war gelungen. Nun wurden sie von der Elite der Nation und von den Hoffnungsträgern für eine gebildete und innovative Zukunft zur Last – für die Universitäten, den Staatshaushalt, das öffentliche Einverständnis mit der Bildungspolitik."

1990: 25). This equals an increase of about 270 percent over a period of fifteen years.⁵¹

The public higher education financial provisions were simply not able to adjust to this kind of expansion. The Science Council therefore suggested in the middle of the 1970s to limit the places of study to 800,000 by means of restricting new construction. This figure was also to serve as an upper limit for the research-orientated teaching. Both governmental levels eventually followed the suggestion, simply for financial reasons (Oehler, 1989: 200).⁵²

The problem was that at that time projections for the further development of student numbers implied that by the mid 1980s the figures would go down again as a result of a drop in the birth rate of the relevant age group. These projections were widely accepted. However, before the student numbers would drop again the actors involved had to face a (perceived) dilemma. The state could not or did not want to respond by expanding the system. It would have been considered as a waste of money anyway, as it appeared that the demand for an expansion would have eliminated itself again after a certain period. On the other hand, the alternative seemed to be to restrict access to universities even further and for more subjects (via the ZVS). This again was perceived as an unacceptable restriction of the ability to study and thereby undermine the principle of equal chances for a whole age group (Teichler, 1990: 17; Turner, 2001: 27).

The way out of the dilemma for both governmental levels in agreement with the higher education institutions was the so-called ‘*Öffnungsbeschluss*’ (opening decision) of 1977. It basically meant that the institutions ensured the open access of their study programs by temporarily taking on more students than there were actually places available.⁵³ The principle behind it appeared to be straightforward (de Rudder, 1993: 246):

⁵¹ The figures for every year were ascertained during the winter term and they do include all higher education institutions.

⁵² The figure of 850,000 area related study places was established later on and served as a formal reference figure (financing etc.) for the years to come despite a reality which produced much higher student numbers.

⁵³ For an extract from a document of the WRK from 1976, dealing with the issue and signalling an acceptance of the agreement under certain conditions, see: Daxner, 1996: 32-3.

The policy was to allow more students in during the years of the expected “student mountain”, increase the staff only temporarily, and limit the permanent capacity to the demographically expected smaller number of students after that “mountain”.

The underlying idea appeared to be very economical and efficient. The reality of permanently rising numbers, however, taught a different lesson. This is probably why Neusel (1986: 78) characterises the decision as simply an attempt to repair the shortcomings of higher education planning. Helmut de Rudder (Ibid.: 246-7) portrays the situation in similar terms:

Thus, the finance ministers capped – with the exception of medicine and the new vocational colleges (Fachhochschulen) – the funding of universities at the level of the late 1970s, while the number of students kept growing and the “student mountain” turned out to be a high plateau due to a steady increase in the percentage of young people graduating from “gymnasium” (academic secondary school) and thereby earning the right to enter higher education. And the percentage of those who actually entered also kept going up.

This situation put further strains on the universities but it also revealed the financial restraints which came to play an even more important role.

3.3.3. *REDUCED FEDERAL POWER, REDUCED FINANCIAL COMMITMENT*

The federal government showed little response to the implications of rising student numbers as it appeared to be withdrawing even more from higher education policy especially after a federal report released by the BMBW⁵⁴ in 1978 received little support from the Länder. The report focused on the structural difficulties of the education system and came to the conclusion that there were too many diverse elements which challenged a certain standard of uniform living conditions. Hence, the conclusion was that more federal power was needed, which the report in fact demanded. The Länder were obviously less than willing to grant this request as they “began to refuse any further Federal-Länder regulations and agreements in educational planning” (Teichler, 1992: 148). For example they rejected the establishment of the Study Reform Commission on the basis of a federal-Länder contract. Even the inclusion of the BLK acting as a supervisory body was not

⁵⁴ Bundeminister für Bildung und Wissenschaft (1978) Strukturprobleme des Bildungssystems im Bundesstaat. Bonn: Bundesministerium für Bildung und Wissenschaft

accepted by them. As has been shown above, the final result was that the KMK took on the responsibilities for the commissions. Teichler argues developments of this kind eventually led around 1980 to Bonn reducing its financial commitments in the field of the construction of higher education facilities which “[s]ome Länder governments interpreted ... as an indication of the federal government’s desire to relinquish its involvement in higher education planning” (Ibid.: 149). Figures on the federal financial contribution seemed to prove this point (Ibid.: 148-55). In order to put the following figures into perspective, it is helpful to look first briefly at the general composition of higher education expenditures.

Public expenditures for the higher education field consist of the general university budget, external research grants (Drittmittel) and the funding of scholarships (amongst others, based on the BAföG). Amongst those categories, the general budget represents by some distance the biggest contribution (for example 81 percent in 1987). The general budget itself is made up of investments and costs for personnel and material and equipment. Within this budget, the federal level contributes normally only 50 percent of the investments, with the rest being paid for exclusively by the Länder. Beside this, the federal funding includes payments as part of the external grants (see below) and the scholarships (Frackmann and de Weert, 1993: 85-6; Rothfuß, 1997: 256-7).

Taking all these expenditures into account and considering that they are partly only based on estimates, Bonn’s contribution in 1975 – at a time when construction was high on the agenda – accounted for an estimated 23 percent of *all* public expenditures on higher education. In 1980, this figure had gone down to 18 percent. Individual sectors of the higher education system do, however, present a different picture. In the category of joint research promotion, for example, the federal contribution remained roughly on the same level when comparing 1975 and 1980 – at just over 72 percent. Research is obviously a subsystem with an especially high federal contribution (to outline the whole detailed picture of higher education financing goes beyond what is necessary here, given the present focus on intergovernmental relations). The central institution for funding research at higher education institutions, for example, is the DFG (Nettelbeck, 1990: 226) which is jointly financed by the federal government and the Länder but which has also a “very distinct identity ... as an autonomous (publicly financed, but not state-

directed) organization” (Mayntz, 1991: 51). This again reduces its relevance for intergovernmental relations in the sense that it is a rather unsuitable body for the federal authorities to ‘compete’ with the Länder. This limitation is in addition to the already mentioned restrictions on the federal level as result of the 1975 Framework Agreement on the Promotion or Research (Teichler, 1992: 148-55).

It is different in the case of research (as will be shown below) but when looking at higher education funding in general, Teichler (1992: 155) clearly states that “[n]o special federal “power of the purse” has existed in the sense that there are hardly any situations where the federal government can undertake any initiatives without involving the *Länder*”. However, the expansion of joint financing programs (like construction) still gave Bonn a considerable role in higher education planning. In addition, it put pressure on the Länder to harmonise their activities and their institutions. From this perspective it becomes obvious why it is more important to look at the actual programs and not so much at financial details.⁵⁵

3.3.4. THE SITUATION AT THE END OF THE 1970S

Looking at the conditions from the perspective of the role played by the federal authorities, the situation in higher education had changed again at the end of the 1970s especially in comparison with the first half of the decade. The period after 1975 was characterised by what Neusel (1986: 81) described as a turning point and an attempt to find a new orientation. The analysis of the period also reveals the definite break-up of reform alliances and a situation where planning and reality in higher education institutions were far apart.

Looking at the period from an intergovernmental perspective (Oehler, 1989: 198-9), it can be portrayed as one that witnessed a rise of compromises and blockages, with the federal government and Länder governments of similar political composition on one side and the other Länder – most of the time in question representing the majority amongst the Länder – on the other side. In the process of finding compromises or even blocking each others’ moves, the BVG as

⁵⁵ For some detailed figures about higher education financing between 1970 and 1989, see Teichler, 1992: 154-8.

another actor beside the governmental ones became increasingly involved as an umpire, assuming something of a policy-shaping role.

Beside the growing role of the BVG, the ease with which initiatives could be blocked in this policy field had further negative consequences, principally as regards the potential for reform and financing issues.

REFORM POTENTIAL

As the state influence as a whole had been growing within the higher education sector, compromises or blockages on the intergovernmental level had a negative influence on the potential for reform.⁵⁶ That is partly because there are too many regulations by the state which again makes it difficult for the universities to act autonomously and put forward innovative solutions to societal demands. Initially probably more important, though, was that the non-governmental representatives of the higher education institutions had little chance themselves of seeing their ideas and suggestions becoming part of a policy if the governmental actors did not agree on it. The two levels of government together had a clearly dominant role in the sector relative to all other actors. In the event of a blockage at the intergovernmental level, this affected also those involved outside that level. Even in the case of universities being represented in committees that were supposed to have a certain influence on the policy of the state(s), the impact was still limited as the committees remained behind the original aspirations (with the exception of the Science Council) which restricted their reform potential for the whole sector.

FINANCING

According to Christoph Oehler (1989: 198-9), the blockage possibility had another negative effect. It was counterproductive towards not only the federal financial involvement, but also towards the whole public investment into higher education. Initially, the need for additional funding for the universities was the reason for the federal authorities getting involved. Yet, if the financing was supposed to go beyond a basic funding without any policy agenda, the actual situation including compromises and blockages made it difficult to do so. That again made it easier

⁵⁶ A view shared by the following three authors: Oehler, 1989: 198-9; Briese and Ruffert, 1986: 40-1; Bultmann, 1993: 87). The present analysis of this issue draws on these three sources.

for the federal finance minister *and* the finance ministers of the Länder to block financial demands from this field and move higher education funding downwards on their list of priorities.

The reduced priority shown by the finance ministers towards higher education reflected an overall reduced political and material priority of higher education, not only within the governments but also within the society as a whole. Other tasks became more important. The public was not interested anymore in the demands of the students who themselves had in any event modified their demands (Ibid.: 21-2). Hence, it is not surprising that the willingness to reform the universities was substantially reduced at the end of the 1970s. This included the federal government, which certainly did not show the same engagement as it did at the beginning of the decade.

4 The 1980s – no big changes or just the calm before the storm?

4.1. General developments

Looking at the federal dimension, the beginning of the 1980s did not bring major changes to the higher education system. Universities appeared not be high on the agenda anymore. In addition, an employment crisis, which could be traced back to 1974, worsened in 1981 and led to a more competitive environment for the allocation of public funding.⁵⁷ The universities were no longer in a position to dominate in such an environment. For these reasons, and because of the increased resistance of the Länder towards a centralisation of higher education policy, the centralisation process did not go beyond the initial attempts, despite the establishment of central institutions and their legal provisions. According to Briese and Ruffert (1986: 38), the phase of reforms was simply too short to have a more

⁵⁷ The employment crisis had also the effect, that because of an increase of university graduates with a certification and with the aspiration of getting jobs with a higher social standing, the struggle for these kind of jobs intensified, especially as the amount of exactly these kind of employment possibilities did not grow correspondingly (Briese and Ruffert, 1986: 28).

substantial impact in terms of centralisation. The development became even more obvious after the change of national government in 1982 (Ibid.: 28, 38).

In 1982, the coalition partner of the Social Democrats, the FDP, changed its preference in favour of the Christian Democrats.⁵⁸ As a result of this development the chancellor Helmut Schmidt lost a vote of no confidence, leading to a more conservative coalition government of Christian Democrats and Liberals under Helmut Kohl. What followed was according to Ulrich Schneekloth (1990: 53) the beginning of a “market-orientated nationalisation of higher education institutions ...which went on to combine elements of “social revenge for 68” as well as advanced capitalistic patterns of nationalisation”.⁵⁹ This new direction was reflected, for example, in a 1983 publication by the Minister of Education and Science, Dorothee Wilms, entitled “Differentiation and competition in the higher education system”⁶⁰ (Teichler, 1992: 149). The central point of the publication was the goal of reworking the whole financing of the higher education system in favour of more competition including more differentiation amongst the universities, which at least should be able to face an increased competition for students (Frackmann and de Weert, 1993: 91).

One field that appeared to provide an appropriate ground for exercising the new policy was the need-based student assistance law (BAföG). Because it was difficult to define exactly who was entitled to how much support, the resulting rules were rather complex. Together with changing economic and political factors influencing the assessment of the importance of the funding, the BAföG had to be changed more often than other laws in order to adjust it to economic circumstances. This led to disagreement over the different versions of the BAföG right from the beginning (1971), including heavy criticism from various groups. Over the years, the BAföG was several times subject to discussions about its

⁵⁸ It might be a bit simplistic, though, to attribute the change in government purely to the FDP adjusting its preference. The following general election of 1983, which nearly saw an absolute majority of the CDU/CSU, indicated that it went beyond that by showing, according to Clausius Gellert (1984: 217) “that the *Zeitgeist* had definitely turned conservative”.

⁵⁹ Own translation of: “... marktorientierte Vergesellschaftung der Hochschule ... die sowohl Elemente von “sozialer Revanch für 68”, als aber auch weitergehende kapitalistische Vergesellschaftungsmuster verbinden sollte.”

⁶⁰ Dorothee Wilms (1983) *Differenzierung und Wettbewerb im Hochschulsystem*. Bonn: Bundesminister für Bildung und Wissenschaft.

underlying principles. One such discussion focused around the fact that part of the funding (a proportion that varied over time) was not on a loan basis but was a subsidy/grant without any need for repayment. The central point of the argument was the aspect of the justice of the distribution.⁶¹ Financing problems further reinforced the discussions. The costs for the program rose more and more and led between 1977 and 1980 to an increase of one billion German Marks, rising from 2.7 to 3.7 billion. In 1981, the law was changed for the seventh time. The financing issue was addressed in a way that was intended to provide more students with less support, without going beyond the financial provisions and by keeping the subsidy element. However, the government under Kohl – against the will of its junior partner (FDP) in the coalition – changed that as one of its first official duties. The result was a BAföG fully based on a loan scheme which lasted from 1982 until 1990. Wilms justified the move as being a necessity resulting from the ‘desolate’ state of the public finances (Turner, 2001: 141-54).

Elements of the changed approach of the new federal government were also formally institutionalised in 1985 in the form of the revision of the HRG. Accompanied once more by student protests, the 1985 HRG strengthened the role of the professor again within the committees of the universities. Furthermore, the (unsuccessful) paragraph dealing with the goal of bringing together the different forms of higher education institutions into comprehensive universities (GSH) was deleted. Further changes affected the content of the HRG dealing with study reform and the Study Reform Commissions, although not to the extent Bonn initially envisaged. According to Teichler (1992: 149):

The amendment of the *Framework Act for Higher Education* in 1985, originally based on an initiative by the federal government, was destined to distinctly restricted governmental supervision of higher education institutions. The *Länder*, regardless of which parties were in power there, resisted major restrictions of public supervision of the administration of higher education institutions, and of the approval of examinations regulations in the various departments of the institutions. The sole major change in this respect was that under the amendment to the Act the ministries of the *Länder* no longer examined the content of study regulations of the various departments, but merely the general legal parameters.

⁶¹ This social dimension of student assistance led Claudius Gellert (1984: 221) to characterise “Educational Policy as Social Policy”.

Despite the compromise, the universities gained from the change as they received more competence for the structuring of their courses of studies (Teichler, 1990: 17-8; Frackmann and de Weert, 1993: 80-1).

The federal government attempted to amend the HRG once more in 1989, this time aiming at more fundamental structural changes. Yet again, the resistance of the Länder was too strong and therefore the amendment never made it beyond the legislation procedure (Konradt, 1997: 151).

One aspect within higher education that appeared to be affected by neither the change of government nor by anything else, was the still rising number of students. After passing the one million student barrier in 1980 and passing 1.2 million in 1982, the figures kept on growing every year and eventually went beyond one and a half million in 1989.⁶² It became obvious that the earlier assumption that the figures would go down again was false. Nevertheless, some actors were still worried that student numbers in West Germany would decline in the 1990s. In 1988 another estimation about expected student numbers was released and the report actually predicted that the numbers would go down again. And again, it was a false assumption which was already clear when the figures were published. In any case, the universities were not able to keep the expansion of their staff roughly in line with the student figures, leading to the student-staff ratio deteriorating even further (Frackmann and de Weert, 1993: 72-4; Neuweiler, 1994: 3).

The resulting financial pressure for the funding of the universities did not lead to the conservative-liberal government increasing its share of the financial support. It thereby followed the principles outlined at the beginning of the parliamentary term. It furthermore simply represented the recognition of the lack of a federal power of the purse for general institutionalised funding. Without looking at detailed figures, it nevertheless becomes clear that the earlier established tendency was still valid. The percentage of the federal funding as part of the whole public funding of higher education went down even further. After 18 percent in 1980, it only reached 17 percent in 1986 and was reduced to 16.5 percent the following year. By 1989 it was up to 17.2 percent (own calculation)

⁶² For explanations of the permanently rising student numbers, see: Frackmann and de Weert, 1993: 88-91.

again (Teichler, 1992: 154-5; Frackmann and de Weert, 1993: 85, Rilling, 1993: 341).⁶³ Yet, even the rise in 1989 should not divert from the fact that neither the federal share nor the absolute funding (in real prices) were close to the level of the 1970s (Konow, 1996: 54).

4.2. Research

Research and development during the 1980s does also, at least partly, serve as an example for the more economically orientated and competitive approach of the conservative government. Looking at the previous two decades, it has been said before that the focus of higher education planning was centred more around teaching and the organisation and structure of studies than around research, even if one takes into consideration the traditional role of the professors as combining teaching and research. Hence, it is not surprising that university research suffered as well from the declining priority attached to higher education at the end of the 1970s in terms of financial support and its political dimension. However, according to Welf Schröter (1988: 106-7) the attitude towards research changed again, first amongst the conservatives who *rediscovered* the productive force of scientific research. Based on a specific technology policy including direct state intervention, the aim was to create an infrastructure of research that would actively contribute to a structural economic recovery. Critically evaluating this change, Schröter concludes (in 1988) that the policy turned into a rather one-sided industrial policy, focused only on the economic applicability of research outcomes.⁶⁴

When looking at the financing aspect of research, there is no straightforward way of determining the federal contributions and its policy influence. For university research, such an evaluation is made more difficult by the

⁶³ This 16.5 percent share was based on the whole public funding in 1987 which resulted in 20.504 billion DM that were spent on the following categories: general budget = 81 percent, external grants (*Drittmittel*) = 9 percent and scholarships = 10 percent (Frackmann and de Weert, 1993: 85). The funding for 1989 rose to altogether 21.878 billion DM but the distribution in terms of percentages was the same with the federal contribution cumulating to 3.767 billion DM, i.e. about 17.2 percent (Rilling, 1993: 341).

⁶⁴ The development led to a more technology orientated focus with the consequence that especially the humanities lost some importance as they were perceived by some as only representing a forum for 'discussions' (Schröter, 1988: 107).

defined role of the main research actors, the professors, within that field. Gareth Williams (1996: 25) emphasises this aspect by arguing that “the unity of teaching and research is strongly reflected in university funding in Germany” which ultimately makes it “impossible to identify the proportion of university basic income or expenditure that is devoted to research”. This view is commonly accepted.⁶⁵ Naturally, attempts have nevertheless been made to estimate the share of funding used for research. Even Williams (Ibid.: 25-6) acknowledges such attempts. To at least create a general impression of the situation, one of the attempts to estimate the research share and the further resulting figures will be looked at in the following paragraph.

As already mentioned, the university budget is supposed to provide the basic resources for research. Including the teaching load and the administrative responsibilities of a professor, it also pays for her/his time devoted to research. In addition, other members of staff are also there to assist in research or are actually employed for the purpose of research only. Together with equipment and material that is paid for, Teichler (1992: 159) estimates – by relying on research expenditure data – that one third of the general budget of higher education institutions is spent on research. Based on this assumption, about 70 percent of university research is financed by the university budget and the remaining 30 percent by external grants or ‘third-party funds’ (*Drittmittel*) as they are called at German universities. In the concrete case of the year 1985, the external grants amounted to 34.5 percent (after 25.1 percent in 1975 and 29.2 percent in 1980). Of this percentage, 40 percent came from the jointly financed (federal-Länder) DFG (Teichler, 1992: 151-60).⁶⁶ Considering that the general university budget is mainly a responsibility of the Länder, which thereby reduces the federal contribution mainly to its share of the joint financed research institutions like the DFG and the MPG, the federal contribution to research appears to be relatively

⁶⁵ Further authors who point at the difficulties (but not impossibilities) are Frackmann and de Weert (1993: 86) and Renate Mayntz (1991: 59), all of whom outline that it is not that easy to distinguish the funding for research from the whole budget of the universities and thereby determine its share.

⁶⁶ Other sources in 1985 were: private sector; federal government; Länder governments; federal-Länder support schemes for junior academic staff; non-governmental foundations and international organisations (Teichler, 1992: 157).

small.⁶⁷ In addition, the decision-making committees of the DFG consist of representatives of the federal and the Länder level (and of representatives of the science community). Yet, its considerable independence limits its potential as a starting point for a federal research policy. Another access route to university research appears to offer more federal control.

In 1985, twenty percent (down from 23.7 percent in 1975) of the external research grants – i.e. half the size of the contribution of the DFG – came from the federal government directly or more precisely from its ministries such as the Ministry of Science and Technology. The actual figure was below half a billion DM, which was actually less than the federal share of the DFG funding for university research in that year. Nevertheless, this additional federal money justified for Teichler (Ibid.: 160) the comment that “there no doubt exists the power of the purse of the federal government to promote university research by special emphasis”. It is a federal power that, as has been said before, does not exist generally for higher education. However, it seems to be a rather limited power and it is also partly limited by the spending preference of the federal government itself. In 1985, for example it chose to spend ten billion DM on research in public non-university research institutions (like for example MPG)⁶⁸ and for research in industry which for the conservative government certainly offered a better ground to follow its objectives (Ibid.: 156-60). It could be, however, that earmarked funding does allow the federal authorities to exercise influence and even creates the potential for an intergovernmental conflict. According to Ulrich Karpen (1991: 155):

Even the Deutsche Forschungsgemeinschaft and Max-Planck-Gesellschaft – although highly dependent of general funding of the activities – suffer from an increasing percentage of project-oriented money in their budget. This is not without danger ... it is well possible, that the Federation via selective project-funding gains overweight [sic] over the Länder, which stay with general support

⁶⁷ Teichler (1992: 151) estimates that “the *Länder* spend at least twice as much as the federal government on university research. On the other hand, the federal government spends at least eight times more on nonuniversity research than it does on university research.” However, Teichler does not outline in his contribution how exactly these figures materialise.

⁶⁸ It has to be remembered, though, that institutions of the MPG do also co-operate with universities which makes a clear distinction (including the funding) a bit difficult.

of the Max-Planck-Gesellschaft and Deutsche Forschungsgemeinschaft-budgets...

It has to be said, though, that at the end of the 1980s there was no sign of this danger turning into a conflict, partly because the federal government did not seriously outperform the Länder.

To clarify the different sizes of the various research sectors, it might be useful to look at the *whole* cost of research in Germany. Based on the costs of 1987, the figures show that research in higher education institutions contributed only 12.5 percent with the public non-university research institutions adding up to 13.5 percent.⁶⁹ Both sections, though, look quite small in comparison with the costs for research in industry and private research institutes (70.8 percent). The rest of the costs (3.1 percent) are carried by international research institutes (Frackmann and de Weert, 1993: 85-6). The federal share of the total research budget accounted for 20.9 percent of the costs in 1990 which was down from 26.3 percent in 1981. The Länder contribution also went down in the same period, from 16.2 percent to 13.2 percent. In contrast, the input of industry and commerce rose from 56.1 percent to 63.8 percent, little of which, however, contributed to university research (Rilling, 1993: 340; Konow, 1996: 54).

Looking at this picture, the federal economy-supporting approach does not manifest itself so much in absolute figures or growth rates. However, it has to be added that it was less a federal approach than a party political one. In fact, it was a government of a Land which was at the forefront of this approach – Baden Württemberg under Lothar Späth (CDU).⁷⁰ The room for manoeuvre was naturally bigger for a Land as it had more influence on the universities. In addition, several Länder followed the example of Baden-Württemberg and provided additional

⁶⁹ Amongst the public non-university research organisations the focus so far was mainly on the DFG and the MPG. Even if these are the two most important actors, at least from the perspective of this work, it should not distract from the fact that there are other groups within this sector. Other organisations include (amongst others) the Fraunhofer-Gesellschaft, “a government-owned company that operates in the field of research and development ... on a commercial basis” (Konow, 1996: 54); the largely federal financed Big Science institutes and the so called ‘Blue List’ of various smaller independent research institutions (for details, see: Mayntz, 1991; Nettelbeck, 1990). As their impact on intergovernmental relations is limited, it is not necessary to look at all of these organisations in detail here.

⁷⁰ Späth, after his forced retirement from his position as premier, moved into the private sector as a manager of an East-German company (Jenoptik), a position from which he only recently retired.

research funding in the form of external grants (Ibid.: 160; Schröter, 1988: 107). Hence, the research policy of the conservative federal government was actually, at least partly, supported and reinforced by some Länder. Nonetheless, the different research policies did not lead to a regional imbalance as Teichler (Ibid.) is keen to assure:

[T]he statement that the promotion of research in Germany has resulted in great differences in quality among the higher education systems of the different *Länder* belongs to the realm of party polemics rather than that of valid perception.

The reason for that is also simply the limited size of university research, at least in terms of costs. Renate Mayntz (1991: 59) therefore concludes that “[u]niversity research enjoys a safe, though not dominant position in the public research sector” and that the “main threats to university research have not come from the outside, e.g. from state intervention or from competition with other research organizations”. She rather sees the rising student numbers as such a threat, as a bigger share of the general budget has to be devoted to teaching. In addition she assumes that the student protest had left its mark in that research institutions were moved away from the universities. In terms of funding, Mayntz recognises the increased need for outside funding. That does have an effect on the choice of research topics, but it does not fundamentally undermine the autonomy of the researcher or in the words of Mayntz, it means “formally unchallenged autonomy but growing dependence on earmarked outside funds” (Ibid.: 60).

4.3. The situation before unification

The 1980s did not bring many changes to the higher education system especially when compared with the previous two decades. There were various reasons for this. One contributing factor was the changing societal and political awareness of the subject. Higher education was simply not a topic for the headlines anymore, which had been taken over by issues like peace, energy, environment, employment and equality (Odendahl, 1988: 113). This situation was reflected in politics in the form of the education and science ministries losing their importance in favour of the ministries of finance, of home affairs, of trade, commerce and social welfare (Briese and Ruffert, 1986: 40).

Another reason for the limited changes was the many rules and laws introduced especially in the 1970s, which meant that there was not much space left to be filled with new regulations. Briese and Ruffert (1986: 50) describe this situation, which is in particular a burden for the universities: “Nearly all questions relevant to higher education institutions are standardised by law, which creates a tight framework for the higher education institutions and their freedom of action and structures.”⁷¹ Hence, the norms were there and did not need to be reinvented, particularly as they were usually based on compromises, i.e. the former conservative opposition on the federal level had contributed to the existing regulations as well. What the new conservative-liberal government was able to modify, though, was the general higher education policy climate highlighted by slogans like ‘differentiation and competition’.

The general trend of a declining federal influence in higher education planning as a result of reduced financial commitments was already set at the end of the 1970s. This did not change in the 1980s as nation-wide coordination appeared not to be on the (conservative) federal agenda anymore. Yet, the nation-wide coordination amongst the Länder, which was more important in this sense anyway, did not develop a prominent profile in this period either (Teichler, 1992: 163-4).

The 1980s from the perspective of a federal higher education policy did not constitute a particularly remarkable period and neither did the higher education sector as a whole. Yet, looking back further, the period between 1959 and 1989 experienced such a substantial quantitative and structural change within higher education that Thomas Ellwein (1992: 249) expresses the need to describe it as “revolutionary in every respect”. Especially the constitutional amendments of 1969 can certainly be described as a critical juncture in terms of the further development of the policy sector. The approaching German unification certainly also marks a period of revolutionary change. Although the university system was not at the centre of the coming developments, it was certainly affected by it. And it led to the federal government taking a more prominent role in higher education policy again. Such circumstances might raise the expectation of another critical juncture in higher education policy.

⁷¹ Own translation of: “Nahezu alle hochschulrelevanten Fragen sind gesetzlich normiert, woraus sich für die Hochschulen ein enger Rahmen ihrer Handlungs- und Gestaltungsfreiheit ergibt.”

5 German unification and its aftermath – a need for a federal higher education policy?

5.1. The starting point: the situation in the higher education system of the GDR

The year before the German (re)unification in 1990 was quite remarkable in the sense that autumn 1989 marked the highpoint of a peaceful revolution. It is perhaps surprising, though, that the main centre for this societal movement and its demands for political and societal change was not located in the universities, in particular if one considers the events of the end of the 1960s in West Germany. Even when the wall eventually came down, “it had no immediate effect on the structure of the universities and colleges” and consequently, “[t]he reins of power [in the universities] continued to be held by the very same people” (Hecht, 1997: 87). This, however, did change soon as the following unification process gathered momentum and finally led to the official reunification on October 3, 1990. It had fundamental consequences for the higher education sector, as it had for other parts of the society. Hence, it has to be emphasised that the significance of the unification process went well beyond its political dimension with its social, economic and cultural implications.

Before looking at the transformation of higher education in the former GDR, it is necessary to at least generally outline the situation within that field before the changes took place.

Higher education in the GDR was characterised by its diversity, with various forms of higher education institutions. Without going into the details of this diversity here, it is worth pointing out that there were 33 institutions within the university sector in contrast to the 64 at that time in the FRG which, however, was nearly four times bigger in terms of population. Despite the number of institutions there was some regional disparity. For example, the territory of what now constitutes the Land *Brandenburg*, with its currently over 2.5 million inhabitants, was the one Land which did not have a university at all prior to unification (Weiler, 1996: 135). In addition, the institutions in the GDR were much smaller on average and generally the system was more fragmented. On the other hand, the

student – staff ratio was much lower as there were about 105,000 members of staff dealing with nearly 135,000 students in 1989. The student number again was over ten times smaller than the one in the FRG at that time (over 1.5 million), reflecting a policy of restricted access to the higher education institutions in the GDR. The access criteria were so strict that since the 1970s there had been no increase in the student numbers (Ellwein, 1992: 242-3; Konow, 1996: 50; Frackmann and de Weert, 1993: 73; Block, 1993: 138-9).

When looking at individual subjects, it is obvious that some were more affected by the developments in the East than others. Especially law, economics and the social sciences lost their foundation with the collapse of the social and economic order of the GDR. Hence, many of those departments were closed, with some exceptions like for example agricultural economics (Block, 1993: 138-9).

The field of research was also problematic when looking at the role of the universities. Research and development in the GDR was basically divided into three categories in terms of its location (Däumichen, 1993: 342):

- Research and development facilities of the industrial sector like for example the building and construction industry
- Scientific academies, represented mainly by the Central Institutes and the Institutes of the Academy of Science (*Akademie der Wissenschaften*)
- Universities and other higher education institutions

The focus in the system was in particular on natural science and technology with most of the research capacities being located at the academies. Hence, research at universities was not a big issue, except in those cases where a university was closely linked to the industry located in the same place. There were only a few nationally and internationally established researchers which were privileged accordingly. Most of the other staff did not have a real chance to engage in proper research as preconditions like an exchange of thoughts at congresses and conferences or contributions in important international journals were quite limited (Ellwein, 1992: 242-3; Neuweiler, 1994: 9). In addition, the fact that at the end of the 1980s more than 90 percent of the professors were members of the communist Socialist United Party of Germany (*Sozialistische Einheitspartei Deutschlands – SED*) further increased the potential for difficulties in the upcoming unification

process. Yet, a general condemnation of those professors would certainly have been unjustified as membership of the SED was not always driven by an ideological identification with the party's goals but was simply "an essential element ... if someone wanted to embark on a career" (Hecht, 1997: 87). Consequently, in the 'lower' ranks of the universities, the membership rate was not as high (Ibid.).

These are only some of the aspects which had to be considered by the actors involved in the transformation of higher education in the GDR. The period between autumn 1989 and the unification about a year later was characterised by some movement in the sector. Andreas Stucke (1992), focusing mainly on research policy, analysed this period in terms of a balance between the federal government, the Länder and the science organisations. His thesis therefore is that the West German actors were driven by the motive of stabilising this balance during the unification process. In his analysis, Stucke distinguishes between three different phases: a co-operation phase, a strategic positioning phase and a negotiation phase.

CO-OPERATION PHASE (NOVEMBER 1989 UNTIL MARCH 1990)

This phase was characterised by an expansion of the scientific-technological co-operation between the FRG and the GDR. During this time, the independence of the GDR was not fundamentally questioned. In order to finance the numerous contacts, the Federal Ministry for Research and Technology (*Bundesministerium für Forschung und Technologie* – BMFT) received a supplementary budget of 40 million DM and a further 40 million DM of the existing budget of the BMFT was reallocated in favour of the GDR. The BMFT thereby tried to stimulate and coordinate the relevant activities. The Länder co-operated with the institutions in the GDR (for example amongst universities) without getting substantially involved with financing. The activities did not yet manifest a horizontal coordination. The science organisations, as the third actor, did partly develop an expansion strategy which was, however, limited to those activities that were financed by the federal level. The co-operation phase ended in March 1990 with the election victory of de Mazières (CDU) in the GDR. Closely connected to that victory was the desire quickly to bring about unification.

STRATEGIC POSITIONING PHASE (APRIL UNTIL JULY 1990)

Because of the increased likelihood of a fast unification, political activities in this direction became more dominant. For example, the cabinet in Bonn established a committee called 'German unity' including various working groups dealing with different policy fields – but not science and research. Already on April 12, 1990 the parliament of the GDR (*Volkskammer*) decided to join the FRG on the basis of Article 23 of the Basic Law. Soon after that, on May 18, an agreement about economic, monetary and social union was signed between the two states. This also implied that the actors involved in science policy had to prepare themselves for the forthcoming German unification. At the beginning of this process, the existing institutional system of research and research promotion in the FRG were fundamentally questioned, but because of the pressure resulting from the expectations of the environment, the three actors – the federal government, the Länder and the science organisations – did not follow the road of a fundamental change. The BMFT followed the strategy of taking the political initiative, to avoid getting forced into commitments, especially not into long-term financial commitments. The Länder, in contrast, did not show any particular involvement in this phase with the exception of West Berlin. This was partly because it was the only West German 'Land' that was actually unified with East German territory (East Berlin) to form the new Land Berlin. In addition, it would have been especially affected by the unification as there was a high concentration of institutes of the Academy of Science in the eastern part of the city, thereby offering an enhanced scientific position for a united Berlin. The science organisations were mainly concerned with securing their autonomy and the strategies they applied in the East. At the end there was general agreement amongst the actors about applying the federal structure to the united German science system. Given the strategies of the actors this was the lowest common denominator – to keep the current system and its institutional status quo.

NEGOTIATION PHASE (MIDDLE OF JULY UNTIL THE END OF AUGUST 1990)

The actual negotiations concerning the unification treaty dealing with science and research took place with the following participants: the BMFT, the GDR Ministry for Science and Technology, the BMBW, the Federal Ministry of the Interior, the

Federal ministry of Finances and in addition Saarland, Berlin and Baden-Württemberg as representatives of the Länder. One of the central topics was the future of the Academy of Science and its institutes. Especially the Länder, in contrast to the GDR, did not want to keep such a centralised organisation as it would have been perceived as contradicting the independence of the Länder in matters of education and culture. The federal position of the BMFT, on the other side, was to start negotiations about the continuation and the financing of the Academy after its institutes had been transferred to the Länder authorities. During the negotiations for the unification treaty, the Länder did not play a significant role, after they had successfully claimed their responsibility for science and research at the beginning. After that their main concern was to avoid further financial commitments, which they thought had been fulfilled by contributing to the general 'German Unity Fund' (*Fonds Deutsche Einheit*) of June 1990.⁷² Consequently, they only appeared again on the negotiation scene at the end, when concrete financial arrangements were discussed. The final result of the negotiations, laid down in Article 38 of the Unity Treaty of the 23rd of September 1990, consisted amongst others of the regulation that the established methods and programs for the promotion of research would be extended to the whole of Germany. Furthermore it was laid down that the Science Council was charged with evaluating the research institutions of the GDR.⁷³ It has to be added, though, that the negotiations were not amongst equal partners, as the GDR was under much more pressure and also had less of a 'threatening potential' than the other actors involved.

⁷² This fund was intended to be in particular a substitute for the exclusion of the East German Länder from the fiscal equalisation system and this exclusion from the distribution of the Länder share of the sales tax. Originally it provided 115 billion DM for the 1990 – 1994 period, 15 percent of which was intended for the federal level in order to fulfil public duties within the new Länder. The sum eventually grew to over 160 billion DM with the federal share being dropped altogether. For more details, see Laufer and Münch, 1998: 233.

⁷³ The Science Council was already asked earlier (summer 1990, during the strategic positioning phase) by the governments of the GDR and the FRG and by the then eleven Länder to evaluate the research institutes of the GDR, to make suggestions of how to integrate a science system of a centralised state into a federal system and to prepare recommendations for the future structure of the higher education institutions. The reference in the unification treaty served as confirmation of that task. The first statements and recommendations were already produced in November 1990 with the final resolutions being adopted in July 1992 (Block, 1993: 137-8). It was only after the Science Council had finished its assignment that it accepted appointments from East Germany (de Rudder, 1993: 243).

To briefly summarise Stucke's conclusions, he assumed in 1992 that the accession of the former GDR would disturb the previous balance in the FRG. One reason for that was the financial weakness of the new Länder in the East, preventing them from taking on the required research policy. The old Länder, on the other hand, would not have provided compensation for this shortfall, leaving the federal government to fill the gap and thereby take on more responsibility, ultimately leading to more centralisation. Stucke thus concludes that the federal level might emerge as the 'winner' of the unification (whereas in the old system it was more the science organisations) by shifting the balance of research policy more towards the federal centre.

Yet, it was already clear that higher education did not receive the highest priority within the new state. Reflecting this comparatively low priority as well as other factors detailed above, the "[m]erger followed the pattern of the traditional West German system without any change but also with all its problems" (Konow, 1996: 50). Hans Weiler (1996: 129), the first rector of the new European University in Frankfurt/Oder in Brandenburg, offers an even stronger evaluation of the consequences of this way of dealing with the higher education system in the GDR: "In fact, a rather remarkable opportunity for change and innovation was thoroughly missed."⁷⁴ Instead, given that the GDR dissolved itself and joined the FRG – i.e. it was not a merger – internal attempts for reforms had little chance against the powerful West German apparatus and therefore "the basic structures and mechanism of financing higher education were not a matter of choice and discussion for East Germany" (de Rudder, 1993: 239). Yet, this did not mean that none of the actors in the West wanted to seize the opportunity for reform. In fact, the Science Council, which was asked to produce statements and recommendations for dealing with the GDR higher education and research system, originally appeared inclined to use this historic task as the chance for a general restructuring of the all-German research and higher education system. In addition, besides the conditions implied by the GDR higher education system joining the West-German

⁷⁴ That is not to say that if reform intentions would have been announced, that they would have actually led to major changes. The example of industrial law shows that although the goal of a reformed all-German law was provided for in the Unification Treaty, this has not produced the desired results. Over twelve years later not much has happened, despite a general agreement on the need for its reform (Niejahr and Rudizo, 2003).

system, there were no preconditions attached to the work of the Science Council (Block, 1993: 137). However, quite early it became clear that a restructuring plan would not work. Gerhard Neuweiler (1994: 3), an academic member and sometime president of the Science Council at this time, summarises the reasons quite vividly:

But already the first planning phase showed that the intention [restructuring] was doomed to failure because it would have meant converting a fully loaded super tanker in the roughest sea into a luxury cruise ship. Besides this, political reasons and the hardly bearable insecurity about the future for the people affected spoke for a quick incorporation.⁷⁵

Without comparing the higher education system of the GDR to that of the Nazi era, it has to be said that it was not the first time that a chance for a new beginning was not taken. As a result, the consequences for higher education in the five new Länder were more negative than the impact on the system in the old Länder.

5.2. The unification process in higher education and its consequences

The difficulties of the unification process really only started after the GDR ceased to exist. The underlying initial problem the five new Länder and their higher education sector had to face as a result of the unification treaty has been highlighted by de Rudder (1993):

The GDR was a centralized state with one central ministry of higher education in East Berlin, while in the political system of the federal republic, higher education was and is a matter of the states. This applied immediately to the new East German states. They had to start from scratch.

Because of this disadvantage, the Länder were not required immediately to adjust the structure of their higher education institutions. In the treaty there was a three year period provided for such an adjustment and for the necessary higher education laws to be adopted in order to fulfil the requirements of the HRG. Despite that provision, the first higher education laws in the new Länder were

⁷⁵ Own translation of: "Doch schon die ersten Planungen zeigten, daß diese Absicht zum Scheitern verurteilt war, denn sie käme dem Versuch gleich, einen Supertanker in schwerster See bei voller Beladung zu einem Luxusliner umbauen zu wollen. Außerdem sprachen politische Gründe und die von den Betroffenen kaum zu ertragende Unsicherheit über ihre Zukunft für eine rasche Eingliederung."

already passed in 1991. However, originally these were so called higher education renewal laws (*Hochschulneuerungsgesetze*) that acted as transitional provisions before the ground was prepared for the 'regular' higher education laws. Generally, the new Länder did not take advantage of the provision allowing them to try different solutions. This, together with the undifferentiated transfer of the HRG, resulted at least temporarily in a strengthening of the existing university system (Schramm, 1993: 90-1; Keller, 2000: 305-6).

The higher education structure in the East was not only determined by the HRG but also by the already mentioned role of the Science Council in providing recommendations for the future shape of higher education and research in the East. In broad terms the proposals of the Science Council aimed at a restructuring of the higher education institutions including the foundation of new universities⁷⁶ and FHs. One of the more specific aims was thereby to provide a greater regional balance but generally the most important goal was to create as quickly as possible functioning and viable higher education institutional and research structures. For the research sector therefore, the Council basically promoted public non-university research represented by those institutions (for example the MPG) which had proven themselves successfully in the West (Block, 1993: 139-41, 347-9; Buck-Bechler et al, 1993: 75-6). The focus on the non-university sector further emphasised the ongoing relative decline of the universities and their role in the research system. In addition, within university research, the share of external grants (and a resulting dependency) was also growing, which left more room for industry and, especially in the East, the federal government to gain influence (Rilling, 1993: 336-7).

The general re-structuring and the promotion of research also had obvious financial implications, as it produced costs which again caused problems with the implementation of the recommendations.

In order to compensate for the additional costs for the higher education and research field in the East, the intergovernmental BLK released the first draft of a 'Higher Education Renewal Program' (*Hochschulneuerungsprogram* – HEP) in March 1991. Generally, the program was aimed at personnel and structural

⁷⁶ The Science Council recommended the establishment of ten universities, but the Länder corrected this to fourteen (Buck-Bechler et al, 1993: 75).

renewal, at measures to preserve research potential and at providing money for (additional) investments in construction. The troubles began when the total sum available and the source of the funding had to be determined. The old Länder refused to contribute to the HEP as they argued that they had financially engaged themselves enough via the redistribution systems, but probably also because they had problems with the financing of their own higher education system. In May 1991 it was finally agreed that the HEP would provide 1.76 billion DM for a period of six years which would be financed by the federal government (75 percent) and the five new Länder (25 percent). The money available was far less than the Science Council had anticipated as necessary for the task. That conclusion did not change even after the HEP was increased to 2.4 billion DM in July 1991 as it was still well below the sum of six to eight billion DM demanded by the Science Council. (Klose, 1993: 145-6; Block, 1993: 141; de Rudder, 1993: 248-50)

Despite not meeting the target of the Council, the federal contribution might appear to be quite substantial. Yet, if one compares the federal funding for higher education institutions, adjusted for inflation, it shows that the funding for West-German institutions was 4.1 billion DM in 1975 and only 3.9 billion DM in 1994 for the institutions of the united Germany. During the same period, the number of students has risen from about 765,000 to around 1.8 million (Keller, 2000: 318). In addition, the federal funding for the East did not go much beyond the federal involvement for specific programs in the West. Thereby, the last of these programs was agreed to amongst the old Länder and Bonn without the inclusion of institutions in the East despite unification already being on the doorstep.⁷⁷ In the eyes of Science Council member Hans-Jürgen Block (1993: 141) this was the result of a “remarkable hurry”, implying that the aim was to exclude the East from the program.

The general policy strategy applied in the aftermath of the unification has been characterised as “building up the East before expanding in the West”

⁷⁷ In 1989, a so called ‘Higher Education Special Program’ (*Hochschulsonderprogramm*) initiated by the federal education minister Jürgen Möllemann (FDP) was introduced to counteract the danger of a decline of the academic staff as a result of the high average age, by promoting the employment of junior members of staff. This was followed by another Higher Education Special Program (also called ‘Möllemann II’) in 1990 aimed at the introduction of post-graduate institutes, sponsored by the DFG (Turner, 2001: 266).

(“Aufbau Ost vor Ausbau West”) (de Rudder, 1993: 247). That approach also applied to the higher education sector, but it was simply not as high on the list of priorities as other renewal and reconstruction measures. The lack of priority, however, was not a new development. Hence, the Standing Conference of University Rectors and Presidents (*Hochschulrektorenkonferenz – HRK*), which replaced the WRK after unification, argued that the governments had not lived up to their obligations as result of the ‘opening decision’ of 1977 and unilaterally terminated the agreement on this decision in November 1991 (Köhler, 1993: 126-7). The move itself had little effect and was probably more aimed at raising public awareness of the situation of the universities.

In summary, after unification the federal level and the old Länder offered only a restricted amount of financial help in the restructuring of higher education in the five new Länder. This, however, did not stop individual federal ministries from playing a stronger role. The influence of the BMBW, for example, was at least temporarily strengthened as a result of the political developments with its need for quick decisions (Heidenheimer, 1994: 24). The KMK on the other hand, because of its mechanism of consensus decision-making had less of a policy shaping influence with the accession of five new Länder. The willingness for reforms was consequently also less pronounced (Klose, 1993: 146).⁷⁸

The reform of the higher education system became more of a topic again a couple of years after unification and after the initial problems had been dealt with. The first major attempt to stimulate the reform discussion once more was a January 1993 paper entitled “10 propositions concerning higher education policy” (*10 Thesen zur Hochschulpolitik*) by the Science Council which drew on earlier papers by the HRK and the BMBW. Those reports were followed by a paper on education and research policy by the BMBW and BMFT which eventually led to a document of a federal-Länder working group, formed in order to prepare an education summit planned by Helmut Kohl for autumn 1993 (but which never materialised). The consensus document of the group outlined in detail basic higher education and research policy measures (like for example autonomy and

⁷⁸ That might have been one reason why the *conservative* chancellor Helmut Kohl has called the KMK – according to the correspondent Karl-Heinz Reith (1998: 161) – “the most reactionary institution of the Federal Republic”. (own translation)

responsibility for the higher education institutions) which formed the basis for the following discussions and further contributions dealing with a reform of the HRG (Keller, 2000: 306-7, 329).

The aftermath of the unification and its influence on the higher education field cannot be completely understood without at least briefly looking at the human consequences of the renewal strategy in the East. It has been mentioned above that the numbers of staff were quite high, too high to be retained. In addition to the departments that were closed because of their ideological burden, many members of staff lost their jobs because they were too heavily involved with the old regime or because they had originally obtained their positions without having the proper qualification. As a consequence, the number of those who got sacked was quite high. Even if it was justified in many cases, it still left some bitter feelings in the East as a whole. But even those who passed the evaluation of their past were not guaranteed to keep their position, they created “just a pool for new appointments” (de Rudder, 1993: 242). The resulting insecurity amongst the members of staff was dismissed by many of their ‘colleagues’ from the West as being normal (?) for an academic, thereby totally ignoring the reality of a completely different socialisation of the people in the East. This lack of understanding was not helped by the fact that not only the higher education system was imported from the West, but also many new members of the academic staff. (de Rudder, 1993: 241-2; Melis, 1993: 360; Weiler, 1996: 134-5)

Another source for misunderstandings was the comparison of the renewal of the staff with the denazification at the West German universities after the Second World War, which itself was not done very thoroughly (Ellwein, 1992: 265-6). Many East Germans felt offended by such a comparison even if they were not personally affected. After all, whatever one thinks of the GDR it certainly never reached the destructive and fatal energy of Nazi Germany. For that reason alone, an implicit comparison must therefore be considered inappropriate. Ellwein (Ibid.: 266) summarises the fundamental underlying problem: “Two systems are

joined in a way that in principle the standards of one are valid to which the members of the other system can only correspond in an exceptional case.”⁷⁹

The unification might have brought a single higher education landscape for the whole of Germany but it further reduced the autonomy of the universities. The first years were dominated by politics and finances leaving little room for the universities in the East, but also in the West, to find their own way. Members of universities in the East which were already employed under the old regime, but were not politically involved before, summed up the evaluation of their influence: “Earlier we had little say, now we have no say”⁸⁰ (quoted in Schramm: 1993: 110).

5.3. Towards a new federal government

German unification and its implications for higher education determined the direction of the sector in the first years. After this initial period, the situation ‘normalised’ to a certain degree and the focus was again more on structural reforms and on internal developments and less on the integration process of the higher education field. As part of the resulting changes, the universities started partially to lose their uniform character as a consequence of different policy developments in the various Länder. According to Hans Joachim Konradt (1997: 154), a former member of the Science Council, the uniformity of the higher education institutions is already a fiction anyway despite a lack of acceptance of this situation amongst certain actors involved: “The differences which exist in fact are only recognised with reluctance.”⁸¹ The realisation of such changes is certainly also made more difficult by the existence of legal framework provisions like the HRG.

This move towards greater diversity has been based on a recognition that the degree of regulation and state influence (federal and Länder level) on the universities had reached a stage that was actually counterproductive (Turner, 2001:

⁷⁹ Own translation of: “Zwei Systeme werden so miteinander verbunden, daß im Prinzip die Maßstäbe des einen gelten, denen die Angehörigen des anderen nur im Ausnahmefall entsprechen können.”

⁸⁰ “Früher hatten wir wenig zu sagen, jetzt haben wir nichts zu sagen.” (own translation)

⁸¹ “Die tatsächlich bestehenden Unterschiede werden nur ungern zur Kenntnis genommen” (own translation)

217). This evaluation, which became widely accepted in the middle of the 1990s, implied the need for systematic corrections. A reform was intended to give the higher education institutions more cooperative autonomy, leading away from a model of state control to a model of state supervision, yet without the difference between the two models being that clear (Ibid.).

Given the main responsibility for the universities, it is obvious that a move towards a different model of state involvement had to start at the Länder level. In some Länder, preparations for reforms in this direction started already at the beginning of the 1990s. Yet, for more substantial reforms it was necessary to change the HRG. A new HRG was expected to reduce the detailed steering provisions in order to make it possible for the Länder to take advantage of the freedom and enter into a competition with the other Länder for the best solutions (Konradt, 1997: 153-4).⁸²

The new HRG which came into force in August 1998, shortly before the conservative – liberal federal government under Helmut Kohl was voted out of office and replaced by an SPD/Green coalition, caused some controversies during its gestation. Following the above-mentioned initiatives of 1993 by the Science Council and the federal-Länder working group, the federal government was hoping to be able to agree on an amendment of the HRG. However, it is worth noting that despite the consensus character of the federal-Länder document of 1993, concrete suggestions for a reform of the HRG in the appendix of the document were marked as those of the federal level, as the Länder refused to agree to the proposals. The Länder, being predominately under SPD control again, actually preferred the realisation of higher education reforms at the Länder level or at the institutional level, thereby ‘weakening’ the uniform character of the sector. Nevertheless, this original stance did not stop the Länder from taking the initiative in the renewal of the HRG. In July 1996, the Bundesrat started a legislative initiative aimed at the amendment of the HRG. However, this move did not counteract their original position as the amendment was focused on the inclusion of a ‘test clause’, allowing the individual Länder to experiment with alternative models for the administration and organisation of the universities. The move was related to the

⁸² The next paragraphs, dealing with the HRG of 1998 and the developments towards it, are mainly based on Keller, 2000: 305-17.

constitutional amendment of 1994 in which Article 75, dealing with the federal right to establish framework regulations, was amended in a way that Paragraph 2 now explicitly states that such regulations are only allowed to be detailed or direct as an exception.

The federal government, unwilling to accept a partial change of the HRG without a general conceptual framework, presented such a framework in August 1996 in a paper entitled “Higher education institutions for the 21st century” (*Hochschulen für das 21. Jahrhundert*). This was followed by the first draft for an amendment of the HRG in April 1997. The SPD opposition still did not agree with such a comprehensive reform which they saw as transferring competence to the federal level. Nevertheless, the positions of the main actors were not as far apart as some commentaries might have implied. Hence, in August 1997 an arrangement between the SPD-led Länder and the Federal Ministry for Education, Science, Research and Technology (*Bundeministerium für Bildung, Wissenschaft, Forschung und Technologie – BMBF*)⁸³ was announced. This compromise was possible because the SPD moved away from some of its original demands, such as the inclusion of a ban on tuition fees.

The situation changed again in January 1998 when the SPD withdrew its agreement with the federal government in Berlin⁸⁴. According to Keller, this decision was partly a result of the student protests of 1997/98 and the upcoming federal elections. This thereby serves to highlight two things: First, the joint-decision trap is one which is particularly relevant before elections with a stronger focus on bargaining by the actors to enhance their profile. Second, the bargaining – especially during pre-election campaigns – follows mainly party political lines and not a Länder – federal government logic.

In any case, the SPD decided only to agree to the new HRG if a ban on fees were included. The counter reaction of the federal government towards the negative statement of the Bundesrat was to announce that the HRG draft did not

⁸³ The former BMBW and BMFT had been merged in 1994, creating the new BMBF. In 1998, as a result of major parts of the technology sector moving into the Ministry of Trade and Commerce, it was renamed Federal Ministry for Education and Research (Bundesministerium für Bildung und Forschung), but kept its abbreviation BMBF.

⁸⁴ As a result of the unification, the new capital of Germany became Berlin. Yet, it took some years before the government actually moved to Berlin permanently.

need the agreement of the Bundesrat at all, even if for decades there had been a consensus on the need for such an agreement in the case that the federal government wanted to use the legal competence of the framework provision. During the 1970s when there was a SPD led federal government and a Bundesrat dominated by the CDU, there was no question about this agreement. In doing otherwise, a constitutional conflict was programmed.

In February 1998 the HRG passed the various stages of the decision making process of the federal parliament. The Bundesrat not surprisingly refused to accept the amendments and got the mediation committee involved. The committee finally made the offer of including the ban on fees which was rejected by the parliament. The Federal President, Roman Herzog (CDU), was now in the situation to decide whether to sign the law about the reform of the HRG or not, as there were considerable doubts about its constitutional validity given the absence of a positive vote in the Bundesrat. Herzog, with the elections coming up, signed the law on the 20th of August, which came into force five days later. This resulted in the threat of the SPD to appeal to the BVerfG. At the end, the Social Democrats did not follow this road as the alternative appeared to be closer: a victory in the federal election, which actually became reality on the 27th of September 1998, ending sixteen years of a conservative-liberal federal government.

Another area which was also (still) heavily influenced by party political positions was that of financial assistance for students (BAföG).⁸⁵ As part of a more substantial overhaul to the scheme, the parliament decided in 1990, amongst other changes, to move away again from the 100 percent loan system to a system where only half of the financial assistance was on a loan basis and the rest came as a subsidy.⁸⁶ The next amendment in 1994, the seventeenth, did not pass the SPD dominated Bundesrat because the SPD perceived it as unbalanced and in its social dimension as unacceptable. What followed were debates and arguments between the two chambers, i.e. mainly between the CDU/CSU and the SPD including the involvement of mediation committees, resulting in compromises which at the end

⁸⁵ The following paragraph is based on Turner, 2001: 141-69.

⁸⁶ Turner (2001: 148-9) points out that because of the favourable conditions attached to the loan for the students (for example, it is interest free) in contrast to a regular bank loan, the actual share of the loan in the scheme is only a quarter, with three quarters being a simple subsidy.

still did not pass one or the other chamber. Both sides blamed each other for the repeated failures, with the SPD playing the more social card and the conservatives focusing on the financial problems which led to suggestions of either returning to the loan base only or to a loan share including interest rates. In the end, chancellor Kohl and the premiers of the Länder agreed on a compromise that, amongst other adjustments, kept the loan share interest free but only for the period of time within which a student is supposed to complete his or her studies.⁸⁷ The eighteenth amendment of the BAföG passed the federal parliament in June 1996 and the Bundesrat a month later. The need for a more fundamental reform was also undermined by the lack of interest of the finance ministers of the Länder, who were not willing to give extra money to the scheme. As a result, no substantial reforms took place before the federal elections of 1998 despite the demands from many sides, including from the Federal President Herzog. The different majority situations in both chambers had led to a self-inflicted situation where the main actors blocked each other, preventing any major progress, i.e. BAföG at this stage was ‘trapped in the joint decision procedure’. The chance for a way out of this kind of deadlock seemed again to be offered by the federal elections and a change in government which indeed then led to the same party – the SPD – briefly dominating both chambers.

Student assistance and the HRG are two fields within higher education policy that experienced some discussions and confrontations along the federal – Länder line but even more so along party political positions. An important aspect of these discussions was the financing issue that was especially visible in the case of BAföG. But it was not only student assistance that was affected, the period after unification was generally characterised by scarce funding for higher education and research. Johannes Rau therefore remarked in 1998 (75): “Science policy today is reform policy in times of constricting cash shortage and oppressive overcrowded

⁸⁷ The degree pathways are not – yet – as regulated in Germany as they are in Canada, leaving the students more freedom and responsibility of organising their studies, including the time it takes them to complete the degree. Therefore, the German system in general hardly recognises a difference between part-time and full-time students. Nevertheless, for every degree there exists a time frame indicating the period of time it normally should take (a full-time student) to finish the degree (*Regelstudienzeit*). However, with the introduction of more Bachelor and Master degrees, this situation is changing.

higher education institutions.”⁸⁸ This was a situation that to Rau’s mind would not change substantially in the future. Figures from the OECD seem to prove that point. In 1996, for example, Germany ended up in the lower third of eighteen examined countries in terms of its expenditure per student in higher education institutions.⁸⁹ Such comparison might be debatable as the figures are only comparable to a certain degree, but it nevertheless can be seen as an indicator for the overall condition (Keller, 2000: 318-9). One might consider the result as being the responsibility of the Länder, but this does not mean that the federal level fulfilled the financial expectations. Because of the need for further investments in the higher education sector in the East, the federal government actually appeared quite weak when it came to the ‘regular’ investments which resulted in cutbacks in higher education and research. In these circumstances, Gerhard Konow (1996: 52-3) argues that some fundamental solutions were considered:

The steady failure of the federal government to live up to its financial obligations has led to the proposal that the joint task be given up entirely and that both the funds and responsibility for investments in higher education be returned to the states.

Yet, Konow himself points out that such a radical change is not really an option (Ibid.: 53): “This is unlikely to happen, due to the financial disparity among the respective states and the strong belief in the benefits of central/state involvement.” Nevertheless, federal funding was also decreasing in research despite the reservation some analysts had about an increased federal role in research as a result of the unification process (see above, Stucke (1992)). Figures concerning the general funding of research and development show that the expenditures were constantly growing since 1989, but when looking at the funding in terms of its share of the GDP, the figure went down from 2.9 percent in 1989 (West Germany only) to 2.3 percent in 1998 (Die ZEIT, 2002).

⁸⁸ Own translation of: “Wissenschaftspolitik heute, das ist Reformpolitik in Zeiten beklemmend leerer Kassen und bedrückend übervoller Hochschulen.”

⁸⁹ The annual expenditures per student per year were 7,900 US Dollars in Germany, which was well behind Switzerland (\$15,700), the USA (\$14,600) and Canada (\$11,100).

5.4. The change of government in 1998: renewed federal engagement

The election victory of the SPD led to a coalition with the Green party under the chancellor Gerhard Schröder (SPD). His victory was partly the result of the desire of many voters for a change after sixteen years under the same chancellor, Helmut Kohl (CDU).

Within the higher education sector, one of the topics that received immediate attention was the BAföG.⁹⁰ Already in January 1999, initiated by the new Federal Education Minister Edelgard Bulmahn (SPD), the first minor changes were passed in the parliament (with the votes of the opposition) basically aimed at reversing the changes of the 18th amendment of 1996. Considered to be only an emergency action to repair damages, a more substantial reform was supposed to follow later. What eventually did follow a year later, though, was still no more than a minor reform within the usual frame of changes. A reform that would have gone further was actually prevented by the chancellor himself.

Nevertheless, the reform in 2000 was successful in a way as more students were entitled again to receive financial assistance, which was one of the central objectives of the changes. In any case, it certainly was not the first time the BAföG was changed or reformed. Looking back at the period since it came into existence in 1971, Turner (2001: 168) observes that it appears to be one of the policy fields that has experienced most course corrections within higher education. He identifies two reasons behind that characterisation. First, there is the fact of the shared financing of the student assistance between the two levels of government, which means that if adjustments take place it is difficult to find a consensus amongst the actors involved also because the Länder governments do not act as one bloc. Second, student financial assistance is probably one of the most controversial topics in terms of party political ideologies, privileging either the ideal of the welfare state or more the principle of individual responsibility and the market economy.

Less ideology-driven was the development towards the fifth amendment of the HRG which focused on two aspects: the employment regulations for professors and the introduction of the so called 'junior professor'.

⁹⁰ The following paragraphs dealing with the BAföG are based on Turner, 2001: 164-9.

Generally, regulations concerning academic staff of the universities are made on the national level. This is done by federal law but also by the HRG. The legislative initiative in both cases is taken by the federal government, but normally requires the approval of both the Bundestag and the Bundesrat. Both sources for the regulations are supposed to underpin the uniformity of conditions for academic positions, although there is some diversity visible when it comes to positions below the rank of a professor. Salaries are based on the same wage scales with the exception of the five new Länder where the salaries are generally slightly lower. Exceptions to the wage scales are possible, for example for professors who were offered a position at another university (Teichler, 1992: 153-4).

University professors are civil servants and are paid according to their age, practically independent of their actual academic performance. To get to that stage, academics normally have to obtain a qualification beyond the doctorate, the habilitation,⁹¹ which used to be more or less the only way of qualifying for a professorship. This inflexibility and, what is probably more important, the situation that those who eventually get a professorship are on average over 40 years old and have until then been dependent on one or more professors, demanded an adjustment. The circumstances had not escaped public debate, with the portrayal of the situation as being too much characterised by dependency for too long a time. In addition, there is only little chance of professors that do not fulfil their duties having to face any consequences unless they are taken to court – obviously not a particularly helpful instrument. In any case, the public debate reached a highpoint in 1999 and therefore reinforced the need for a change. Although the status of the professors had been questioned before, not much had happened. This, however, did not stop the Education Minister Bulmahn taking on the task of reforming the system by focusing on the payment of professors and on the qualification path which eventually led to the fifth amendment of the HRG (Turner, 2001: 254-60).

Without going into the details here, the three main changes of the new HRG were the introduction of the so called ‘junior professor’, the abolition of the habilitation and the introduction of an at least partly achievement-orientated

⁹¹ Germany and Austria are the only countries left that still have the habilitation procedure (Leffers, 2002)

payment of professors. In the case of the latter point, agreement between the Länder and Berlin was not a problem and was achieved in the mediation committee (Schwarzburger, 2002). What caused more problems was the gradual abolition of the habilitation and, because it is closely related to the abolition of the habilitation, the introduction of the junior professor.

The junior professor is supposed to become the normal career path leading to a full professorship, without the need for another examination after the doctorate.⁹² This automatically increases the independence of the junior professor. In order to achieve the junior professorship replacing the habilitation, the HRG provides a regulation that basically implies the abolition of the habilitation in the next ten years. This provision was the main target of criticism from the Länder and here especially from those with a conservative government. After all, the abolition of the habilitation appeared to penetrate into the competencies of the Länder. Bulmahn seemed to have been aware of the problems that this step might cause amongst the Länder and therefore offered to pay the basic cost of 3000 junior professorships in exchange for the acceptance of the ending of the habilitation (Loewe, 2001).⁹³ Although the Science Council fully backed the step, the amendment to the HRG did not pass the Bundesrat in November 2001. What followed was nothing new. The federal government decided to push the HRG through on its own, which led to a situation similar to that in 1998 (and it also happened more or less in the run-up to general elections in 2002). This time it was Federal President Johannes Rau (SPD) who had to face the same situation as Roman Herzog (CDU) before and decide whether to sign a law that did not have the support of the Bundesrat. Like Herzog, Rau, after reflecting on it for some weeks, signed the law in February 2002, which then became effective on March the 1st. The response from some Länder was quick. Three of the eight conservative led Länder (Bavaria, Thuringia and Saxony), despite accepting the HRG in 1998 where the Bundesrat was ignored as well, decided to appeal to the BVerfG (in June 2002) as they perceived the lack of acceptance by the Bundesrat as a constitutional

⁹² A similar approach in the 1960s, attempting to introduce assistant professors to replace the habilitation was not successful (Turner, 2001: 269-70).

⁹³ At the end, the BMBF provided altogether 180 million Euro and promised every junior professor 76,000 Euro at the beginning of their appointment for their research (Rauner, 2002: 36).

breach. The discussion had not even reached its climax when the federal government already put forward another, the sixth, amendment of the HRG, which proved to be just as controversial (Schwarzburger, 2002; Leffers, 2002).

At the centre of the sixth amendment was a well-known topic – tuition fees. After the federal election in 1998, the discussions about fees continued, although not with such clear distinctions between the positions anymore. At one stage, the public discussion even appeared moving towards the introduction of fees. Following the loss of its majority in the Bundesrat after an election defeat in Hesse, the SPD-Green government seemed to have given up on the introduction of a ban on tuition fees. Nevertheless, at the beginning of 1999, there were signs of a temporarily restricted agreement amongst the Länder aiming at a nation-wide renunciation of tuition fees. The aim was probably to gain time to search for a fee model based on consent amongst the actors involved (Turner, 2001: 184-7).

In May 2000, the education ministers of the Länder agreed in the KMK on a fee-free first degree, but the attempt for a contract between the Länder and Berlin on the issue failed. At the end of 2000 Bulmahn announced the inclusion of a ban on fees in the HRG. As in the case of the fifth amendment of the HRG, the federal government argued that the inclusion of the ban in the HRG would not require the agreement of the Bundesrat. Hence, in April 2002, the sixth amendment was passed in the federal parliament with the votes of the SPD and the Greens and came into force four months later. The new HRG not only included the bans on fees for the first degree (Bachelor and Master) but also forces the Länder to constitute student unions that have the right to establish their own organisational structure, get financial contributions from the students and are able to comment on the policy of the higher education institution. This provision affected only Bavaria and Baden-Württemberg which until then had resisted the reestablishment of such bodies which they had abolished in the 1970s. Not surprisingly, not all the Länder agreed with either the new HRG or the method of its adoption. The protesters included SPD governed Rhineland-Palatinate. At the forefront of the protest, though, were the conservative governed Länder of Bavaria and Baden-Württemberg, which threatened to appeal to the BVG as they especially perceive the financing of the higher education institutions as part of their competence. Yet, it has to be added that despite the formal ban on tuition fees, the HRG still

provides quite a few loopholes for the Länder to charge fees, for example for students who have significantly exceeded the regular time it should take to finish a degree. These kinds of fees had already been charged before in various Länder (Schwarzburger, 2002; Leffers, 2002a, b; Horstkotte, 2002; DUZ, 2002).

The possibility of introducing some kind of tuition fees even after the new HRG had come into force, was – ironically – highlighted by the SPD stronghold of North Rhine-Westphalia where nearly two thirds of all students in Germany are enrolled. The SPD/Green government of the Land is not only thinking of introducing fees for long-term students but also wants generally to charge every student an enrolment fee. Even if only a small amount is planned as an enrolment fee (50 Euro per semester) it is provoking some strong reactions, including from within their own party. Yet, this move also highlights the desperate search for money to finance the university system (Moeller, 2002), especially in the light of still growing student numbers.⁹⁴

The topic of tuition fees caused some divisions, even if they were not as fundamental as in the case of BAföG. But they were certainly also driven by party political ideologies, trying to emphasise a social achievement of studying for free (SPD) or by focusing more on economic aspects, including financially penalising long-term students. Then again, the public discussion is still in its early stages and the frontiers appear to be blurring, partly losing their ideological dimension. It remains to be seen whether the ban on tuition fees would survive a change on the federal level back to a conservative government.

The introduction of tuition fees is obviously closely linked to the financing issue in general. Fees will probably not become a major source of income for the universities or the Länder in the near future. Given that this is due to a federal policy, it may be seen to follow that the federal government should provide partial compensation for denying such a financing source. And indeed, it can be generally said that the financial involvement of Berlin in higher education and research at least initially rose in contrast to the financial commitment in the last years of the Kohl government.

⁹⁴ Starting with the winter semester in 2002/03, nearly two million students are currently enrolled at German universities, with the female students for the first time outnumbering the male proportion (Spiegel Online, 2002a, 2003).

One example is the BAFöG where more students are funded under the current government than in the last years under Kohl. This naturally led to a greater federal financial contribution financed by the BMBF. Therefore, when the Federal Minister of Education and Research was asked in an interview in 2002 before the last federal elections what aspect of her work she was particularly proud of, she pointed to the 21.5 percent increase in the budget of her ministry since 1998 (UniSpiegel, 2002: 34). In the draft of the federal budget for 2003, despite an overall decrease of 1.2 billion Euro (from 247.5 down to 246.3 billion Euro), the BMBF actually received a further increase of 2.6 percent, leading to a budget of just over 8.6 billion Euro (Spiegel Online, 2002).

Besides student financial assistance, another area which benefited most from the increased budget was the field of construction of higher education institutions (Leffers, 2003).

In the case of research, the picture does not look as positive. The general funding of research and development in terms of its share of the GDP only increased from 2.3 percent in 1998 to 2.5 percent in 2001 (Die ZEIT, 2002).⁹⁵ When looking at the federal role in more detail, the situation appears to be more critical. In a recent development for example, Bulmahn asked the leaders of the big research organisations (DFG, MPG etc.) to attend a meeting in Berlin to personally tell them that the promised increase of three percent of their budgets for 2003 would not be on anymore, instead using the increase of the budget of the BMBF to promote 10,000 all-day schools with four billion Euro until 2007.⁹⁶ Ironically, the originally intended extra three percent for the research organisations was adjusted because of the financial situation of the co-funding Länder – Berlin was actually aiming at an increase of four percent (Grunenberg, 2002). Even if one considers the funding of the research of junior professors, it certainly does not appear anymore that the federal level is at the brink of dominating the research sector.

⁹⁵ In a OECD study of 2001, the share of research and development of the GDP was located at 2.38 percent (see end of section six in the part on Canadian higher education).

⁹⁶ Some of the Länder first harshly rejected the four billion Euro present, but then decided to accept it provided that they were allowed to use it without any conditions attached (Leffers, 2003).

5.5. Summary remarks

When looking at the German higher education system, one dominant characteristic is the extensive regulatory regime. This reflects another aspect of the system: the high degree of state influence on the higher education institutions. This influence resulted in a relatively homogenous system across Germany, despite the main competence actually being located at the Länder level. Partly that is due to the legal framework for higher education which is now essentially as follows:⁹⁷

- various articles in the Basic Law
- similar provisions in the constitutions of the individual Länder
- the HRG of 1976 in its current version of August 2002
- higher education laws in the Länder that fill in the framework provided by the HRG

Yet, the actual reasons for the uniformity of the system go beyond the legal framework. Inter-Länder revenue transfers reduce the gap between the poorer and the richer Länder, providing a certain financial equality for the respective university sectors. Furthermore, although the HRG might be the single most influential factor, institutions based on a third, but still national, level had a shaping influence too (Heidenheimer, 1994: 27). Those institutions are based on various principles and different compositions. The most important of these institutions are the KMK, which is basically an inter-Länder body, the Science Council, the HRK and the BLK, the only true intergovernmental body amongst those mentioned here. All these institutions – beside the two governmental levels and their respective ministries – are involved in one or the other way in the planning and decision-making of higher education policy. This also includes an organisation like the HRK that does not have any formal competence. From that alone it becomes clear that higher education policy in Germany is characterised more by a system approach than by an institutional approach, or a sectoral approach as in Canada. Yet, there are signs of a move away from the steering of the whole system towards more institutional responsibility in the form, for example, of much looser rules for the institutional budget, i.e. the universities are

⁹⁷ Updated version of outline by Karpen, 1991: 145.

more in control of what to do with it (Kehm, 1996: 169; Müller-Böling, 2003). Eventually this will lead to more institutional diversity, as some have already identified (see above).

None of the competencies of the federal level is exclusive. Even in those areas with most federal influence, research and student assistance, there is at least an influence of the Länder in the form of financial participation. In terms of the financial involvement of the federal level, it can be said that there is no general federal power of the purse with the exception of the period of the German unification. However, that was the result of a specific situation and not of a general policy approach. Generally, the joint tasks, such as in the construction sector, prevent further financial involvement because of the need for matching funding from the other side. Hence, reform efforts focus on this field. In any case, both governmental levels did not appear to have overspent over the last decades in the higher education sector which led Turner (2001: 175) to characterise the common higher education policy approach of the Länder and the federal government with the following keywords: “open it, keep it open and look away”⁹⁸, reflecting a rather disengaged attitude on part of the governments.

Higher education policy in the German federal system appears to be – at least temporarily – a good example of the ‘joint decision trap’ as a result of the policy interlocking. Not only does this seem to block a reform of the system, but as the legal situation is not always that clear, the constitutional court plays a significant role in the policy field as well. Yet, the various discussions and conflicts that occurred over the years cannot simply be characterised in terms of the Länder being on one side and the federal government being on the other. In many cases this intergovernmental dimension was overlapped by a stronger party political dimension sometimes leading to ideological confrontations. In other words, there is no homogenous federal-Länder division in higher education. This might also explain why there was no straightforward development of higher education policy on both levels, the development was rather characterised by a lurching from side to side which Turner (2001: 272) still sees as a rather restrained description.

⁹⁸ “„Öffnen“, „offenhalten“ und „Wegsehen“” (own translation)

Looking at the higher education policy of the federal government alone, it reveals, at least originally, fundamental ideological differences between the conservative and social democratic led governments since the entrance of the federal level into higher education policy at the end of the 1960s. However, although ideology still plays a role (see more recent developments), this dimension is certainly not as strong now as in the 1970s.

The political situation was certainly not helpful for a reform of the sector, but not only because of the role of the federal level. Gareth Williams still wrote in 1996 (25): “The need for agreement amongst the separate Länder is one reason why German higher education has not so far been subject to the numerous reforms experienced in many other OECD countries in recent years.” This might have changed in the meantime. The abolition of the habilitation together with the introduction of the junior professor might especially be a tool that could develop its own momentum and reform the university from within, by for example weakening the extreme dependency structure at German universities. The Länder also have moved forward not by leaving the road of common agreements, but by withdrawing more from the universities, leaving them with more freedom, flexibility and more potential to look for solutions out of problematic developments (Müller-Böling, 2003).⁹⁹

Despite such a positive evaluation in terms of reforms, the demand for eliminating some joint tasks is still there and, maybe because of a ‘reform atmosphere’, has been re-emphasised. The Science Minister of CDU governed Hesse, for example, demanded a move away from cooperative federalism towards competitive federalism leaving behind the joint tasks. To look at the topic, a committee appointed by the minister-presidents has been engaged since March 2002 in discussions about the reform of the federal system, focussing particularly on joint financing. Already a year earlier, the Länder level had suggested the abolition of the joint tasks, i.e. the abolition of Article 91 a and b of the Basic Law, with a particular focus on the joint construction issue (Horstkotte, 2002a).

⁹⁹ Detlef Müller-Böling, leader of the Centre for Higher education Development, a think tank of the Bertelsmann foundation and the HRK, argues generally that the reform of higher education institutions is well on its way and is still gaining speed, despite the public perception which implies the opposite.

Where does this leave research now? Although the joint financing of research is also under scrutiny (Kuntz-Brunner, 2002), it is not such a contested field in terms of intergovernmental relations. Maybe that is because the federal government is such a dominant force in terms of financing in contrast to the Länder, at least in the non-university research sector. In addition, the financing of university research as an integrated part of the employment of a professor is no source for arguments either because of the constitutionally guaranteed autonomy of the professor and his or her employment by the Länder.

What could affect the research sector more fundamentally is an aspect which has not been mentioned so far – the European Union (EU) dimension. The EU will probably not have a fundamental impact in the near future on German higher education policy as it has only a limited amount of jurisdiction (research programmes, research and technology policy) in this field (Konow, 1996: 50-1). Nevertheless, there are developments taking place a European level that will also have an effect on higher education in Germany. An example is the so called ‘Bologna process’, where 30 European countries agreed on the establishment of a European higher education system based on Bachelor and Master degrees (Wiarda, 2003). Yet, these are more general developments that do not fundamentally undermine – at least not at the moment – the situation in the higher education policy field in Germany. This evaluation generally also applies to the research sector, though with some restrictions.

Obviously, the EU has no jurisdiction in research policy either, but the EU budget for the promotion of research is constantly rising, by 17 percent for the latest program which offers 17.5 billion Euro for the period 2003 – 2006 to researchers in the member states (Fritz-Vannahme, 2002). Yet, the whole process of research funding by the EU – while certainly representing a financial influence – has no fundamental effect on intergovernmental relations in Germany as it is mainly a matter for the universities and the researchers themselves. Whether this will change dramatically is rather unlikely, despite demands by the European Council for more investments in research (Schuh, 2003). In addition, such demands as well as the Bologna process, can be seen as result of (economic) pressure generated by a wider, global environment. From this point of view, these developments do not manifest a direct intrusion into the policy field but rather

represent aspects that have to be taken into consideration anyway – like so many others – by the governmental actors in the higher education sector.

6 Conclusion: The intrastate model at work

One of the most striking aspects of higher education policy in Germany between 1945 and the present is the longer term growth and variation of federal influence. While it might be obvious that this was not a question at all in the first few years after the war (due to a lack of a formal state), the initial period after the establishment of the FRG in 1949 did not prove to be that different in this regard. The federal role was still very limited regarding its policy impact.

Looking at this period from a historical institutionalist perspective this situation appears to be understandable. The foundation of the FRG was orientated towards the negative example of the centralised Nazi state. Hence, the Republic was aimed at reducing the influence of the centre by introducing a federal state and thereby manifesting an institutionalised decentralisation. There was a common agreement on that, even if it was partly seen as being imposed on Germany by the allied forces. In any case, this period seemed to have reflected a clear critical juncture for Germany generally and also for the higher education sector more specifically. Yet, the development of the following period from the late 1950s until the end of the 1960s makes it difficult to sustain such an analysis.

From the beginning of the FRG, it was a federation that was orientated towards the intrastate model of federalism despite the focus on decentralisation (which normally might have implied something more along the interstate dimension). There are a variety of possible explanations for this. One aspect that certainly seemed to have played a role is the existence of a relatively homogenous (or non-federal) society. This was highlighted by the fact of the inclusion of the ‘uniformity of living conditions’ provision in the Basic Law.

From another perspective, the Bundesrat – as a defining element of the intrastate dimension – was from the beginning positioned at the centre and placed there as a device to control the federal government. Applying this view a

centralising element like the Bundesrat does appear to be less of a contradiction in terms of using an intrastate model to stop the reappearance of a centralised state.

The Bundesrat presumably can be seen as both ‘centralising’ in that it brings issues and Länder governments into the ‘central’ political system, while also acting as a protection for the Länder insofar as it allows them to occupy a crucial – and relatively expansive – veto point within the political system. It also, of course, meant that there was a pre-existing institutional forum within which policy co-ordination in the higher education sector, as elsewhere, could be developed. This in turn helps to understand the development in the higher education sector that led eventually to the constitutional amendments of 1969.

The amendments to the Basic Law in hindsight certainly represent a critical juncture. They had such a fundamental impact on the higher education policy in terms of intergovernmental relations that it is possible to distinguish between a pre 1969 and a post 1969 reality. The reasons that such a fundamental change was possible, as detailed above, encompassed a general agreement amongst the key actors involved (especially common party political positions) because of increased federal financial contributions and the resulting need for coordination, as well as wider societal and economic pressures. Yet, it might still surprise that the Länder basically gave up what turned out to be a rather big and important share of their constitutional competencies. The role of the Bundesrat could offer the explanation here. The Länder knew that the Bundesrat would offer them a relatively effective way of controlling the federal government and its newly acquired competencies. This was especially the case because the rather limited role which had initially been envisaged for the Bundesrat was rapidly expanded (notably by decisions of the Constitutional Court) so as to bring over half of all federal legislation within the sphere of its ‘veto’. Applying this observation, the Bundesrat is not only a central element of the intrastate dimension of German federalism but also important from a historical institutionalist perspective; it represents the framework of the federation that was in place from the beginning in 1949 and which can be seen as shaping the developmental path leading to the critical juncture of the 1969 constitutional amendments.

The characterisation of 1969 as a critical juncture became only fully recognisable after the introduction of the HRG in 1976. Yet, at this stage the

federal role was seen as being on the decline again. However, it was less the federal role that was declining but more the party political agreement that had disappeared and made the policy process at the centre more difficult – due to the role of the Bundesrat, which only in the absence of a common understanding amongst the main parties and in the case of opposing majorities in the Bundestag and the Bundesrat showed its ‘full potential’. This potential also included the joint-decision trap which in the higher education sector became a somewhat regular feature in the policy process. Hence, despite apparently dramatically changing conditions in the higher education field, there is especially one constant that heavily affected the events – the institution of the Bundesrat.

The further development of the higher education sector reinforced the role of the Bundesrat and thereby preserved the authority of the Länder, even if it was not always a question of autonomy due to the vertically integrated party system and the regularly resulting dominance of party political positions over Länder positions. Under these circumstances, the balancing act for the Länder was less characterised by choosing between cultural autonomy and influencing the national higher education process. This, of course, is then also reflected in the overall balance of the federation where the federal government normally is more responsible for the economy and the Länder for developing and preserving their cultural distinctiveness. Although the desire for cultural autonomy should not be completely dismissed, the previous argument already implies that it is not such driving force as it is in Canada. It could generally be argued that the interlocking nature of German federalism makes it more difficult to distinguish between the assumed preferences of the governmental levels given the ‘distracting’ influence of the party system. From this perspective and including the relatively homogenous society, the Länder, especially when represented by the opposition party on the federal level, might use their influence to ‘promote’ their own national economic approach. This does not of course imply that the Länder have the same constitutional competence regarding the nation’s economy as the federal level. However, the intrastate system provides them with possibilities of influencing the federal competence.

In contrast, an aspect which could be seen as strengthening the federal role is the economic weakness of the five new Länder in the East. They have to rely

more on the role of the federal level and its economic responsibilities. This potentially also reflects a division amongst the Länder, with the richer West German Länder being in a more powerful position when it comes to the bargaining process.

Nevertheless, German unification was not able to challenge the established system in higher education and did not create a new critical juncture despite the dramatic implications for German politics and German society. There are obviously various reasons for this absence of radical change. First, German unification was not based on a merger but on the GDR joining the FRG (for some it even represented a takeover). Unlike a true merger, this does not automatically imply a rearrangement of the existing structure of the FRG but only an expansion. Second, despite the recognition of the need to reform the universities (and the policy process), unification imposed different demands on the system. Reforms in the FRG were somewhat sidelined by the need to tackle the basic financing of the higher education system in the GDR (including the establishment of new universities) and the task of dealing with the 'personnel issue' (which was rather more dramatic, as has been outlined earlier). Under these conditions, a reform of the policy sector became less likely. Unification did temporarily lead to a stronger federal role based on its financial involvement, but this did not fundamentally undermine the institutional structures despite the perceived greater dependency of the new Länder

What was arguably less influenced by unification is the coherence of the policy sector. Due to the interlocking aspect of the policy sector and the framework setting power of the federal government, a national policy is almost a necessity within the intrastate system in Germany. Yet, this does not necessarily imply a coherent higher education policy. Aspects like the joint-decision trap and its implications of sub-optimal policy outcomes due to the bargaining style of the relevant actors involved would actually imply the opposite. However, the policy sector has shown that the bargaining process is often the result of party political positions. This logic does not only provide the ground for a further division. It can also – in the case of the same party dominating the two federal chambers or in the case of agreement amongst the main parties – offer the possibility for a policy

process that is actually orientated towards problem solving, as most recently shown in the period at the end of the 1990s.

A certain policy coherence might also be ensured by the higher education policy networks (see for example Onestini, 2002), releasing the parties from the pressure of exclusively carrying the responsibility for policy decisions. Especially the Science Council – while basically still having a considerable intergovernmental element – has developed a reputation as an impartial expert for the policy field, making its recommendations more acceptable to the governmental actors and at the same time ensuring more coherence because of its problem-solving style.

In general, the existence of the Science Council and the implication of a policy network is due to the more fertile ground on the national level for the actors in the German higher education field. While the interlocking aspect already indicates the necessity for a policy network of the relevant governmental actors, their involvement (and the impact of the party system) requires not only bodies for policy coordination but also provides more access or veto points for other actors (like universities, interests groups etc.).

More recent developments could even further strengthen some of the policy networks actors while weakening the influence of others, i.e. the governmental levels. This development could be summarised under the heading of competitive federalism, basically aiming at a more competitive higher education sector to survive or perhaps even to take advantage of global competition.

The demand for competitive federalism has also been fuelled by the election of the SPD/Green government in 1998. Following the more interventionist strategy of the 1970s, policies like the prohibition on student fees raised the opposition against the federal role (leading to the ‘appearance’ of joint-decision traps) and led to demands for more autonomy not only from the Länder but also from the universities themselves. Yet, this time it is less of an ideological confrontation as even some SPD governed Länder joined the opposition concerning issues such as the ban on fees.

Even more than Canada, the German case is marked by the existence of distinctive developmental periods – linked to the growth of a clear federal influence in the

field, with, however, variations over time. Most notable, however, is the consistently central role of the Bundesrat in this process – as both ‘central’ institution and instrument of Land influence at the centre. It is here that one most clearly sees the workings – and the broad trajectory – of the German intrastate model.

IV

COMPARISON

**The institutional context and the wider environment of
higher education policy in Canada and Germany**

1 Introduction: The (non-) development of a national policy approach

Earlier in this thesis it has already been mentioned that education is one of the policy fields where the constitutional authority in federal systems rests – under normal circumstances – with the constituent units. As a consequence this also applies to the more specific area of higher education. It is an area, however, which in intergovernmental terms is more contested as especially higher education (and research) is associated more directly with having an impact on dimensions like the national economy of a state.¹

Both countries in this comparative study are not exceptions to the rule of the allocation of competencies for education or higher education respectively to the subnational level. Both constitutions – the British North America (BNA) Act of 1867 for Canada and the Basic Law of 1949 for the Federal Republic of Germany (FRG) – stated that more or less clearly. Despite such a similarity, when looking at the empirical evidence in terms of the appearance of a national higher education policy, a more differentiated picture emerges. In the following, I will therefore briefly look back at the development of the ‘nationalisation’ process – or the lack of it – in the two countries, starting with the postwar period. The aim is to provide a general characterisation of the respective national policy fields with a focus on their developmental trajectories.

1.1. The starting point: the postwar years

Given the origin of the BNA Act dating back to 1867, the explanation of the Canadian situation requires at least a brief look at developments prior to the post-World War Two period.

Higher education was not mentioned specifically in the BNA Act, in part probably reflecting the limited size of the sector in 1867. This already indicated

¹ This is not to say that, for instance, primary education is of less importance. In certain ways, primary education requires even more attention than higher education, for example in terms of integrating non-national minorities into the society of a state. However, the purpose here is not an evaluation of the function and relevance of the various educational sectors.

that the universities as a whole did not represent a significant policy issue, a situation which lasted until the Second World War.

Despite this relative lack of significance, one might still have expected the emergence of a national policy approach. After all, at the time of the BNA Act, Canada was a quite centralised federation. Despite decentralising developments in between, the periods of the two world wars were again characterised by centralisation. The obvious reason for this was the engagement of Canada in both wars which did not allow for formal (federal) political practice during these times of national emergency. However, those periods of centralisation did not lead to a lasting nationalisation of higher education policy. Besides the obstacle of the constitutional provision further arguments might help to explain this 'shortcoming'.

The university field was still small at the end of the Second World War and was therefore not substantial enough to get more attention. Furthermore, for a long period previously universities were mainly located in the private sector. Although this was not the case anymore for most higher education institutions, they still had not yet fully arrived in the public sphere. In addition, the universities were relatively autonomous, which gave them a strong position in relation to the federal government. This was highlighted by the fact that they partly dealt with Ottawa directly. This also led to the consequence that in the postwar years, when the university sector was growing rapidly, federal financial contributions were made to the universities directly instead of making payments to the provinces (as a result of the Veterans Rehabilitation Act and even more so, already indicated by the name, as a result of the direct grant period between 1951-67). This situation points at another important factor: the limited role of the provinces in higher education in the postwar years despite it being within their legal authority. Yet, for a national higher education policy to develop, it would require a considerable input from those authorities which hold the legal competence, i.e. from the provinces.

The situation in Germany in the period after the war was quite different from the one in Canada. On a more general note, the end of the war marked a clearer historical break and had a fundamental impact on German society and the state more generally. It marked the beginning of a 'new era' even if there was not much evidence for that within the universities themselves.

Concerning the role of the Länder in contrast to the role of the provinces, a diverse picture also emerged with the Länder certainly not having been in a weak position initially.

In the sense of the allocation of competencies for education or higher education respectively, the newly established state of the Federal Republic of Germany (FRG) initially did not represent an exception to the classical situation. What is worth pointing out, though, is that in the immediate aftermath of the Second World war, the responsibility for higher education was not a question at all, as the establishment of the Länder took place before the (re-) establishment of the West German state in 1949. This was highlighted by the Standing Conference of the Education Ministers of the Länder (*Ständige Konferenz der Kultusminister – KMK*) which was founded already a year earlier. Furthermore, the KMK – after the FRG came into existence – represented a body that was supposed to observe the independence of the Länder in educational (and cultural) matters. Consequently, there was no direct provision in the Constitution (Basic Law) of 1949 that gave the new capital Bonn a role in higher education. Yet, already at that early stage some of the provisions in the Basic Law – especially the Article requiring ‘uniform living conditions’ (Article 72, Section 3) – opened the door for a federal involvement, reflecting not only legal conditions but in a much wider context the state of German societal development.

When summarising the situation in higher education in the postwar period, it appears that the German Länder were in a stronger position than the Canadian provinces. Nevertheless, the constitutional ‘protection’ of the constituent units in the policy field appeared to be more complete in the Canadian case. From the perspective of a national policy approach – while not yet clearly visible in either Canada or Germany – the first signs of an appearance (KMK, for example) could be witnessed in Germany.

1.2. The 1950s and the 1960s: The rise of Bonn and the ‘awakening’ of the Canadian provinces

In the period following the immediate aftermath of the Second World War, a somewhat contrasting development took place in Canada and Germany. In short it

could be described in a way that the less significant actors in both systems – the provinces in Canada and the German federal government in Bonn – gradually gained more influence in the policy field of higher education. The fact that in one country the national level (Bonn) and in the other country the subnational level (provinces) was growing in importance led obviously also to changes in the characterisation of the policy sector. Yet, the effect of it became visible only gradually.

As already pointed out above in the case of Canada, the Veterans Rehabilitation Act and the ‘direct grant period’ between 1951 and 1967 emphasised not the autonomy of the provinces but rather the autonomy of the higher education institutions (and the NCCUC/AUCC as its representative). The provinces were somewhat bypassed, highlighting not only the financial dependency of the provinces but also their relative lack of impact in the field despite the absence of a direct policy influence by Ottawa.

The exception in this situation was Quebec, which accepted the payments as a result of the Veterans Rehabilitation Act but denied its universities payments under the direct grant scheme. Initially therefore Quebec suffered financially because of its strategy. However, the resulting impasse between Quebec and Ottawa was finally solved in a way that became a model for further developments affecting the other provinces too. Quebec was allowed to ‘contract out’ of the federal financial direct grant payments by basically receiving a transfer of tax points in order to raise their own revenues for the financing of the higher education sector. By doing so, Quebec gained financial control and autonomy over its postsecondary institutions. This development helped to pave the way for the end of the direct grant policy and led to the cost sharing program that included payments to the provinces in the form of a transfer of tax points.

The provincial ‘awakening’ within higher education was part of a much wider process in the Canadian system which has been labelled ‘province building’. This province building – which roughly started in the 1960s – led to the provinces establishing themselves on the political landscape as self-confident players. As such they also claimed back authority over the universities. Most visibly this happened in the form of a change from a direct funding to a shared cost agreement between Ottawa and the provinces resulting in payments to the provinces in

respect of higher education institutions. In this light it is understandable that despite an enhanced role of the provinces in the policy sector, there was still no sign of a national policy approach especially not with an input from the provinces. After all, they just had gone through a phase of a kind of ‘emancipation’ thereby determining their own position. Why should they therefore have moved towards an agreement framing a national higher education policy which would have required them to give up some policy competence? On top of that, the dynamic of the development had something more of a decentralising movement whereas a national policy approach would have required the opposite direction. This movement in the opposite direction, in contrast, actually took place in Germany.

The ‘uniform living conditions’ article of the Basic Law opened the door for federal involvement even in those areas of exclusive Länder competence. It gave Bonn the possibility of interfering in instances where Länder legislation did not fulfil the criteria set out in the Basic Law. Yet, at the beginning the autonomy of the Länder in matters of higher education was hardly affected by this article. Financial contributions from the federal level were welcomed and not seen as the start of a federal intrusion or even incursion. The danger of a national higher education policy threatening Länder autonomy would anyway have been a misleading interpretation of the situation and perceptions at that time. After all, the Länder had already become active in this direction by the creation of the KMK, basically aiming at a national coordination, though without the federal government.

Although the federal involvement was not perceived as a fundamental intrusion, the financial contributions led to a system which later on became more problematic: mixed financing. This approach of financing projects together necessarily required some coordination. It can therefore be described as a stepping stone for a national policy even before mixed financing received constitutional status in 1969.

What is clearly visible from the early developments in the higher education sector is that there appeared to be no natural aversion on the Länder level towards a national higher education policy. Consequently, federal efforts in this direction were accepted as long as they were limited and resulted in financial assistance. In addition, awareness towards the importance of the higher education sector for the

nation as a whole grew steadily, further justifying a more prominent federal role. This role was also required to deal with the rapidly expanding university sector. At the end of the 1960s there was common agreement amongst the main political groups about the importance of higher education and the need to pool the efforts for dealing with it. The amendments to the Basic Law of 1969, resulting in a much stronger federal role, were therefore not surprisingly based on a broad coalition of the main political parties. In connection with a strong vertical party system this also ensured that there was no major opposition to the move on the Länder level. Furthermore, the changes – especially the formalisation of joint tasks and the competence given to Bonn to create framework regulations for general university matters – did not create a new dimension to the federal system. Joint tasks were not new and the characterisation of the model as cooperative was arguably not new anymore either.

At the end of the 1960s both countries here had experienced similar pressures (importance of higher education for the national economy; expanding university sector) but the direction the higher education field took was quite different – towards nationalisation in Germany and protection against such a move in Canada. Yet, while the development in Canada was more the result of an ongoing process, the changes that took place in Germany (highlighted by the 1969 constitutional amendments) manifested a clear critical juncture. Furthermore, the paths chosen at that time in both countries were not only temporary but determined the further development of the policy field through to the present.

1.3. Establishing the roles: the 1970s and the 1980s

Despite not shaping the policy field as much as the previous two decades, the 1970s and 1980s did bring some changes that underlined or weakened the established system.

In the absence of a coherent national policy approach, the focus in Canadian higher education continued to be on the financing issue. Although the more fundamental change had taken place already in 1967 with the introduction of the cost sharing agreement leading to payments to the provinces instead of to the

universities directly, further developments in this area proved to be even less supportive in terms of a national policy approach.

As a result of intergovernmental negotiations, a new financing scheme was introduced in 1977, the 'Established Programs Financing' (EPF) which was supposed to cut the spiralling expenses of cost sharing for Ottawa and further reduce federal intervention. But the main effect of EPF – as an unconditional transfer – was that it marked another stage of a development where federal money was increasingly less earmarked as contributions to the higher education sector despite official statements by the federal government claiming the opposite. The discussion is highlighted by the argument as to whether the revenues of transferred tax points are still federal contributions. Whatever position one takes in this discussion, it might be difficult to argue that the degree of dependency on federal funds was not diminishing. In any case, the provinces gained more financial autonomy as a result of the changing financing policy of Ottawa. A simple fact that highlights this is the use of money earmarked for the university sector which was actually regularly used by the provinces for other purposes. This was (and still is) possible because the financial contributions are not connected to any federal policies. They are unconditional transfers and they have to be unconditional otherwise the opposition from the provinces – and not only from Quebec – would cause major problems.

The decline of the financing aspect as a tool of a national policy was not counteracted by other developments. The Council of Ministers of Education of Canada (CMEC), for example, rejected attempts to turn it into a federal-provincial forum. Another attempt – despite some initial opposition by the provinces – to solve the problem of a lack of a coherent national policy led to the National Forum of 1987 bringing together all the main actors of the policy field. In the aftermath of the event more coordination efforts became visible – but also a decline of federal financial contributions.

The situation in the German higher education system, in contrast, continued to be influenced by a strong federal government – at least at the beginning of the 1970s. Although the fundamental constitutional change in 1969 coincided with the election of the first national social-democratic led coalition government, the federal role (and with it the constitutional change) was – as already said – accepted

and supported by an agreement amongst the main parties. This agreement continued for the first few years of the new government, but by the time one of the main pieces of the constitutional amendment was realised – the Higher Education Framework Act (HRG) of 1976 – the policy field was much more contested and characterised by ideological divisions. This in itself, though, did not question the existence of a national higher education policy. It was rather the question of what the content of that policy should be. Unlike Canada, the federal financial role – while not being that substantial – was not a major issue in the developing political arguments which in any case were more characterised by party political positions than by a federal-Land division.

Already before the change in government of 1982, bringing the CDU/CSU back to power (with the FDP still remaining the junior coalition partner), Bonn had started to reduce its role in the higher education field again. The following years under Helmut Kohl only saw more or less minor changes to what could be summarised as an established national higher education policy. The real test for this policy was about to appear in the form of the German unification of 1990.

As has been said above, the 1970s and 1980s did not bring fundamental changes but rather strengthened the foundations laid earlier. Canada remained far away from a coherent national policy approach, highlighted by the responsibilities for post secondary education being fragmented across various federal ministries and departments. The German federal government not only had two (later one) ministries dedicated to the task of co-ordinating the policy field but was initially even able to further increase its impact (which, however, was subsequently reduced again).

1.4. New directions? German unification and Canadian research

The period of the 1990s including the first years of the new millennium saw both higher education systems being exposed to issues that had and still have the potential of changing the overall appearance of the policy field even if those issues have not yet led to a ‘dramatic’ policy change.

A rather drastic incident took place in Germany in the form of the unification. The expansion towards the east not only meant an enlarged territory of

a united Germany but also an increased diversity. One might have expected that this would have also brought fundamental changes to the higher education system but this was not the case. By the time of the unification in 1990, the national higher education policy was well established and not questioned by the accession of the five new Länder. Even the increased federal role in covering the additional financial requirements of the universities in the east was only a minor and temporarily limited result.

Until the end of the 1990s, higher education received relatively little attention in comparison with other policy issues. This changed again with the end of the Kohl era and the election in 1998 of an SPD led coalition government, including for the first time the Greens as a party in government (and ending an uninterrupted period of 29 years with the FDP being junior partner in every federal government). The federal level renewed its interest and its involvement again in aspects of higher education without fundamentally changing the system. It rather resulted in arguments about policy content. Yet, some of those arguments point in the direction of more autonomy for the Länder but also more autonomy for the institutions of higher education themselves. This was in recent years highlighted by the demand for a more competitive federalism requiring the abolition of joint tasks and the (partial) withdrawal of the federal government. This appears to threaten the existence of a national higher education policy. However, even these discussions – while reflecting reform debates in Germany more generally – are still *national* discussions.

Canada was obviously not exposed to such an ‘extreme’ development as the unification process in Germany (although the potential was there too, if the secession movement would have succeeded in Quebec in 1995 – though implying a different dynamic than a unification).

The development of the higher education sector since 1990 basically concerned two aspects: the further diminishing federal role in the general financing of the universities and the resulting policy shift of Ottawa towards a more targeted funding of research.

The transfers under EPF steadily declined, eventually leading to a new system in 1995, the Canada Health and Social Transfer (CHST). It did not stop the reduction of transfers and it arguably marked the endpoint of general federal

funding for universities under this scheme. CHST funding – which was unconditional like EPF – was used by the provinces not for the universities but for other programs. Even the name CHST made no reference to the higher education field anymore.

The resulting move of Ottawa towards more targeted funding was not a new federal ‘tool’ as it had already been applied earlier. It included less problematic fields like – amongst others – the Canada Student Loan Program (CSLP) and the Millennium scholarships (despite some problems associated with the program). Of particular importance, though, is the research sector which is constitutionally less problematic – from a federal perspective – than higher education more generally. This combined with the recognition of the importance of university research for the national economy led to a situation at the end of the 1990s – although the beginning of this development dates back further – where Ottawa manifested itself more and more as a considerable player in the field of university research. This is underlined by the federal government’s ambition to ‘push’ Canada higher in the OECD ranking of research and development.

When looking at the current situation in Canada and Germany the aspect of a national higher education policy has not fundamentally changed since the direction was set in the 1960s and 1970s. Germany still has a comparatively coherent national policy whereas Canada appears to be further away from it than ever, at least in the form of a policy for the whole sector. The situation in Canada seems to be characterised more by financial struggles than by policy issues, with the federal government but also the provincial governments only reacting to demands and shortcomings of the system (though with some indications of a more active approach). This is not to say the German national policy is a superior system in comparison with the Canadian one. Not only can it not compensate for financial shortcomings, demands are actually made in Germany to move away from an all embracing and determining national approach. However, so far the current system remains intact. It can therefore still be argued that Canada and Germany have moved in opposite directions when it comes to the framing of a national higher education policy. The main question therefore to ask here is: why? It is a key contrast in the development of both federations (within higher education) that not

only indicates a changing balance but also clearly points at fundamental differences in the evolution of the federal role. The following section of this chapter will try to address this – by applying the research questions as outlined on page 41 – within the framework of this thesis.

2 Understanding the conditions

The answer to the question of why the higher education policy fields in Canada and Germany developed in the way they did obviously requires an incorporation of various aspects. As this thesis is focused around the political concept of federalism, this will determine the points that will be looked at here in more detail.

The federal principle is a characteristic feature – amongst others – that both states have in common. That was the reason for choosing Canada and Germany for this comparative study. Yet, it was not the shared political system alone that was decisive for that choice but rather that both countries do to a certain degree represent opposing models of federalism. There are various reasons for this portrayal of the two systems as representing opposing models, but at a fundamental level it requires the evaluation of the constitution, which after all is a decisive factor in defining the two ideal-types (and indeed an essential ingredient of a true federation, acting as guarantor of autonomy for the constituent units). It will therefore be the starting point in the search for the answer to the question posed above. The analysis, however, will go beyond the formal constitutional structure and will incorporate the actual practice including the role of the constitutional courts and the allocation of the residual power not directly dealt with by the constitution. In short, the institutional reality will also be examined.

The constitutional structure and practice alone do not fully explain the complexity of the topic. In a further step, attention will therefore be given to the involvement of further actors, i.e. those involved in the policy field besides the various governments of both levels and the courts. The main focus in this category will be on the party system, which, while closely linked to the governmental actors, appears to be quite different in Canada and Germany.

Requiring a slightly different perspective, another aspect that helps to understand the respective systems is the external environment and hereby especially the societal conditions.

The aspects looked at in the following discussion are of course not exhaustive but might reveal – as a part of the comparative approach – some explanations that help to understand higher education policy in Canada and Germany.

2.1. The constitutional and legal environment

The constitutional and legal environment is itself an aspect which is made up of different elements, with the actual constitutional structure representing ‘only’ the starting point.

2.1.1. THE BNA ACT AND THE BASIC LAW

The constitutional situation concerning higher education was initially not that different in Canada and Germany in the postwar years. The authority concerning (higher) education in Canada was still determined by the BNA Act of 1867, which basically left no room for federal intervention except for some general provisions – ‘disallowance’ and ‘reservation’ – which have not been used for some time and are no longer considered to be of relevance.² Another exception, of probably even less

² These provisions offer in ‘theory’ the federal government some options for interfering with provincial legislation in the form of the powers of disallowance and reservation. The possibility of disallowing any provincial act within a year of its adoption – providing Ottawa with a potential veto power – is set down in Article 56 of the BNA Act. Although initially used quite regularly, the application of disallowance became very rare after 1911 and was last used in 1943. Similarly, the last use of the reservation power dates back to 1961. One reason for that might be – as J.R Mallory already observed in 1971 (329) – that the “examples of reservation and withholding of assent in the last fifty years are almost wholly frivolous and acutely embarrassing to the federal government” Hence, disallowance and reservation – despite being still legally valid – are currently more of a theoretical nature as they are powers that “are unlikely ever again to be used” (Stevenson, 1995: 403). Yet, Van Loon and Whittington (1987: 180), referring to the disallowance act, point out that “the legal power to use it still remains as a reminder to the provinces that the Fathers of Confederation viewed the provincial legislature as “second-class citizens”.” Furthermore, although the authors agree that the disallowance power “now appears to be a dead letter” (Ibid.: 196) they relate the disuse of the provision to the “coming of age of the provinces” (Ibid.) and argue that “it is also possible that if the federal government had continued to make a habit of disallowing provincial acts, the provinces might never have come of age” (Ibid.). It does therefore not surprise that Consensus Report on the Constitution, Charlottetown, Final Text, August 28, 1992. Article 30 stated that both powers should be repealed. The Charlottetown Accord, of course, ultimately failed but it still highlighted the currently limited importance of both powers. The examination of all those aspects would obviously go too far here. Nevertheless, it might be worth noting that the

relevance because of its restricted scope, is the national defence provision (Article 91, Section 7) of the BNA Act which allowed the establishment of the Royal Military College in Kingston.

In terms of limited provisions for federal power in higher education, almost the same can be said about the Basic Law of 1949. The Länder, after all established before the Federal Republic, had constitutionally guaranteed authority over matters concerning higher education. However, in contrast to the disallowance and reservation powers laid down in the BNA Act, there was a provision in the Basic Law that – despite not having a great effect originally – eventually turned out to be a tool for federal intervention: the requirement for ‘uniform living conditions’. The effect of this constitutional article was less visible in the form of its direct application to the policy field. It rather provided the ground for constitutional amendments (like the establishment of joint-financing and the right for the federal government to create a framework law (HRG) for higher education) that allowed for a much stronger constitutionally guaranteed federal role that ultimately was supposed to fulfil the task of uniform living conditions.

On a more minor note it also has to be pointed out that scientific research was – in contrast to the Canadian constitution – an issue in the Basic Law and established as a concurrent legislative power (Article 74). However, it did not have a major impact on the development of the university sector and had more consequences for non-university research. An amendment of the article (Section 13), establishing concurrent legislative power also for financial assistance of education, was more important as it led to more federal influence in the form of the nationally standardised law for the financial assistance of students (BAföG).

The constitutional changes of 1969 had even more of an impact and are still defining features of the current system. The amendments brought new legal structures dealing with the ability of the federal government to create a legal framework, providing general guidelines for the university sector (Article 75, Section 1a; amended in 1994) and the introduction of ‘joint tasks’ for both levels of government concerning expansion and construction (Article 91a, Section 1, No.

provisions had/have at least the potential of allowing federal interference, including in higher education policy.

1) and educational planning and the promotion of research (Article 91b). These are of course only those articles that are directly related to the higher education policy field.

Considering the role and the influence of the German Bundesrat (the organisational form is laid down in the Articles 50-53), it is actually the case that only one of the above listed articles directly requires the participation of the Bundesrat in the legal process (Article 91a, Section 1, No. 1).

Another aspect that is different from the Canadian case is the fact that even a comparatively highly integrated policymaking structure like the German federal system leads to a decentralised policy implementation and administration by the Länder. This situation is not simply a result of intergovernmental practice but also rooted and defined in the Basic Law (Article 30 and Articles 83-85).

What becomes clear from the overall analysis is thus that the constitutional prominence of the sector (including the direct implications of the wider context) appears to be much greater in Germany than in Canada. Then again, the Canadian model of interstate federalism implies less need for more detailed constitutional regulations as the different governmental levels and their respective policy competencies are more independent. After all – although representing a rather extreme interpretation which is not considered to be acceptable anymore – Canada’s constitution had been described earlier in the last century as consisting of ‘watertight compartments’ “that supposedly confined the federal and provincial governments within their respective fields of jurisdiction” (Stevenson, 1995: 402). The empirical reality, however, proved not only for higher education that this was rather a misinterpretation of constitutional practice.

2.1.2. CONSTITUTIONAL PRACTICE, RESIDUAL POWER AND INSTITUTIONAL REALITY

The constitution is only one side of the coin that represents a political system, a side that might actually not be that influential in the shaping of the overall system. Roger Gibbins (1987: 22) emphasises this possibility by even arguing that “[i]n their practical operation, federal systems may depart quite *dramatically* from what their written constitutions would predict” [own emphasis].

Obviously, it is not the whole federal system of Canada and Germany that is under observation here. Nevertheless, even when only looking at the example of

the higher education policy field, the actual practice within this field goes beyond the formal constitutional structure.

An area where this becomes obvious is – not surprisingly – the policy-making process, including implementation and administration of the resulting policies.

Given the somewhat clear allocation of constitutional authority over the universities to the provinces, it could be expected that the Canadian situation in practice also produces a straightforward picture with the provinces being in charge of the process. However, when looking at developments in Canada since 1945, initially the situation appeared to be quite different, with the federal government having a considerable influence despite a lack of constitutional competence, even if it was mainly based on Ottawa's financial strength. On top of that, the implementation and administration of some federal policies (mainly the early financial contributions) saw either Ottawa itself or other actors (for example the predecessor of the AUCC), not the provinces, being in charge. Yet, the further development witnessed a gradual take-over, or more precisely enforcement, of the constitutional authority by the provinces, highlighted by the changing programs of federal financial contributions and by the role of Quebec as a forerunner. The attempts by Ottawa to secure a certain influence, by claiming the financial transfer to be conditional despite being clearly unconditional or by claiming annual federal transfers that were actually by most already considered to be provincial property (taxpoints), can only be viewed as attempts that were doomed to fail.

In Germany, the situation after 1949 was initially opposite to the Canadian, with the Länder being in charge of the policy field, which at that time also reflected the constitutional provisions. As in Canada later developments brought some changes, but unlike in Canada it led to an increased federal role. Although this federal prominence was later on (1969) put on a firm constitutional base, the actual development had already started earlier. One reason for that was the overall constitutional framework of German federalism that was in place from the beginning. The most relevant factor here is the role of the Bundesrat which allows for a remarkable input of Länder governments to the policy-making process at the centre. This again allows for a federal role in higher education policy as it could still be influenced and controlled to a certain degree by the Länder at the federal

level. This situation is further emphasised by the fact that even *federal* higher education policies – as generally with most federal policies – are implemented and administered by the Länder, giving them an extra element of power but also responsibility.

The administrative function of the Länder is clearly outlined in the Basic Law, acting as a counterweight to the dominance of the federal level in the policy-making process (Laufer and Münch, 1998: 135). Yet, as not only the example of higher education shows, the initially limited role of the Bundesrat in the federal policy-making process has constantly increased without fundamental constitutional changes to the role of the Bundesrat itself.³ In the case of higher education this is a result of the constitutional changes of 1969 leading to increased ‘mixed financing’ and to the federal government taking advantage of the right to provide a framework of guidelines for the whole policy sector. As a consequence the question of jurisdictional competence became more contested, with more federal policies requiring the agreement of the Bundesrat and with some federal initiatives leading to controversies whether an agreement by the Bundesrat is necessary or not.⁴

This ‘problem’ as an outcome of policy processes characterised by joint-decision making does not exist in Canada. Yet, the above described declining role of Ottawa in general higher education policy does not portray the whole picture. Gibbins (1987: 22-3) points out that one of the main reasons for a discrepancy between constitutional structure and the actual reality is the financial issue. While losing the policy tool of general financing for the university sector and in the absence of specific constitutional competence, Ottawa started to use its ‘power of the purse’ to become more active in the financing of research leading to various programs (for example CFI, CHIR, CRC) as a result of policy initiatives. These programs are primarily federal policies and therefore further emphasise the ‘independence’ of the governmental levels. The division also affects other residual

³ In an article by The Economist (2003) it is pointed out that “the Bundesrat now has a say in over 60% of federal legislation, instead of the 10% or so intended when the Basic Law was written”. For a more detailed analysis for the reasons behind this development see: Laufer and Münch, 1998: 161-81, 407.

⁴ See for example the more recent discussions surrounding the amendment of the HRG and in particular the aspect of the ban on tuition fees.

powers like for example student fees and admissions which lies within the jurisdiction of the provinces. One of the few examples of a shared policy – and indeed reflecting a more national approach – is the Canada Student Loan Program (CSLP). However, this is an exception in a field that is generally not characterised by ‘sharing’. In addition, an individual policy reflecting a national dimension does not represent a coherent policy for the whole sector.

The question of the residual power in Germany is one that requires a slightly different perspective given that nearly all competencies are covered or affected by the legal framework. Given that those powers are exercised within this framework which emphasises the aspect of sharing, they are therefore also generally characterised as powers that are shared between the two orders of government. For example the case of the HRG, where the federal government provides the framework and the Länder fill in the details where necessary. There are exceptions to this scheme but they exhaust themselves in the search for loopholes in the existing structure⁵ or on agreeing to allow some ‘experimental changes’. Even research is not a suitable candidate to point at differences with the main research-funding bodies being jointly financed by both levels of government.⁶ The conclusion might therefore be that a ‘federal power of the purse’ does not really exist to the same extent as it does in Canada. There is simply not enough power left to be manipulated purely by the purse without resistance as a result of the overall framework. This framework is not only represented by the actual constitution and the resulting practice but also by the institutional reality.

The institutional reality in Germany in relation to the higher education field is defined by the interlocking nature of the policy process and by the issue of joint financing. As such the institutions are more or less devoted to a national policy or are even required to fulfil the task of coordination necessary as a consequence of the constitutional structure. The role of the Bundesrat has already been described above. Furthermore the federal government has most of its higher education

⁵ An example of this are the attempts by various Länder governments to introduce tuition fees for ‘long-term students’ despite a ban on fees more generally in the HRG.

⁶ University research is in the German case anyway – unlike Canada – mainly covered by the general funding of the universities.

competence concentrated in a ministry devoted to (higher) education and research (BMBF), thereby emphasising the national importance.

Whereas the formal governmental-institutional arrangement has not changed, one institution that in its organisational structure combined both levels of government and was therefore arguably the most pure form of intergovernmental relations within the higher education field, can partly be portrayed as a failure. The BLK (Federal-Länder Commission for Educational Planning and Promotion of Research) was a direct result of Article 91b of the Basic Law, outlining the high aspirations of a Federal-Länder approach to higher education (and research) planning. The BLK still exists but its coordination responsibilities have been considerably reduced. The reason for this, according to Laufer and Münch (1998: 269), can be found in the situation that the BLK was mainly used as a forum for party political controversies rather than as a federal-Land institution (the influence of the party system will be looked at further down).⁷

Although the Länder interests concerning higher education are more directly represented by the Bundesrat in the actual policy process, the main body for the formulation of the Länder position(s) – especially after the failure of the BLK – is the KMK which after all already started to emphasise the national dimension of higher education policy coordination before the federal state even existed. The national policy was further reinforced and established by various institutions outside the governmental scheme (which will be looked at in more detail further down). One of the most important institutions in this sense is the relatively independent Science Council which was founded in 1957 by both levels of government as a co-ordinating body. As the Science Council existed before the major constitutional reforms of 1969, this not only emphasises its role in the establishment of a national policy but also reveals the co-ordinating efforts (*the* precondition for a national policy) that started a considerable time before the national agenda setting constitutional amendments.

⁷ The controversies reached a highpoint at the end of the SPD/FDP federal government in 1982, which ultimately led under the new government under Helmut Kohl to an abolition of the main responsibilities of the BLK (Laufer and Münch, 1998: 269).

The institutional landscape in Canada in contrast looks quite different. No federal higher education ministry and no equivalent to the Science Council or other similar institutions exist there.

The lack of constitutional basis might explain why there is no federal ministry of higher education (despite proposals to establish one, for example by the Bladen commission of 1965) which could serve as a co-ordinating force. Instead, the various aspects of federal involvement in the postsecondary sector represent a rather fragmented picture, as responsibility is spread across various ministries and departments in the federal government.

The only governmental institution on the inter-provincial level that could have served as a body for the creation of a national policy is the Council of Ministers of Education of Canada (CMEC). However, it has not proved to be willing to take on such a task. After all, the CMEC not only rejected attempts of turning it into a federal-provincial forum, but its horizontal co-ordination abilities are also quite limited within higher education.⁸

The above described situation leads to the recognition that there is no (inter-) governmental institution that devotes itself to the creation or the framing of a national policy of higher education more generally.

Following the principles and the logic of interstate federalism, there is no constitutionally formalised or institutionalised participation of the provinces in the higher education policy process at the centre. This makes both actors – in the form of the federal and the provincial levels – appear to be quite separate from each other. As a result there is no need for bodies that coordinate the (general) policy efforts of both levels. No further substantial actor – beside those representing only particular aspects of the higher education field – could therefore develop as a result of coordination needs.⁹ The advantage of such an institutional actor, especially if

⁸ Another institution aimed at policy coordination amongst some provinces was the previously discussed (see part II) Maritime Higher Education Commission (MPHEC). Yet, because the MPHEC did not include all provinces, its relevance here is restricted. In addition, its national policy ambitions were limited anyway as it was primarily a forum for the Maritimes provinces. Nevertheless, it did at least prove to be a forum for some horizontal co-ordination amongst the provinces involved.

⁹ There are obviously other institutional actors involved in the higher education sector like for example the AUCC (Association of Universities and Colleges of Canada) and CAUT (Canadian Association of University Teachers). Especially the AUCC showed and shows again some effective involvement. Yet, they lack the dimension of being formally connected to the two governmental

created as a result of intergovernmental efforts, could have been the potential of overcoming the federal-provincial division and leading to a focus on a national policy approach. Yet, although Ottawa probably would support such an institution, it is highly unlikely that it would get the blessing of the provinces, especially not from Quebec.

Constitutional practice, residual power and indeed institutional reality are political dimensions that reveal differences between Germany and Canada that help to understand the reasons for the differing developmental path which higher education policy took in each state. However, a look at the legal-constitutional environment of higher education cannot be complete without the legal interpreter or guardian of the constitutional documents – the courts.

2.1.3. THE ROLE OF THE COURTS

It is not possible and not necessary to look at all the different courts. The ones which are relevant here have been called ‘federal umpires’ (Smiley and Watts, 1985: 59). Smiley and Watts explain the meaning of these federal umpires in the following way (Ibid.):

Every federal system composed of coordinate central and state governments, in which neither order of government is subordinate to the other, has found it necessary to establish an umpire to rule upon disputes relative to respective governmental powers and to interpret the constitutions. ... In most federations, this role of the federal umpire has been played by a supreme court or a specialized constitutional court.

The two case studies under observation do actually represent both kinds of expression of a federal umpire: a supreme court in Canada and a constitutional court (BVG) in Germany. The main difference between the two types of court is that a supreme court also acts as a more general court of final appeal – in Canada since 1949 (Smith, 1987: 115) – whereas the constitutional court in the German case has as its “sole function ... the interpretation of the Basic Law” (Ibid.: 60).

levels. Other institutions, such as the buffer or intermediary agencies on the provincial level, never were represented at the national level.

The Supreme Court of Canada and its role in Canadian politics is obviously a subject which has generated a vast body of literature.¹⁰ Yet, the main concern here is its influence on the higher education policy sector and especially its impact on intergovernmental relations. Considering this limitation, there is not much to be told. This might not come as a surprise, given the clear constitutional separation of responsibilities. This leaves relatively little room for overlaps of competencies which could act as a source for legal (constitutional) arguments. This does not mean that decisions by the Supreme Court (for example related to fair employment by the universities) do not touch the field of higher education or that more general decisions do not also affect the policy field under observation here. But still, if it comes to decisions dealing directly with the policy sector affecting the role of the federal and the provincial governments, the impact of the Supreme Court cannot be described as leaving behind fundamentally (national) policy-shaping marks.

The same can certainly not be said about the BVerfG, the German constitutional court. The prominent role of the BVerfG appears to be a natural consequence of a higher education system that is characterised by shared responsibilities and joint policy-making. It therefore almost appears to be a natural consequence that in the political arena such joint policy-making is highlighted by arguments over judicial competence. From this perspective – and given that the resulting interlocking is a feature of the German federal system more generally – it appears to be no coincidence that the BVerfG in contrast to its Canadian counterpart is entirely devoted to the constitution as the defining topic of its jurisdiction. As such it played an important role in shaping the policy field of higher education. Yet, this role only became possible after the constitutional changes of 1969 with the following period leading to various policy initiatives resulting in an enormous number of laws and decrees. The actual implications of the decisions by the BVerfG can be interpreted in various ways. It imposed conditions on the policy field that were binding for the whole country (for example the disallowance of treating ‘out-of-Land’ students differently in the admissions procedure). Furthermore, despite the initial perception of the institution as reviewing federal intervention, the BVerfG was also active in controlling Länder initiatives (for example by protecting the

¹⁰ See for example the first five chapters dealing with the ‘Constitutional Division of Powers and the Courts’ in Stevenson, Garth (ed., 1989).

rights of the universities). More generally it also became involved in the policy processes by having to deal with blockages involving the federal government and the Bundesrat (for example in relation to the amendments of the HRG) or by more generally clarifying the positions between the two actors (for example regarding internal university participation whereby a BVG judgement of 1973 provided the ground for this area becoming a responsibility of the Länder).¹¹

Overall, the policy shaping influence of the BVG was at times so strong that it even was described (as already mentioned earlier) as a ‘secret Ministry of Culture’. But it has to be emphasised that the BVG did not become involved on its own initiative or purely as a result of the existence of a rather few constitutional provisions, but rather because of the resulting policies being contested (mainly for tactical reasons and not because of ideology). Furthermore, it appears that the political opponents of measures sometimes not only took the probable view of the BVG into consideration but actually used its ‘final’ decision-making capacity as a ‘normal’ instrument in the policy making process. The resulting influence of the BVG can mainly be described as homogenising by imposing conditions and by demanding compromises or agreement on a national level.

These last few pages have shown that despite similar starting points in terms of constitutional conditions, the actual developments in Canada and Germany led in opposite directions: from a relatively weak to a national policy forming influence of the federal government in Germany; from a prominent role to a reduced but also more focused role of Ottawa in Canada. Yet, in contrast to Germany, a relatively strong federal role in Canada – after all an essential ingredient of a national policy approach – was never supported by a stable constitutional base or indeed supportive institutions. The enhanced constitutional position of the federal level in German higher education policy was backed by an already existing structure of the federal system more generally and here in particular by the position of the Bundesrat and the existence of joint-financing in other policy fields prior to its introduction on a constitutional level to the higher education sector. Conflicts within these field of competence and between the two levels of government – with

¹¹ With the Bundesrat most of the time not acting as a homogenous actor, as will be shown in the next section dealing with the party system.

the potential of breaking up the coherence of the national policy – were counterbalanced by the influence of the BVG. This influence was missing in Canada simply because of clearer constitutional provisions regarding higher education. In addition, Canada also lacks further institutions like those in Germany which help to stabilise the national higher education policy beyond the influence of the federal but also the Länder level of government.

In summary it can be said that the current formal constitutional structures in both countries, while not entirely representing the complexity of constitutional practice, residual power and institutional reality, do nevertheless point in the direction of the actual situation in the higher education sector in Canada and Germany (this becomes especially visible because of the comparative approach). Nevertheless, it has to be remembered that this was not always the case as earlier stages of the development in both states have shown.

2.2. The involvement of further actors

An understanding of the constitutional environment necessarily encompasses a reflection on the role of the main governmental and non-governmental actors involved in both higher education systems. The present section does not represent an exhaustive account of all those actors potentially involved in the sector. Yet, the focus on the most important ones and their structural influence will help to understand the reasons behind the shape the policy field took in the two countries.

2.2.1. THE PARTY SYSTEMS

There can be no doubt about the importance of parties as central elements of governing democratic systems. Nevertheless, as Chandler (1987: 149) emphasises “parties usually enjoy only a quasi-official status” because “[u]nlike federal arrangements, they are neither constitutionally prescribed nor legally created”. Yet, they are ‘vehicles of power’ and as such they have to be taken into consideration, especially as their character and role are an “important factor in the dynamics of any federation” (Watts, 1999: 90). Taking this into account, it can be assumed that the party system in Canada and Germany does play a role in the policy field portrayed here. Therefore, the differences in the party systems might

also be reflected in the policy process. After all – when looking at it more generally – the differences are obvious. Germany has a comparatively centralised and vertically integrated party system whereas the Canadian party structure is decentralised and characterised by a lack of vertical co-operation (Laufer and Münch, 1998: 252-4; Watts, 1989: 11; 1999: 91; Thorlakson, 2003: 17-8; Schultze, 1997). And indeed, when looking at the development of the higher education policy field, there also appear to be major differences between the two countries in terms of the impact of the party system.

Higher education policy in Canada proves to be characterised by an overriding predominance of a federal-provincial division in intergovernmental relations instead of a party political division. This does not mean that party politics are irrelevant but they are more visible either on the national level or on the provincial level (between the respective governments and opposition parties). Given the lack of a vertically integrated party system, the ‘natural’ opponent in intergovernmental relations are the provinces, even those with the same party in power as at the national level.¹² Party politics did influence the positions of the respective federal governments but they could and cannot really rely on support from their party on the provincial level. Higher education policy shows that clearly as it was more dominated by the discussion of the role of the federal or the provincial level than by party political positions. This was in particular visible in the development of the general federal financial contributions to the university sector which saw a clear line between the needs of the provinces and the needs of Ottawa, more or less independent of the relations between the parties. This situation in general has also meant that a coherent national policy was even more difficult to achieve as the federal-provincial dichotomy could hardly be overridden by party political solidarity.

The difference with Germany could hardly be greater. Initially the centralised German party system did not have such an impact on higher education policy, simply because there was no space for it to be exercised due to a lack of a

¹² This does not imply that the provincial position is always a homogenous one. The individual provinces do also take individual positions when facing the federal government, especially visible in Quebec’s role.

constitutionally justified federal role. This changed in 1969 with the constitutional amendment. And it changed because the two main parties – CDU/CSU and SPD – agreed on the reform. It was no coincidence that the previous three years saw a grand coalition at work at the federal level, reducing party political competition which made it easier to push the amendments through the federal parliament and the Bundesrat. It was generally a period of agreement amongst the main parties about higher education policy (some of the reasons for that will be looked at further down). The agreement, though, did not last very long and it was in this period that the party system gained more relevance in the formal policy process. The 1969 constitutional amendment established not only a federal influence in higher education but at the same time it also established a participation by the Länder governments via the Bundesrat in the resulting policy process at the national level. This again meant that the Bundesrat was able to block decision-making at the federal level. And it is here where the party system gained its influence. As following periods with different majorities in the federal parliament and in the Bundesrat showed, the Bundesrat was regularly used as a party political tool by the respective opposition party in the federal parliament to promote its own agenda via the majority in the Bundesrat by blocking federal initiatives and/or forcing the federal government to compromise on policy issues. This was not always successful, resulting in disputes over legal responsibility (which sometimes the BVG had to solve)¹³. Thereby, it clearly showed that with the help of a centralised and vertically integrated party system, it was possible to at least temporarily turn the Bundesrat from a territorially defined second chamber into a party political chamber (or in a more specific case, led to the BLK losing its viability because of party political controversies). This was particularly highlighted more recently in 1998 and 2002 with political arguments over amendments of the HRG just before the general federal elections which emphasised the party political dimension even more.

The above described situation shows that even the Länder chamber can be dominated by national party politics which underlines the national dimension of the policy field of higher education. In addition, compromises as a result of a deal

¹³ This situation further emphasised the role of the BVG as it not only has to deal with federal-Länder controversies but also with party political ones.

between the federal government and the majority in the Bundesrat also suggest that such a policy not only gets the backing of the two chambers but also that of the main parties, thereby representing a substantial national majority. The party structure also implies that in less controversial situations in the Bundesrat, or indeed within the Länder themselves, the national perspective of the federal party headquarters enjoys a considerable prominence, further contributing to the national policy dimension.

There are of course situations where such a strict evaluation of the party structure does not apply. The earlier example of the CSU in Bavaria – which after all is a regional party – regarding the preference for students from within Bavaria, showed that Länder also attempt to take a more regionally based approach. In addition, more recently there was resistance from some SPD Länder towards the general ban on tuition fees by trying to introduce such fees against the will of their national party. The financing crisis which hit the universities in the last couple of years also emphasised a more Länder centred approach. Yet, despite such developments the overall picture of the federal system – especially in contrast to Canada – still considerably reflects the nationalising effect of the party structure.

2.2.2. NON-GOVERNMENTAL ACTORS

Although the issue of non-governmental (institutional) actors ¹⁴ has already been mentioned earlier in connection with the institutional reality of the constitutional environment, a closer look at it again here might offer some further explanations in order to understand the higher education landscapes in the two countries.

The aspect of the involvement of non-governmental actors is potentially a broad one. However if the scope is narrowed down to only the most influential ones on a national level or with a national agenda, the picture should become clearer.

This clear picture applies in particular to the Canadian system where – as has been emphasised above – institutional actors outside the intergovernmental scheme are not only rare but also not particularly influential. There are various

¹⁴ Non-governmental here implies not that there is no direct connection with any governmental level but rather that the relevant institutional actors are not associated with one governmental level exclusively.

institutions in support of research but they are either dominated by the federal level (NRC) or are dealing with just a specific field of research without their influence going beyond that. The other main relevant institutions are interest groups. Here in particular the AUCC stands out, as it exercised at least periodically some influence in the policy field. In particular in the immediate postwar period, the AUCC was somewhat a natural co-operation partner for the federal government given that the provinces' impact on the universities was at that time more limited. With the 'provincial awakening', the special relationship of the AUCC with Ottawa was fundamentally reduced. More recently, however, there are signs of the AUCC – for example as part of a federal research strategy – gaining more recognition again. This is also possible because the roles of the governmental actors are now more clearly defined with higher education more generally representing provincial territory and research reflecting a somewhat acceptable federal dominance. As a result of such a relatively clear division, intergovernmental bargaining processes concerning those areas (highlighted by the concept of executive federalism) are not as important anymore due to a reduced overlap of policy competence. Under these circumstances interest groups like the AUCC might find it easier to influence governmental actors as they are probably less focused on bargaining than on problem solving. Referring to the Canadian case but also arguing more generally, Watts (1989: 12) underlines this situation by stating that “[t]he predominance of executive federalism in the parliamentary federations has constrained and affected the scope for interest group activity in relation to matters under intergovernmental negotiation”. Therefore, even the AUCC, which might have the potential to act as a body reflecting a national approach, can only exercise – despite a more recent 'recovery' – a limited amount of influence.

The German case reveals a different picture. Not only does the higher education system witness the involvement of some prominent actors – in particular the Science Council – but the influence of non-governmental institutional actors in general clearly exceeds that visible in Canada. This is not to imply that the respective governments are not in charge of the policy field anymore. Yet, given the nature of a national policy approach there is more requirement for co-ordination which again opens opportunities for the involvement of various actors. This is visible already in the various governmental institutions (for example KMK

and BLK) taking part in the co-ordination process, and hence in the policy process. Furthermore, institutions like the Science Council have been set up by the governmental levels to support them in their co-ordination efforts.

The Science Council is – strictly speaking – not a non-governmental institution as especially its administrative committee is made up of representatives of the various governments. Nevertheless it managed to establish itself as an intermediary communicator between the governments, as well as between the political world and the scientific community more generally. Thereby it goes beyond its original task as an advisory body for the governments (which led to it also becoming more influential).

As a result of their involvement in the co-ordination process, the actors in the higher education sector have been described as forming a policy community. This allows for the application of the policy network approach as a way of understanding the processes, the directions and the developments in the policy field (see for example Onestini (2002) in relation to the higher education policy network in Germany). Applying this approach, the emphasis is less on the formal institutional structure to understand the policy process. It is an approach which is of some explanatory value in the German case, but is less helpful to understand higher education policy in Canada because of a lack of a national policy and, as a consequence, a lack of a coherent policy community (i.e. actors) to form a national policy network.¹⁵ Although it has to be emphasised that despite the potential of even actors with a limited scope exercising more influence as part of a policy network, it is still the governments (and the parties) which dominate the field in Germany. This became in particular obvious during times of party political (and ideological) confrontations in the governmental institutions which reduced the room for manoeuvre of the remaining members of the policy community.

In summary it can be said that the existence of the various actors involved in the policy field on a national level further strengthens the national dimension of higher education in Germany. The Canadian situation in contrast delivers a further

¹⁵ This, however, does not include the provincial level. Glen Jones (1996: 364-5), for example, identifies “exclusive policy networks in each province” (Ibid.: 364). Yet, their limited sphere of influence also reduces their relevance for this study.

example that – by the absence of a similar institutional involvement of non-governmental actors – explains the lack of a national policy.

However, it probably could also be argued that the lack of a national policy is not the consequence of a limited involvement of non-governmental actors, but that the argument has to be made the other way round, i.e. there are no further actors because of the non-existence of a coherent national policy. The aspects looked at earlier might offer an explanation but even those aspects so far were more narrowly defined by looking more at the policy field and its specific conditions instead of including the wider environment. The next section will therefore look at the explanatory value of the societal conditions which are particularly relevant as a part of the external environment.

2.3. The societal environment

In contrast to other federal states like for example Belgium or indeed Canada, Germany, was and arguably still is characterised by a relatively homogenous society – at least in terms of territorially defined diversity.¹⁶ This in itself might already serve as a starting point to explain the existence of a national higher education policy if one follows the idea of a direct connection between the organisation of a political system in a state (like for example federalism) and its society. Within sociological thinking, such an approach enjoys considerable prominence and was for example highlighted by William Livingston's idea of a 'federal society' (1952, 1956). This concept basically puts the society itself at the centre of a theory of politics, leading to the argument that federal institutions would 'only' reflect the existence of a federal society, i.e. a society which consists of territorially defined communities which are fundamentally different from each other for example in terms of language and ethnicity (Erk, 2003: 295-8). In the words of Livingston (1956: 4) it is simply that "[f]ederalism is a function not of constitutions but of societies".

¹⁶ The unification of the FRG with the German Democratic Republic (GDR) in 1990 reduced the territorial defined homogeneity of Germany to a certain degree. Yet, less so in terms of ethnicity and language. In addition, the emergence of a national higher education policy falls mainly into the period prior to unification.

Based on this assumption, the political scientist Jan Erk (2003) logically concludes from Livingston's idea that not only a federal state reflects a federal society, but that "if the society is not federal and if federal institutions are in place, then the latter should change to reflect the characteristics of a "non-federal society" and become centralized" (Ibid.: 296).

Germany appears to be a suitable candidate to prove this thesis. Its (re-) establishment after the war as a federal state was less connected to the conditions within society but was rather a consequence of the negative experience with the weak federal organisation of the Weimar Republic paving the way to a centralised state under the Nazi dictatorship. The new FRG was therefore to be a federal state with strong constituent units (in the form of the Länder) providing a safety barrier against the reappearance of a (potentially threatening) centralist state.

This federal organisation of the state did not reflect the conditions within the German society at that time: it was not a 'federal society'. Erk therefore argues that "the German federal system has not socialized the German nation into a federal society – German society has not changed, the institutions have" (Ibid.: 297). The higher education field appears to prove that. The institutional arrangement has changed fundamentally in the sector since 1949. Nowadays the emphasis is more on the interlocking nature of the field than on the autonomy of the Länder despite the initial constitutional arrangement stressing this autonomy in matters of education. The stepping stone for federal intervention leading to a national policy – and therefore also to more centralisation – was the 'uniformity of living conditions' (since 1994: 'equal living conditions') provision of the Basic Law. From the perspective of Germany not being a federal but rather a homogenous society (probably less so after unification), the provision made some sense and it also makes it easier to understand why a single provision can be identified as reflecting and providing the ground for further development in higher education policy.

In terms of a federal society approach, Canada does not represent a homogenous society like Germany. Although the non-homogenous society is reflected by a diversity that expressed itself in various ways, it was initially in particular the role of Quebec that underlined this fact in the higher education sector.

Quebec was at the forefront of province-building. Yet, in Quebec this process went beyond the development in most of the other provinces in the form of that which became known as the 'Quiet Revolution'. Originating in the early 1960s, the Quiet Revolution resulted not only in a dramatic decline of the influence of the Catholic church but also led to the belief amongst Quebec francophones that "the old method of withdrawing rather than actively resisting change was not working and that, if they were to maintain their identity, they had to take control of their own destiny and initiate, rather than submit to, innovation by others" (Jackson, Jackson and Baxter-Moore, 1986: 99). This impact of the Quiet Revolution on Canadian federalism can still be felt today.

For some observers, the role of Quebec in Canadian politics more generally and in higher education in particular might already deliver enough of an argument why Canada has no national policy for the university sector. After all it was Quebec which first showed opposition to federal financial involvement in the form of direct grants to the universities by withdrawing from the scheme. Efforts by Ottawa to play down any ambitions to influence the universities beyond the financing aspect were not accepted by Quebec. The resulting impasse finally led to the 'contracting out' clause which was designed to accommodate Quebec but was also available to other provinces (and in other policy fields). Although the other provinces did not completely follow the example of Quebec and its strategy of preserving authority over the policy sector, the resulting environment certainly proved to be no fertile ground for a coherent national approach.

As already indicated above, to reduce the exemplary value of the diversity argument to the role of Quebec does not reflect the complexity of Canadian society – its lack of homogeneity goes beyond that. It is a society that offers (territorial) diversity beyond the 'Quebec and the Rest of Canada' issue even though it is highlighted in particular by the existence of two different official languages without many Canadians being truly bilingual. But there are other diversity dimensions. The Atlantic provinces for example are quite different from the prairies or from the West coast (which might also explain the existence of the MPHEC). And there is of course the issue of the 'first nations', though less relevant within the context of this particular approach to higher education. They all

represent competing approaches and traditions making it possible to use Canada as an example of a federal state with a federal society.

Following the argument of the sociological 'federal society' approach it becomes more understandable why Canada did not develop a national higher education policy. There was no pressure to develop such a centralised policy and it simply would not have reflected the state of a non-centralised society itself. This is further underlined by the lack of a vertically integrated party system. Hence, even if provincial governments and the federal government are from the same party political background they are not considered to be natural allies. There is a clear federal-provincial distinction when it comes to higher education policy despite the provinces as a whole not representing a single homogenous actor themselves.

In summary it can be said that the lack of a national policy approach in Canada can partly be explained by underlying societal conditions, i.e. in the form of a diverse or federal society. Even after unification, the still comparatively homogenous German society – or 'non-federal' society – in contrast helped to create a national higher education policy especially as the homogeneity was reinforced by the provision for uniform living conditions. Attempts to restrict university access by preferring students from within the same Land as the relevant institution were therefore doomed to fail especially given the 'protection' of the constitutional court. Whether the homogenous society was the only or main driving force behind the development towards a national policy however is questionable. After all, the foundation for this development was laid in a period where there was more agreement amongst the political actors concerning higher education. The constitutional amendments of 1969, which strengthened the national dimension, took place in an atmosphere of acceptance that a few years later would have been difficult to recreate. Yet, some of these favourable conditions – like for example the recognition of the economic importance of a functioning university system – also applied to Canada. But in Canada it did not lead to a combined national effort to promote the sector. The provinces preferred to take over the sector themselves. After all, a 'province-friendly' approach could argue that if the individual provinces benefited from healthy universities, so would the country as a whole. This left Ottawa with only the option of fulfilling its obligations to promote the well-being of the national economy by focusing on the

more narrowly defined research sector (which for some is anyway more important in terms of the national economy than the higher education field more generally).

What should have become obvious by now is that in both countries the explanation for the state of the national higher education policy field cannot be reduced to one single factor. All the aspects mentioned above are of some relevance but their importance differs not only in relation to each other but also amongst the two countries, especially when considering the development of the policy fields. The question now is what does the situation in both countries imply for the policy field and for the constituent units.

3 Implications of the policy field – implications for the policy field

Some of the above described conditions already indicated more or less clearly the implications for the constituent units – which possess the main constitutional competence – and the implications for the coherence of the policy field of higher education in Canada and Germany. It is nevertheless necessary to look at these points here more systematically and in more detail.

3.1. The constituent units: balancing autonomy and influence

Despite the various developments that took place, the provinces in Canada and the Länder in Germany are still the principal constitutional authorities within higher education. When looking at the current conditions, this might be more obvious in the Canadian case than in the German one. Yet, in both countries the current situation as well as earlier developments have always been a question of balance for the subnational level. A balance that on one side might provide the desired autonomy in the policy sector but on the other side offers influence in the policy process on the national level, i.e. the opportunity for the constituent units to expand their influence and contribute to the formation of a national approach.

The balancing effect appears to be most visible in Germany. And it is again the year 1969 that marked the turning point. Although the argument was initially that the constitutional amendment of 1969 was only to give an already existing federal role a sound legal base, the consequences were much more fundamental and led to an increased influence of the government in Bonn. Before 1969, the Länder were the main actor in the higher education field. They allowed federal financial involvement which initially was not perceived as undermining their authority. It was probably rather the case that they assumed that they deserved the money they received anyway. Furthermore, already in 1957, the Science Council was created, an institution that clearly marked the existence of a desire for a national policy *including* the federal government. In addition, the research sector – despite not being as prominent in the public debate – also can be seen as an indicator for what was about to happen in the general higher education field. More generally, research proved the need for a more prominent federal role as the individual Länder were lacking the capacity to organise in particular larger research projects. Hence, within this policy field, Bonn acquired a considerable competence much earlier than in the general higher education policy area. However, it has to be pointed out that in the long run research proved to be far less problematic in terms of the federal-Länder relationship and hence was less part of the balancing efforts of the Länder.

In any case, the constitutional changes of 1969 led to a clearer framing of higher education as a national policy. Less formalised institutional structures were turned into more formalised ones. As a consequence, the autonomy of the Länder in higher education issues was affected more directly than before. There was a policy shift towards the federal level. Although the actual implementation and administration of higher education policies – itself reflecting an aspect of influence – remained the sole responsibility of the Länder, the policies were not entirely their own anymore.

A direct consequence of a more restricted competence of the Länder was a reduced flexibility in the policy field. They were not able to act and react anymore as they could have done earlier. Especially the issue of joint financing and the Higher Education Framework Act (HRG) clearly portray this consequence. Then again, the issue of individual flexibility was not a big topic at that time as there

was widespread agreement on the desirability of a unified national approach. However, in the years to come the demand for more flexibility for the Länder to deal with the higher education sector individually would grow. Particularly in the current period, this demand is closely linked to the issue of competition amongst the Länder (also stimulated in the wider context by discussions about the reform of the German system towards a more competitive model of federalism).

Although there was a comparatively widespread agreement leading up to the 1969 amendment, the Länder certainly would not have accepted a constitutional change that would have only disadvantaged them in terms of their autonomy and competence. What they gained was, for example, a more formalised scheme of financial support ('joint financing'). The institutionalisation of the financing had the consequence that the federal government could not efficiently apply the 'power of the purse' and use their financial contribution as an effective and direct policy tool. Yet, it has to be emphasised that those federal contributions are not that substantial in comparison with the overall financial requirements of the policy sector.

What is probably more important in terms of what the Länder gained as a result of the 1969 development, is their increased role in the shaping of higher education as a national policy in the form of more institutionalised influence at the federal level. The joint tasks meant that the Länder lost their sole responsibility in the respective field, but they gained influence by becoming part of various 'cooperative' institutions. Furthermore, under ideal circumstances one could also argue that, because of the nature of German federalism, a more prominent leading federal role in the shaping of a (potentially more coherent) national policy also increases the influence of the Länder via the institution of the Bundesrat. In practice, though, this potential – as explained above – was somewhat diluted by the influence of the vertically integrated party system that sometimes meant that the party political dimension was stronger than the federal-Länder dimension.

The last point especially makes it necessary to (again) address the issue of the coherence of the Länder positions. It is rather unusual to have a common Länder position in opposition to the Federal government. Party politics, as already mentioned, is one factor that undermines this. Länder with the same party in power as at the national level are not exactly a natural opposition force just because they

are on different sides of the federal-Länder divide. From this perspective, the Joint Decision Trap is one which – at least in higher education policy decisions – appears to be more affected by party political positions (particularly in the event of an opposition majority in the Bundesrat). Furthermore, the higher education field in the individual Länder might be exposed to different conditions independent of party positions. This last point was especially highlighted by the German unification of 1990 and the conditions in the five new Länder. This event not only weakened the homogenous society argument, it even more so opened gaps between Länder in terms of their ability to make use of their jurisdictional autonomy in ways which did not exist before in the FRG.

In a certain way the unification and its aftermath only exposed the problems of the system. It became obvious that the question of a balance between autonomy and influence for the Länder requires a more complex answer. A clear distinction between gains and losses is not that simple anymore. The joint tasks for example are now seen by some Länder as chains that stop them from developing the policy field individually. For instance, the requirement of joint financing for the construction sector not only costs time because of the need to coordinate two levels of government, but also limits the flexibility of the Länder to set and change their own priorities. Under such circumstances, a joint task is perceived more as a loss of autonomy rather than as a gain in terms of policy influence.

More generally speaking, the federal role is seen as stopping the competition between the Länder. The question of fees for students clarifies this. In an environment where the Länder could decide themselves whether they want to raise student fees and decide how much they should be, ‘market forces’ could be regarded as a natural way of influencing these decisions. Yet, the current federal government pushed through a ban on student fees (for the first degree) in the HRG.

On the other hand and in a wider context it is also necessary to ask which Länder would gain more in a more competitive environment. The East German Länder might be disadvantaged here. Given the existence of a national higher education policy and given that the GDR joined the FRG rather than that it was a unification in the true meaning of the word, the East German Länder were left with no other option but to accept the established system of the FRG. Given that, the university system in East Germany might simply not be ready yet for more

competition or indeed more autonomy. In this respect the initial situation of the five new Länder are somewhat comparable to the situation of the provinces in Canada at the end of the Second World War: they had to (re-)establish themselves first before the question of a balance between autonomy and influence could be approached.

When looking at the provinces and their autonomy dimension, the picture which emerges today appears to leave no doubt about who is in charge given the constitutionally guaranteed authority of the provinces over (higher) education. Yet, as already indicated, when looking at the whole postwar period, a more complex picture emerges. As in the case of the new Länder, the level of autonomy was initially quite low in the higher education sector. However, from there on it was possible to witness almost an uninterrupted development of the provinces towards more autonomy in the general financing of the universities. This narrow definition of autonomy – by referring to the financing issue – was a result of the absence of a constitutional base for Ottawa and a result of the lack of a national policy approach. From this perspective and despite the disputes over the federal contributions and whether they are still federal or already provincial property, the provinces have achieved a considerable autonomy. In the absence of a national policy that might even imply that they did not have to give up any influence, especially after the federal transfers had become unconditional and partly practically irreversible (transfer of tax points). But this is not the whole picture. More than in the German case, the question of balance requires in the Canadian case that one looks at the research sector.

In the absence of a constitutional base but equipped with the ‘power of the purse’, the federal government counteracted its loss of influence in the general sector by shifting more towards targeted funding of the (university) research sector. Given the lack of a national approach, the consequences for the provinces are obvious. As there is no provincial constitutional prerogative in the research area, the provinces are less able to put pressure on Ottawa. As a result, they are less autonomous within this part of the higher education sector and their influence is rather limited without a national approach.

In summary, the answer to the question of balancing autonomy and influence in the case of the Canadian provinces seems to be straightforward with the pendulum swinging towards more autonomy in one segment and less influence in another. This variation is a consequence of the absence of a national higher education policy. Based on their constitutionally guaranteed authority, it made it possible for the provinces to gain – after a considerable period of dependency on federal funds – substantial autonomy in the general funding of the field by gradually eliminating almost any major policy influence by the federal level. However, in an area without constitutional protection or cultural sensitivity – university research – a different picture emerges. This area exposes the disadvantages of the lack of a national policy approach. Without formalised or institutionalised policy involvement the influence of the provinces is limited – and the federal involvement is less predictable. After all, a clearly framed national policy also means predictability and – from the perspective of the provinces – a certain amount of control over federal influence. This ‘vulnerability’, further emphasised by the absence of a vertically integrated party system, though, does not appear to be a problem as the role of Ottawa in research is not particularly contested. This is also due to the still limited amount of federal money and a generally more diffuse federal role as a result of the involvement of further institutions in the funding of research.

The German case, in contrast, is more complex as a result of joint policy-making and the existence of a national policy approach. More generally the balance for the German Länder can be described as one of less autonomy but of more influence on the federal level. In addition, though, the question of what the existence of a national higher education policy means for the Länder is one where the answer is not only affected by the period of time under observation (leading to a reduced autonomy while gaining influence) but also by an increased diversity amongst the German Länder. The search for balance between influence and autonomy might therefore lead to considerably different answers in each Land. Answers which might reveal a fundamentally different attitude towards the authorisation of a national approach.

3.2. Implications for the policy sector

The implications of the underlying conditions – especially the question of autonomy – of the policy field for the constituent units might be the more fundamental one in terms of its relevance for the federal system. However, the implications of the degree of autonomy of the constituent units for the higher education sector might at least initially be more recognisable from the outside. After all, the policy field represents the practical expression of governmental conditions.

Although most aspects that are relevant here have already been dealt with in one or the other form, it is necessary and helpful to portray the situation within both countries concerning higher education from a perspective of taking into account the autonomy of the constituent units.

This autonomy is a result or has led to (depending on the perspective) the national policy in Germany and the lack of the same in Canada. In a more sophisticated approach the policy fields can be determined by their coherence on the national level.¹⁷ Furthermore, from a policy network perspective, a high degree of coherence also indicates the existence of a national policy community (as outlined by Onestini (2002) in the case of Germany).

In the case the higher education policy field in Canada the autonomy of the provinces has left Ottawa (with its limited formal constitutional authority) with only a few opportunities of influencing the higher education sector or even applying a coherent national approach. It appears, however, that there have been no efforts by the federal level to create a comprehensive national policy. Even in the immediate aftermath of the Second World War when there was not much opposition to be expected from the provinces, Ottawa's approach was rather one-dimensional, exhausting itself in financial contributions. The 'power of the purse' remained a weak instrument to influence the universities. It was an instrument, though, which was applied regularly, initially by funding the universities directly, later on by delivering the payments to the provinces – if there were any payments left and the contributions not only based on earlier transfers of tax points. The

¹⁷ For a definition of the use of the term 'coherence', see page 42, footnote 33 in the Introduction.

provinces, in turn, even after they had claimed back their authority did not engage in a coherent policy approach on a national level.¹⁸

The focus on the financial aspect not only expresses a limited national policy coherence, it also creates a particular dependency towards a changing environment whether in the form of economic problems or in the form of a declining priority of the universities. In the concrete example, Ottawa moved away from the general funding of the universities towards a more targeted funding of research, further undermining the degree of coherence of the policy field more generally. Yet, even in a more narrowly defined research policy field, Ottawa's engagement did not lead to a coherent national approach, as the various programs more or less stand on their own without creating a particular research policy community. It nevertheless represented a shift of policy involvement, away from the general field (with the exception of the CSLP) towards research. However, it can further be argued that university research is generally characterised by the involvement of more national actors (like for example research agencies) leading to a diffusion of power with less emphasis on Ottawa.

More generally the higher education sector is characterised by a limited policy involvement of the various governments. In the absence of a comprehensive and coherent national policy and with the provinces not providing a comprehensive provincial approach (based on common positions) instead, the general regulations for the sector are relatively limited. From this perspective, it is only logical that the universities in Canada enjoy a considerable amount of autonomy to be able to fill the 'gap'.

The same cannot be said of the German universities which are actually struggling to gain more autonomy. The high degree of coherence of the policy field means that nearly every policy aspect is somewhat regulated beyond the already extensive constitutional provisions. This is furthermore backed up by a national policy community (and which has changed over time adjusting to the changing constitutional conditions (Onestini (2002))). This again implies that – despite being part of the policy community – there is little room to manoeuvre for the universities. This was different in the immediate period after the war when the

¹⁸ Arguably with the exception of the MPHEC, which, however, has only a regional dimension.

universities enjoyed a greater degree of autonomy due to a lack of a comprehensive policy approach and due to a limited policy community. The move towards less autonomy cannot be connected to a specific date, as there were various developments that contributed to an increased coherence of the policy field. The establishment of the KMK (1948) as a Länder institution that was aimed at coordination in the sector certainly marked a starting point, as did the creation of the Science Council (1957) by the Länder and the federal level. This means that there were efforts to create a coherent policy field at a time when the autonomy of the Länder was at its highest level, which stands in clear contrast to the attitude portrayed by the provinces in Canada. It further also means that the Länder engaged together with Bonn in this process before the involvement of the federal level in the policy process was formalised in 1969.

Given the high degree of coherence, the requirement for policy coordination also implies the need for institutions that fulfil this task. The Science Council is a good example for this. It is also a good example for the momentum of the whole policy field as the Science Council's position went beyond the initial task and became itself – like other institutions – involved in the policy process and an essential part of the policy community. This aspect emphasises the possibility of applying a policy network approach for the analysis of German higher education. However, as such national policy communities cannot be witnessed in the same way in Canada, it also underlines the limited value of a policy network perspective for the present comparative study as to a certain degree it shifts attention away from the governmental actors. By focusing more on a wider policy community, questions of balance (provincial interests and the overall balance of the federation) become more difficult to approach, especially if the case studies differ fundamentally regarding the existence of policy communities. Yet, this should not detract from the importance of the higher education policy community in Germany for the understanding of specific German conditions.

Overall, for example, it can be argued that as a part of the national approach, the limited autonomy of the Länder within higher education led to a high degree of policy coherence and a substantial policy involvement of all the main actors and others beyond them. The price for this situation is changing and contested regulations as a result of policy confrontations (leading under certain

circumstances to the joint-decision trap), and a reduced flexibility of the higher education institutions as well as of the policy sector as a whole.

The Canadian higher education sector, in contrast, is not exposed to something like the joint-decision trap due to the reduced national dimension of the policy field. The Canadian provinces did not use their autonomy primarily to make an effort towards an increased coherence of the policy field as in the case of the Länder. In the light of the absence of a national approach, there was simply no formalised need for coherence. Even the National Forum on Post-Secondary Education in Saskatoon in 1987 arguably proves the point as it appears to have been something of a one-off effort. The limited coherence of the policy field implies also a limited policy involvement of the various actors as there is a reduced scope for policies. Furthermore, the degree of autonomy of the provinces also acts as a hurdle for the policy involvement of other actors as they could easily be blocked by the provinces, as especially the later stage in the development of the federal role in general financing shows. In this light, the shift of the federal government away from more general funding of the universities towards more targeted funding of research activities could actually be interpreted as giving up the hope for a national higher education policy. On a more positive note, though, the lack of national coherence of the policy field in Canada allows for more flexibility which, depending on the perspective, can be valued even higher than a national approach.

4 The implications for the federal framework

Before coming to the main argument of this section, it has to be recalled again that the conditions observed within one particular policy field – higher education in this case – cannot be generalised and viewed as representing the conditions more generally or the conditions in another policy sector. It is rather something more of a snapshot (although one which takes developments in the policy field into consideration). Nevertheless, while realising this, relating the specific outcomes of the policy area under observation to the more general models of federalism in

Canada and Germany should at least offer some insight into the actual functioning of the general models even if the specific results diverge from the models.

Both countries have been defined earlier as somewhat opposing models of federalism, thereby applying mainly the distinction between interstate (Canada) and intrastate (Germany) federalism. Without going into every detail of the respective models, the outcome of the research on the policy field will be related to the more general political framework from two (partly overlapping) perspectives: the aspect of the balance of the federations and the relationship between policy and polity.

4.1. Policy – polity

The main characteristic of the German model is its strong interlocking dimension. However, in the case of higher education policy the resulting situation appeared to have developed a momentum of its own. The more interlocking there is the more there seems to be a need for further regulations with all its side effects like intergovernmental or party political conflicts, eventually resulting in an over regulated policy field. To simply reduce the regulations is rather difficult as it affects the competencies of the governmental actors involved. After all, it is this more specific interlocking of competencies which is at the heart of the ‘joint-decision trap’ and its main consequence of sub-optimal policy outcomes. The theory argues that these sub-optimal policy outcomes are a result of a bargaining rather than a problem-solving approach. In the case of higher education this has certainly been witnessed more recently. However, there were periods where this was not that clear or simply not the case. Even if one excludes the time when there was only a limited involvement of Bonn due to a lack of a constitutional basis, the first few years before and after the constitutional amendment of 1969 were particularly characterised by a problem-solving style in the policy process. In addition, the first years following German unification in 1990 were also more orientated to actually solving the resulting problems of unification, with the federal government, though, carrying most of the burden. Yet, in particular the period of unification was a unique situation which therefore could probably be seen as only a temporary disruption to the prevailing bargaining style.

The Canadian case can hardly be described as a system of joint decision-making. It is, following the logic of interstate federalism, predominately characterised by the relative autonomy of the constituent units in the higher education sector. However, this was not always the case as has been shown above. Initially, autonomy was not a characteristic feature of the provinces and the distinction in terms of competencies was not clear despite the clarity of the constitutional provisions.

In the current situation, however, the 'autonomy logic' of interstate federalism does not sufficiently take into account the specific requirements of the policy field. Whereas in the German case interlocking might lead to sub-optimal policy outcomes, the Canadian example emphasises the competencies of the responsible level to a degree that leads in higher education not to an optimised policy outcome but rather to hardly any (coherent) policy outcome. Under these circumstances, a national approach – without generally implying the superiority of such an approach – appears to be elusive, especially as it would require the provinces to compromise on their (constitutional) autonomy. This elusiveness is further emphasised because of underlying forces like the diverse society and the less integrated party system.

4.2. Balance of the federations

The balance in the Canadian system is not only determined by a high degree of autonomy of the provinces but also by a similar degree of autonomy of Ottawa. In the interstate model this is a defining element as it emphasises the relative independence of both governmental levels. This is visible in the form of structural elements being duplicated at both levels. The higher education sector developed its own kind of dualism. With general duplication not being on the agenda, due to a lack federal constitutional authority, the development led in the direction of the provinces dominating general higher education and the federal government finding a niche in the targeted funding of university research. While more expressing a division than dualism, it nevertheless emphasises the autonomous competencies and thereby the balance of the system.

The probably more important aspect in terms of the balance of the federation is what has been labelled executive federalism in Canada and here in particular the implication of a bargaining process. Whereas the 'opting out' provision can still be seen as fitting into the picture, the general development of the federal financial involvement looks less like a 'bargain' for Ottawa. The reasons for that have been outlined earlier (constitutional power, provincial awakening) but the whole process of the federal level losing gradually more and more influence in the general sector does not represent a 'disturbance' of the balance but rather a readjustment, placing the provinces back into their constitutional position. As a result, the current situation reflects more the interstate model and executive federalism (with its centralised governmental levels) than the period after the war.

Executive federalism is obviously quite established in Germany too. It is even more logical as a result of the constitutionally backed interlocking of the governmental levels. As such, bargaining is quite common as the example of the higher education policy sector shows. However, most of the time the bargaining is not directed towards problem-solving (see above) but rather confrontational and centred around party-political positions due to the influence of the party system. In this way, bargaining is not only about the balance between the Länder and the federal level but also about balancing party interests. Again the period around 1969 can be used as an example as it was characterised by a 'national agreement' that was basically an agreement amongst the main parties involved. From this point of view, higher education does not appear to be that different from the general model. From another perspective, though, one difference emerges. The functional differentiation of the German model leads to the legislative process taking place at the federal level while the administration is nearly exclusively the task of the Länder. In this way, higher education is no exception and reflects the balance of the federation. Yet, when looking at the actual policymaking, the situation does not look that balanced anymore. The logic of functional differentiation implies a predominance of the federal government, but the fact is still that the basic constitutional responsibility lies with the Länder even if the constitutional amendment might have watered down this responsibility. In any case, the federal government appears to dominate the process and the direction of

the policy development. This seems to be more emphasised during times of social democratic-led governments (which would also fit into the logic of party ideologies). The Bundesrat might act as a counterweight but most of the main policy developments in recent years originated in Berlin. Most Länder therefore want to correct this balance again and move back towards more competencies of their own.

5 Prospects for change: not opposing models anymore?

This chapter has so far shown that the differences between the higher education policy fields of Canada and Germany do indeed justify the use of these countries as opposing models of federalism, though with one important exception. When taking into consideration developments since the end of the Second World War, a different picture emerges. The higher education sector has changed considerably in both countries since 1945. Sometimes these changes took place in opposite directions – from opposing starting points: from politically weak to politically self-confident actors in the case of the Canadian provinces; from almost carrying the sole responsibility to being at the brink of becoming the minor partner within the policy field in the case of the German Länder. These developments expressed not only changing balances within the policy field but overall also witnessed a clearly decentralising tendency in Canada and a centralising tendency in Germany since 1945.

Other aspects showed initially similar conditions but are now features characterising the differences (for example university autonomy). Other, more general characteristics again proved to be dissimilar from the outset (for example the functional division in Germany). This list could be continued but the main point is not to analyse these aspects individually. Rather the purpose is to show more generally that the higher education systems in both countries are not static but represent quite dynamic policy sectors. Logically, the question resulting from these observations is clear: which direction will the policy fields take from here? Given that one key observation of the analysis is the decentralising direction in

Canada and the centralising direction in Germany one might assume that they will drift apart even further. Or will they remain just different models? Or do they actually show developments that might lead to the assumption that they are somewhat moving towards each other?

One way of approaching this topic is obviously by looking at reform attempts within the higher education sectors themselves.

In the light of the absence of a coherent national policy approach and given the state of current discussions, reform proposals in the Canadian system tend to be restricted to individual areas that do not have the potential for fundamentally questioning the current system as a whole or the intergovernmental balance (for example the long-standing demand for the coverage of indirect costs of university research by the federal government's research contributions). German higher education, in contrast, appears to be more characterised at the moment by a mood that questions nearly everything and leads to demands for fundamental changes. One example that would have more fundamental consequences is the abolition of the joint financing for the construction of buildings. Another, more publicly discussed topic, is the question of tuition fees. Despite the general ban on fees for the first degree in the HRG, some Länder – and not only those with a different party political government in charge than in Berlin – are already trying to break out of the system by searching for loopholes. Both examples point to the same directions for reforms: more responsibilities and flexibility for the Länder leading ultimately to more of what has been labelled competitive federalism – something which is more widely accepted in Canada.¹⁹

Even if one assumes that both higher education systems move more towards each other – towards more co-operation in Canada and towards more separation of power in Germany with Germany arguably representing the more 'active' system – the question remains whether some aspects that helped shape the current systems would not prevent such a development. One of these aspects is the more fundamental societal condition, the existence or the non-existence of a federal society. Both countries are quite different here as has been shown above.

¹⁹ It has to be emphasised, though, that the competitive environment of higher education in both countries lacks an element which would reinforce this competitiveness: a private higher education sector of considerable size.

Hence there might be the assumption that, despite the reform efforts in Germany, the lack of a federal society ultimately prevents a decisive move towards competitive federalism. Then again pressures as a result of a more competitive environment created by the European Union, which also more specifically stimulates ‘economic regionalism’, might act as forces in the opposite direction. Furthermore, German unification undermined not only the homogeneity of the German society to a certain degree but also exposed an even more visible economic disparity amongst the Länder. Under such circumstances societal solidarity is weakened, leading to the assumption of more self-interested positions by the Länder and, hence, ultimately to more competition. Therefore, although the ‘federal society perspective’ offers some insight beyond the constitutional design of the countries under observation here, it cannot be portrayed in isolation. Ronald Watts (1999: 15) therefore points out:

[T]he view that federal institutions are merely the instrumentalities of federal societies, while an important corrective to purely legal and institutional analyses, is also too one-sided and oversimplifies the causal relationships. As authors such as Alan Cairns and Donald Smiley have pointed out, constitutions and institutions, once created, themselves channel and shape societies.²⁰

Cairns (1977: 698) in his article in particular speaks of the “failure to treat government with appropriate seriousness”. However, it is not only the formal institutions which have an influence. It also has to be considered that despite the differences in the underlying societal conditions both states are also exposed to the same kind of external pressure. Pressure that arises, amongst other sources, from their status as western-style industrial societies. As such, they were both subject to the ‘Sputnik-shock’ and both ‘discovered’ around the same time (1960s) the economic value of the universities. More specifically and more recently the governments in the two states also increased their focus on the research sector as an economic factor.²¹

²⁰ Ronald Watts refers to the following work of the two authors: Alan C. Cairns (1977) ‘The Governments and Societies of Canadian Federalism’; and D.V. Smiley (1987) *The Federal Condition in Canada*.

²¹ This is especially true for Ottawa with its focus on research. In the German case it is not that obvious, in part because the main research activities are outside the universities, a sector which has not been looked at in detail here because of its limited relevance in terms of intergovernmental relations.

From this perspective, it only appears to be natural that the general economic situation in each country individually has to be considered as a factor for change. And indeed, the differences in this category are undeniable. For a few years now Canada has benefited from a budget surplus, which is not the only indicator of the economic well-being of a state but at least indicates fewer problems than in the German case. Since unification – without blaming the economic problems of Germany purely on the fact of unification – Germany has struggled economically. This became especially visible more recently (at the end of 2003) when Germany was about to get penalised for breaking the economic rules laid down for the member states of the Single European Currency (Euro) of the EU. Only because of its political weight and because of France being in a similar situation, it escaped such a humiliating penalty process – for the time being. In any case, in such an environment, it might be less of a surprise when generally the demands for reforms are greater and in particular that demands grow for more competitiveness (which is usually associated with more efficiency, i.e. saving money, even if this is not a natural outcome).

Despite such apparent differences in the economic situation of the two countries more recently, the current positive economic situation in Canada is also based on earlier federal cutbacks including in higher education. These cutbacks, especially in the 1990s, were made easier because of the increased autonomy of the provinces regarding the general financing of higher education. The resulting unconditional block grants made it easier for Ottawa to cut these payments as they were not directly associated anymore with specific programs (especially not with higher education under the CHST). Despite complaints by the provinces, they actually had then to cut the costs of the programs which made them politically more vulnerable as they were mainly blamed for these cuts. In a certain way that was the price they had to pay for the move towards more autonomy. For Ottawa, in contrast, it opened the possibility of using the ‘saved’ money for more targeted funding (especially research). Thereby the federal level was able to swap its limited profile in the more general sector for a more direct and high-profile engagement.

Besides these economic dimensions there are further aspects which influence change besides the constitutional developments. In Germany for

example, a driving force is the already mentioned policy network in higher education which includes actors that are not directly related to either of the two governmental levels and hence might be driven by a different agenda. The influence of such actors goes normally beyond the impact of lobbying groups (a category that might be more applicable to the non-governmental actors in Canada like the AUCC) as they are an integral part of the policy process.

Other factors that have to be considered in terms of their potential for influencing change are the role of individual provinces (in higher education especially Quebec) and Länder, or more fundamental societal developments like the 1968 student rebellion in Germany.

Besides these aspects that are less specific for the federal models, the actual attempts for reforms more generally in both countries have to be taken into account. The reform debate in Germany does actually reflect the discussions surrounding the reform of the higher education system: disentanglement of the responsibilities, focussing in particular on the role of the Bundesrat; reform of the financial equalisation system with less emphasis on 'equalisation' and more on 'competition'. Such changes would at least partly require a reform of the constitution which would generally provide the ground for more competitive federalism. Yet, such changes would almost certainly undermine the coherence of the policy field. On the other hand, that would provide the Länder with more flexibility and deal with identified needs for reform individually. From this perspective, the joint-decision trap represents the lack of reforms. However, while the joint-decision trap might provide the instrument to stop or block reforms, the concept itself does not reflect the lack of reform. This is still a question of the attitude and position of the individual actors.

Canadians have already tried a few times in the last couple of decades to reform their constitution (which was only repatriated in 1982). Both major reform attempts – the Meech Lake Accord and the Charlottetown Agreement – ultimately failed. Both attempts, more generally, would have given the provinces more power, thereby expressing something of a decentralising thrust. Yet, more recently there appears to be an emphasis less on decentralisation but more on co-operation.

In a rather interesting development both countries at the end of 2003 have started initiatives in the form of a 'Federalism Commission' (*Föderalismus-*

kommission) in Germany and a 'Council of Federation' in Canada that are both aimed at enhancing the federal systems. In the German case, the debates within the commission could ultimately also lead to constitutional changes whereas the Canadian council will probably not waste too much energy on a new proposal for a constitutional reform. The council seems to be anyway more directed towards providing a forum for intergovernmental communication. Although a focal point will be health care, the general purpose of the Council of Federation will be aimed at more federal-provincial co-operation (Richer, 2003). It is still too early, though, to see what kind of impact these attempts in the two countries are likely to have on the overall functioning of the federations. It is certainly not the first time that commissions or councils have been established to deal with the reform of the two federations.

In conclusion it appears from more general developments that Germany is moving towards more separation of power and a more competitive federalism whereas Canada shows signs of incorporating co-operative elements into federal-provincial relations. Whether these initial steps will actually lead to more fundamental developments remains to be seen. But it appears that both countries are moving towards each other in terms of the functioning of their political systems, even if evidence from the higher education sector implies that it is only the German system which is moving. If these developments continue the differences between the two case studies here will become less pronounced.²² Then again, the present analysis of the two developmental patterns since 1945 has in any event shown that the differences between the two systems were not always at the same level. After all, both federations are truly dynamic systems and therefore were – and still are – constantly exposed to changes.

²² An analysis from a historical institutionalist perspective (which follows in the Conclusion) actually implies that such a movement towards each other is quite limited in the absence of fundamental institutional change (as represented by a critical juncture).

V

CONCLUSION

Federalism(s) in theory and practice

1 Higher education and federalism: main empirical findings

The starting point of this study was federalism in practice as a political form of the organisation of a state. To clarify the functioning of the concept, one policy field – higher education – was investigated in more detail. To further highlight general patterns, the research was carried out as a comparative study including two case studies – Canada and Germany. The underlying assumption of the study was the recognition of federalism as a dynamic system characterised by a general, but also by more specific searches for balance.

It has already been highlighted in the Introduction to this thesis that federalism is a contested concept, subject to multiple and multiform understandings. This is amply confirmed by the empirical evidence presented here, the two countries providing strikingly different expressions of the shared organisational principle of federalism. Indeed, it becomes plausible to apply the plural form of the word and talk of federalisms in practice (compare with Burgess, 1993: 110). Yet, despite these differing expressions of federalism, the study points to some general aspects that should be considered when analysing the impact of federalism in a policy system.

Models are not deterministic

The reason for choosing Canada and Germany as case studies was mainly based on the possibility of characterising them as somewhat opposing models of federalism – interstate and intrastate federalism. Yet, while these models are useful analytical tools, they tell us little about the dynamics of the systems or the patterns of change within them. They make it possible to categorise and distinguish federations, but they are not deterministic models.

The concrete example of Canada and Germany, and in particular the long-term observation of the policy sector of higher education, reveals the sometimes limited explanatory value of the models.

When looking at the immediate postwar years it becomes more difficult to apply the interstate (Canada) or intrastate (Germany) concepts to characterise the respective federations. In the case of Canada, the dominant role of Ottawa in the

financial expansion of the university sector after the war (Veterans Rehabilitation Act) clearly did not correspond to an interstate model, given the constitutional prerogative of the provinces. This difficulty in applying an interstate categorisation was further underlined at the time by the prominent role of the universities and their institutional representation (NCCU, predecessor of AUCC), which seemed to leave the provinces with only a relatively minor role in higher education despite their constitutional responsibility. From this perspective, neither interstate nor intrastate federalism offers an appropriate description.

In the German case, it is even more difficult to apply the current characterisation of the system as an intrastate federation to the earlier expression of the state. While it was not a question at all before 1949, after the FRG came into existence the constitutional provisions and the picture within the higher education sector bore more resemblance to an interstate federation.

It can be argued, though, that the interstate model for Canada and the intrastate concept for Germany were already embedded in the underlying constitutional and institutional logic. For Canada, this logic was translated into reality by the more general ‘provincial awakening’, manifested in the higher education field by the establishment of powerful provincial bureaucracies which thereby took on the role provided for the provinces in the constitution. In the German Basic Law, the intrastate dimension was incorporated from the beginning by aspects of joint decision-making which was in particular emphasised by the central institution of intrastate federalism – the Bundesrat. The development of the higher education area could therefore be seen as only ‘catching up’ with the already existing, more general characterisation of the federation. However, despite such an apparently implicit logic of development in both countries, a purely constitutional-institutional perspective is not sufficient to understand the individual events that took place in the policy field of both case studies.

Actors within the system

While there is a no inherent contradiction between an institutional perspective more generally and an emphasis on individual actors more specifically, the empirical evidence of higher education in Canada and Germany has highlighted the importance of actors within the system as another aspect of analysis.

Whereas the governmental actors – especially in a parliamentary federation – naturally require particular attention in the analysis, the comparison has also shown the importance of the parties as relevant actors – or more precisely, the underlying structure of the party system.

In Canadian higher education, the party structure is hardly an issue at all. Its lack of vertical integration coincides and helps to define the interstate dimension. This is not to say that parties do not play a role. But the structure of the party system does not fundamentally interfere with a federal–provincial dichotomy.

The same cannot be said about Germany. The hierarchical and vertically integrated party system led and still leads regularly to party political confrontations that sometimes partially hide the federal–Länder structure of the country and replace it with a centralised party structure.¹ This is in particular highlighted by the joint-decision trap, which in the higher education sector only became a real issue when the existence of an opposition majority in the Bundesrat required that a consensus be achieved by the two main national political parties. This has proved especially problematic in the immediate run-up to federal elections.

The higher education policy field in Germany, in contrast to the one in Canada, also pointed at to the involvement of other actors that have to be considered when analysing the policy sector in more detail. The relative importance of such actors in the German case can be mainly attributed to the multiple access and veto points which exist as a consequence of the intrastate organisation of the federal system. The Science Council, however, provides an interesting example of an organisation which was actually created before the intrastate system was formally established within the policy field, and which, moreover, itself contributed to this development. While this can be partly seen as being based on the already pre-existing intrastate characterisation of the whole federation, it also points to another aspect that should be considered when analysing the functioning of a federal system – the societal conditions.

¹ A somewhat similar point is made by the political economist Carl Christian von Weizäcker. He provocatively argued in a debate with the Bavarian minister president Stoiber, that Germany does not represent a federation but rather a hidden centralised state. This ‘pseudo-federalism’ to his mind is based on the strong central position of the Bundesrat and the resulting domination of federal and party politics over Länder specific topics, leaving the Länder parliaments with only a minor role to play (Stoiber and von Weizäcker, 1998: 149-51).

Societal conditions

Despite having a lot in common, the underlying societal condition is an aspect that can be used not only to clearly distinguish Canada and Germany in general, but is also necessary to understand the development of the policy field in the two countries more specifically. It helps to understand why Germany – based on a relatively homogenous society – moved towards a coherent national higher education policy. And it also explains why in Canada, with its diverse or federal society, such a development never took place. Certainly, in the Canadian case, diversity appears as an enduring feature of the national condition. In Germany, by way of contrast, there are indications that the influence of the homogenous society is weakening. This becomes particularly visible in the form of demands for more competitive federalism, not only for the higher education sector but as regards the federal system more generally.

Growing demands for a more competitive federalism are primarily directed at undermining the dominance of joint-decision making – a characteristic feature of intrastate federalism. Yet, this shift also reflects a change in German society. After the unification in 1990 it certainly became less plausible to talk of Germany as a homogenous society. Consequently, the ‘uniformity of living conditions’ article of the Basic Law was reformulated in 1994 and replaced by a less strong demand for ‘equal living conditions’. However, it could also be argued that this change was more a result of the economic situation than based on the recognition of Germany representing a more diverse society. After all, unification was and still is a costly project and created a much wider gap between the richest and the poorest Länder than had existed before. Creating ‘uniform living conditions’ therefore was more difficult to achieve. In addition, holding on to the formulation of ‘uniformity of living conditions’ could have created a legal problem if they were not created in every Land. Under these circumstances, it is not surprising that the demand for more competitive federalism can mainly be found in the richer Länder of the West.

Although the economic and societal implication of the German unification had no immediate effect on the higher education policy field, the long-term picture shows that the economic dependence of the East German Länder has had an impact on the balance within the federation and especially amongst the Länder.

Economic conditions more generally are therefore also important for an analysis of the policy field.

Economic conditions and external pressure

In both federations, economic conditions also had implications for the policy sector. After all, one of the main justifications for federal involvement in a policy field where the constitutional prerogative rests with the constituent units has been that of the economic responsibility of the federal government. In earlier years, the ‘human capital theory’ and the so called ‘Sputnik shock’ affected both countries and highlighted the economic importance of higher education. This provided the grounds for claiming a more prominent role for the federal level in higher education. Such external pressure almost demanded a federal involvement, even in Canada where the existing federal society represented an additional hurdle for such a move. Yet, this external pressure also indicates that the federal involvement in the Canadian case was not purely based on self-interest, but on an economic necessity. From this perspective, the (forced) move towards more targeted funding allows Ottawa not only to acquire a higher profile (which probably does satisfy a certain self-interest) but also to support the national economy more directly (at least when applying a more narrow definition of economic development).

While this analysis also basically applies to Germany, its non-federal society and the intrastate model of federalism made it easier for the federal government to take on a role in higher education based on its economic responsibilities. Unification in particular made it almost unavoidable for the federal level to at least temporarily take on a more dominant role in higher education. While this has not led to a lasting dramatic change in the balance between the Länder and the federal level, the previously discussed situation and the demand for more competitive federalism has the potential for changing the policy sector more fundamentally. In addition, while further external pressure as result of the European Union (EU) has not yet had a notable influence on higher education and its intergovernmental balance, the impact of the EU in other policy fields is undeniable. Under these circumstances and depending on the further development of the European integration process, it appears to be only a matter of time before the EU also manifests itself more directly in higher education. Yet,

because of the cultural sensitivity of higher education, it is rather unlikely that such a manifestation would result in anything more than a minor role.

The above described general aspects are the result of the analysis of higher education policy in Canada and Germany. Yet, while the individual arguments are not new, the comparative approach combined with a long-term observation of the policy field in particular highlight these aspects as analytical tools. They stand out because the research design allows the identification of broad patterns of development and puts them into perspective by comparing them with similar developments in another country. Thereby it is also easier to identify country specific developments or conditions. Yet, the question also arises of how much these results can be generalised. To answer this question, the next section will look at the wider implications of this study.

2 The wider picture: historical institutionalism and the avenue for further investigation

Historical institutionalism, and in particular its related concepts of path dependency and critical junctures, allows us to conceptualise the empirical findings of this study and thereby add further explanatory value to the thesis. In order to do so, the emerging picture from this perspective has to go beyond the simple recognition of the existence of path dependency and the appearance of critical junctures. Path dependency thereby implies that history matters and shapes (policy) choices in a complex institutional environment that is not only created by the formal constitutional structure, the societal conditions, the economic environment but also – as Douglass C. North (1990: 96) points out – by ideas, theories and ideologies. Path dependency also implies a “gradual institutional change occurring through continuous marginal adjustments” (Ibid.: 101). While this mode of change is the dominant one, this path dependency can be exposed to institutional discontinuity as a result of fundamental changes in the institutional environment (like for example revolutions, economic crisis, societal change). The

resulting critical juncture leads to a ‘new’ institutional environment and thereby creates a different path for the policy process to take place.

The situation in Canada appears to be relatively straightforward. The institutional environment within which the interaction regarding higher education took place arguably did only change gradually since 1945 leaving the federal government with almost no choice but to withdraw step by step from a policy field for which they possessed almost no constitutional authority. Even if one rates the province building from the end of the 1950s as a rather fundamental development, it still somewhat served to reinforce the existing institutional path by accelerating certain policy processes. The original policy choice that was a result of this path can probably be traced back to the foundation of the Canadian state itself and the BNA Act leading to incremental change only within an accommodationist mode. Yet, if one compares the current picture within higher education with the one after the Second World War or even the time before that the impression might occur that the situation has changed fundamentally. While this is not completely wrong this does not contradict the recognition of a path dependency. After all, historical institutionalism does not exclude policy adjustment based on institutional change. Therefore a logic of path dependency was sustained in Canada despite the federal government for a long time dominating the fiscal resources – which after all is a fundamental aspect that affects institutional behaviour. However, it is only one factor and to be able to alter the direction of the path, other factors would have had to change too. The question therefore is why did no such critical juncture occur in Canada. After all, the time of the Second World War but also earlier periods witnessed a high degree of centralisation which gave Ottawa more power. Why did Ottawa then not take advantage of its position to change the constitutional condition in a policy field that clearly has some relevance for the nation as a whole (as indeed the technological output of the universities during the war proved)? One reason could simply be that it was not a necessity or a priority during the war. Yet, as even in the aftermath of the war no such attempts took place, it highlights again the broader view of the institutional environment as representing the interaction between society and state. And the societal conditions were not right for a critical juncture even before the time of a more articulated provincial role. Further more, the war represented only a temporary crisis and was therefore not enough to

stimulate an institutional change. Under these circumstances the focus of the federal government on the financial role and later on the more targeted funding of research represented almost the maximum of policy involvement. A substantially higher degree of policy involvement would almost certainly have unsettled the balance of the federation within this policy field and might have contributed to the unsettling of the sometimes already anyway critical cohesion of the Canadian federation.

The situation in Germany from a historical institutionalist perspective appears to be quite different. The war and its aftermath seemed to have represented a clear critical juncture. The war destroyed the old centralised system and was replaced by a decentralised structure in the form of a federal state (1949). Yet, the higher education system was, surprisingly, less affected. During the time of the Weimar Republic higher education was decentralised and even during the time of the Nazis, the degree of centralisation was less than one might have assumed. It appears that there was some form of underlying path dependency dating back to the time when Germany was an accumulation of small, relatively independent states. From this perspective the end of the war represented less of a critical juncture for the institutional environment of the policy sector of higher education. While such an observation would require further investigation it still emphasised the independence of the subnational level in questions of higher education. The first real institutional choice after the war – the Basic Law of 1949 – appeared to have accommodated this earlier ‘tradition’ or path by locating the constitutional authority for higher education at the Länder level. Yet, already in the constitution the ground was provided for what was about to come.

Initially the path dependency seemed to be clear by limiting the role of the federal government. However, already before the critical juncture of 1969 ‘took place’ the institutional environment of the policy sector changed. At the beginning that was predominately visible in the form of the need for a financial role of the federal level to compensate for the limited financial power of the Länder. Another factor that took shape was the societal condition with its high degree of homogeneity. This was partly expressed by the coordination efforts of the Länder and by the involvement of the federal level in the policy field, for example in the form of the Science Council, even before a stronger role was constitutionally

manifested. In addition, the already existing underlying structure of the federal system, especially highlighted by the role of the Bundesrat, and the existence of some constitutional provisions for a federal role, seemed to have already foreshadowed a more prominent role for Bonn. Yet, it required some further factors for the path to be altered and the policy changes to take place. These factors took the form of external pressure (economic situation, ‘Sputnik shock’) and especially the form of internal pressure as a result of the student revolts of 1968 which were directed against the grand coalition, the conditions at the universities and generally against the establishment. Within this environment of protest, pressure, political agreement (grand coalition) and pre-existing conditions (constitution, federal structure, societal condition) the ground was provided for a fundamental policy change (critical juncture) by changing the basic path of development. Nevertheless, although the constitutional amendments can be described as being the result of a critical juncture, it has to be emphasised that this development also contained an element of path dependency because of the initial constitutional provisions, the underlying federal structure including the limited financial power of the Länder and the pressure from the non-federal society. Applying this view, the centralising direction as witnessed in the higher education policy field is also based on the institutional choice of 1949 and was arguably only highlighted and accelerated by 1969 and the following changes. In any case the development of the field since 1969 saw a clear example of path dependency which removed certain policy options, such as a return to an almost exclusive policy role of the Länder, from the agenda. From an historical institutionalist perspective such a institutional change could only take place after another critical juncture. There might be some indication for a changing societal condition resulting in a less homogenous society due to an increased diversity as a result of unification. Such a development might indicate less pressure for centralisation. In addition there are signs of a crisis because of generally weak economic performances and a corresponding reduced federal fiscal clout. Whether these elements of the institutional environment accumulate enough power to create a critical juncture remains to be seen especially if even such a fundamental process like German unification did not develop enough power for an institutional change. From this perspective, and in the current absence of signs for critical junctures in

Germany and in Canada, the previously discussed aspect (IV – Comparison: section 5) of the Canadian and the German model moving towards each other appears in a different light. The path dependency in both countries seemed to undermine such a development. This does not imply that immediate developments are clear but the strength of path dependency implies, according to North (1990: 104) that “although the specific short-run paths are unforeseeable, the overall direction in the long run is both more predictable and more difficult to reverse.”

Although this initial portrait already deals with quite a few aspects of historical institutionalism, the discussion here is certainly not exhaustive and suggests further avenues of research.

It has been argued in the introduction to this thesis that one has to be cautious about generalising from one specific policy sector in terms of it representing a picture of the overall federation or as an indication of the conditions in another policy sector. In the concrete case that means that the more substantive outcomes of the analysis of the higher education policy fields in Canada and Germany cannot be generalised. Other policy sectors may well have their own, distinctive patterns of development despite being exposed to the same broad parameters that create each particular national environment. Nevertheless, the analytical method of historical institutionalism used here potentially offers the possibility of a wider or more general application. Three interrelated conceptual dimensions should, in particular, be highlighted. Given the emphasis on a institutionalist perspective, the present research clearly indicates the importance of an analysis of institutional resources and opportunity structures. Yet, it has also become obvious that there is a considerable connection between state and society which in turn emphasises the role of the societal dimension.

While the former two dimensions derive directly from the present analysis, another dimension – ‘cognitive or mental maps’ – emerged more implicitly. Although, as noted above, it is not possible to speak of ‘deterministic institutional models’ as they do not narrowly determine policy outcomes, those models nevertheless appear to have a fundamental impact on the types of solutions considered by the various actors when faced with problems or, more generally, as regards the development of a policy field.

The three categories – institutional resources and opportunity structure; cognitive and mental maps; and the societal dimension – are incorporated into the present analysis of the higher education policy fields in Canada and Germany and also imply avenues for further, more conceptual investigation. Thereby they offer the opportunity of enhancing our understanding of federalism in practice and underline the view of federations as dynamic systems characterised by a constant search for balance.²

Institutional resources and opportunity structures

While not exclusively focusing on the formal political framework of the two federations, one of the central aspects of this study is the impact of institutions on a particular policy sector. Thereby the basic implication is that institutions do matter. They matter because they create conditions that limit the directions for development of a particular sector, especially after initial policy choices are made.

The example of the policy choice of Ottawa after the Second World War illustrates this condition. Its overemphasis of the application of the power of the purse offered a less stable position within higher education than a more formalised engagement would have provided. Hence, its ability to defend itself against the provinces claiming their constitutional responsibility was quite limited and consequently Ottawa was pushed out of the general financing of higher education. Because of this development the opportunities for a federal role were restricted to more narrowly defined sectors within higher education (research, student financing).

In the German case, the institutional conditions both limited federal involvement and provided the grounds for future developments. Yet, for this potential of the institutions to unfold, it required a somewhat unique situation as represented by the 1969 constitutional amendments. This not only resulted in the introduction of a prominent federal role but also created the basis for a coherent national higher education policy. This again had a fundamental influence on the

² Despite its importance the economic dimension and other pressures resulting from the wider environment, are not specifically outlined anymore. These aspects do not manifest a particular federal dimension. This, of course, does not imply that they should be ignored; they rather should be an underlying aspect in the application of the following categories.

flexibility – or rather the lack of it – of the policy sector. In this regard, Canadian higher education certainly represents a more flexible policy area. Whether it is therefore also more efficient cannot be answered here although a higher degree of flexibility would normally imply a greater efficiency of at least some parts of the sector. Further research might provide an answer to this question.

Cognitive and mental maps

In their portrayal of the relevance of historical institutionalism, Thelen and Steinmo (1992: 27) argued that “institutional choices can shape people’s ideas, attitudes and even preferences”. While this further indicates the importance of the above category of ‘institutional resources and opportunity structures’, it also hints at another dimension which could be called ‘cognitive and mental maps’. For example, Robert Harmsen (2000: 78) in his discussion of Europeanization and its impact on governance, comes to the conclusion “that the study of institutions and organizations cannot be divorced from a carefully contextualized understanding of the cultures within which such structures are embedded”. More specifically this view implies that the behaviour of actors is not only shaped by the institutions (and their resources and opportunity structures) within which they interact, but also by differences in administrative cultures based on distinguishable sets of values and practices (Harmsen, 1999: 85). This condition in turn can be described by the new institutionalist concept of the ‘logic of appropriateness’ as identified by March and Olsen (1989: 21-39). Generally the logic implies that there is a broader understanding within each national system of what represents ‘correct’ or ‘appropriate’ political forms, thereby emphasising a normative dimension. This is, for example, reflected by problems being confronted in terms of categories that fit into specific national institutional cultures. From this perspective, the interstate and intrastate models not only indicate different institutional cultures but also shape them. Therefore, although both case studies show recurring patterns in their development that could be partly explained by reference to the institutional resources and the opportunity structures, those patterns could also be seen as

resulting from the search for ‘appropriateness’ by the relevant actors in each of the two countries.³

The present study with its historical breadth can only suggest the existence of a predisposition of the actors as a result of the patterns of policy outcomes. Yet, the inclusion of this dimension of ‘appropriateness’ does offer a promising line for further contemporary and comparative enquiries. While this would require a more interview based method, it could look for arguments that either underline the logic of appropriateness or search for evidence that might indicate actor behaviour which goes beyond the ‘familiarity approach’. Based on this, the concept of appropriateness might offer a greater insight into the ‘cultural dimension’ affecting the behaviour of the actors within each system. After all, both countries do represent different cultures and traditions that shape behaviour and attitudes, affecting how problems are conceived.

Taking the above a bit further and applying a slightly different perspective, national cultures and the perception of problems also represent different attitudes towards the function and the role of the state.

This attitude, for instance, is reflected in general principles such as the previously discussed (former) German constitutional provision of ‘uniformity of living conditions’. While its implications and meaning have already been explained a few times within this study, the comparison with the Canadian concept of ‘equalisation’ could be further problematised and thereby offer more room for explication. In contrast to the German constitutional principle of (latterly) the provision of ‘equal living conditions’, ‘equalisation’ in the Canadian context is based on a political understanding, which was given a constitutional basis in 1982. From this perspective it also might be a relevant factor that shaped the development within higher education in Canada.

In a more detailed approach, the concepts behind ‘uniformity of living conditions’ and Canadian ‘equalisation’ could also directly be compared. Is, for example, the Canadian concept based more on the provincial capacity to ensure adequate standards of public services in contrast to the German idea of representing more the right of the people to access those services? This further

³ Compare with Harmsen, 2000: 59-62.

underlines a different cultural understanding of what should be provided by the state.

Societal dimension

The question of the impact of the society on the functioning of a federation is certainly not new. It was in particular William S. Livingston (1952, 1956) who already over 50 years ago argued against a then predominantly static and formal constitutional analysis of the functioning of federalism. Livingston's contributions marked the beginning of what became known as the sociological approach to federalism which pays more attention to the societal conditions within a federation. Yet, while this strain of thinking about federalism became very popular especially in the 1970s, authors like Alan C. Cairns (1977) started to re-emphasise the role of institutions in the shaping of the polity. However, Cairns' wider understanding of what constitutes institutions and a polity does differ largely from the more narrowly defined legal approaches of earlier institutionalists like K. C. Wheare (1963).

Presently, it is still possible to characterise contributions to the discussion as representing more an institutional tradition (see for example Thorlakson, 2000) or as being based on a society centred view (see for example Erk, 2003). However, at least amongst the 'new institutionalists' there prevails the recognition of the importance of integrating a societal perspective into the analysis of a political system. Especially historical institutionalism highlights this aspect by expressing the aspiration of building a bridge between both methodologies (see part One).

The more concrete examples of the importance of the societal conditions have already been outlined in section one of this Conclusion. While the incorporation of the societal dimension does not replace a focus on the formal institutional organisation of the state, this study indeed suggests – while leaving room for more investigation in this regard – that institutional and sociological methods are not competing approaches but should rather be seen as complementary analytical concepts within a historical institutionalist framework.

The present research project offered a analysis of two federations, Canada and Germany, which have been the subject of surprisingly little direct, systematic

comparison of the present length and depth. This is reflected by the focus on a more specific comparison of their higher education policy fields. Thereby the long-term observation offers a clear indication that the developments within the policy sector reflect an influence of the different formal organisations of the state – emphasised by the interstate and intrastate models of federalism. However, it is not only the federal organisation that matters. There are different factors that play a role and the influence of these factors (such as the societal dimension) varies over time. This not only underlines the importance of viewing federations as dynamic entities, but also indicates that the federation-defining balances are constantly shifting. This – besides a more specific enriched understanding of the functioning of the higher education sectors in Canada and Germany as result of the comparison – represents the main contribution of this thesis. It provides an extended example that the understanding of federalism is perhaps best advanced through the more detailed and sophisticated understanding of the practice of federalisms.

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