

coalition/minority government by the National Front led by Janata Dal. The council consists of the executive heads of governments of the centre, state, and Union territories plus six central ministers named by the prime minister. It is chaired by the prime minister and makes decisions by consensus, not by majority. The decision of the chairman as to consensus is final (Inter-State Council Order 1990, notified on 28 May 1990, Ministry of Home Affairs, Government of India).

The delayed implementation of the Inter-State Council under the constitution can partly be explained by the preference of Congress governments in the past to deal with intergovernmental matters in less comprehensive forums than an Inter-State Council or in ad hoc bodies outside the framework of the constitutional provision. For example, the government, under article 263 of the constitution, set up the Central Council of Health in 1952, the Central Council for Local Government and Urban Development in 1954, and the Council for Sales Tax and State Excise Duties in 1968. All these bodies are partially intergovernmental in scope. Then, the government established the National Development Council (NDC) for intergovernmental consultation and decision-making in the area of planned economic development in 1952 with its secretariat in the Planning Commission in New Delhi (Resolutions Constituting the National Development Council dated 6 August 1952 and Reconstituting it dated 7 October 1967, Cabinet Secretariat, Government of India). Both the NDC, representing the executive heads of the two levels of government, and the Planning Commission, consisting of experts and politicians named unilaterally by the Union government, were set up by Cabinet resolutions outside article 263 of the constitution. Intergovernmental matters are also regularly sorted out at ad hoc conferences of civil servants and ministers of concerned departments in New Delhi and state capitals. For example, the Union Ministry of Health and Family Welfare (HFW) convenes two annual meetings of Union secretaries and state ministries for formulation and implementation of intergovernmental policies and schemes (interview with A.R. Nanda, I.A.S., Union HFW Secretary, winter 2001). Another example was the convening in 1998 of a conference of education ministers and secretaries of states in New Delhi to discuss a new national education policy emphasizing Hindutva values.

NDC and ISC are two major intergovernmental agencies. The former was set up by Cabinet resolution by the Nehru government in 1952 as a matter of convention and the latter by a presidential order under

article 263 of the constitution during the National Front government in 1990. Neither of these two bodies is entrenched in the constitution in the sense of being written into the text itself by constitutional amendment. Thus, their operation is optional for the government of the day.

During the era of Congress dominance, the NDC was eclipsed by the Congress Party's parliamentary board overseeing the work of Congress governments at both the centre and in the states. Even during a multi-party system and coalition/minority governments since 1989, the NDC and ISC have not really come into their own, since parties in power in the states, including major regional parties, are partners in the federal coalition governments. With direct representation in the government, regional parties holding the reins of power in the states and their chief ministers, do not have much incentive to empower the intergovernmental forums. They use, through remote control, their representatives in the Union Cabinet instead to make their points in matters under exclusive federal or concurrent jurisdictions. This weakens the authority of the prime minister and the collective responsibility of the Cabinet, but the new breed of regional satraps stand to gain.

Additional reasons why the NDC and ISC have failed to emerge as the grand federal councils of "executive federalism" are that the bulk of fiscal Union-state arrangements are written into the constitution itself, supplemented by a five-year constitutional finance commission to recommend on the patterns of revenue-sharing; and central or national councils of health, local governments and urban development, water resources, sales tax and state excise duties, population, etc. are in place to deal with intergovernmental affairs in these policy areas. These bodies include Union and state ministers and officials who can commit their governments to the decisions made therein (Singh 2002a). Moreover, the *Inter-State River Water Disputes Act*, 1956, provides that disputes of this nature be referred to a tribunal on receipt of an application from a state and on satisfaction of the Union government that the dispute "cannot be settled by negotiations." The Union government has so far set up the Narmada Tribunal, the Krishna Tribunal, the Godavari Tribunal, the Kaveri Tribunal, and the Satluj-Jamuna Canal Tribunal. This mode of dispute settlement has generally been effective, except for the last two which have proved to be rather sticky. Finally, other forums such as the Zonal Councils and the North-Eastern Councils of intergovernmental scope have worked with some degree of regularity and usefulness at the regional level. Additionally,

on complex national issues, some prime ministers, notably Indira Gandhi and P.V. Narasimha Rao, have tended to convene the National Integration Council (NIC) founded by Prime Minister Nehru in 1962 in the wake of the Chinese aggression. The NIC is intergovernmental in scope as well as being representative of various aspects of civic life and business. Also, recourse is often made to all-party conferences on controversial issues of wide concern.³

There has recently been a new trend of growing interface between the private sector and state governments alongside the more regular interface of this nature between Union ministers and business groups. For example, the Punjab-Haryana-Delhi Chamber of Commerce and Industries (PHDCCI) organized the "Dynamic North: Vision and Action Conference" on 12 November 1999 in Delhi, which was attended by representatives of eight northern state governments. The conference underlined the point that states have to play an important role in the second phase of economic reforms and that the centre would not always be able to cover state deficits. States must manage their finances efficiently and attract private sector investment by improving the infrastructural facilities and services. In sum, contrary to some analyses (Sáez 2002, ch. 4), intergovernmental institutes are alive and well in India.

Union Agencies

The constitution makes provision for strong federal agencies, armed with considerable autonomy from governments at the centre and in the states. Among them are constitutionally entrenched agencies of the Comptroller and Auditor General of India, the Election Commission of India, and the Union and state public service commissions. All these agencies have responsibilities relating to the accounts, elections, and highest levels of civil services of both the Union and state governments. The incumbents of these offices have been guaranteed special constitutional protection as to their removal and emoluments. Their performance has generally been of a very high order, although the Bihar, Punjab, and Maharashtra Public Service Commissions have recently received bad press due to large-scale, corrupt practices in rigged examinations and venal public employments.

The Union Public Service Commission is responsible for the All-India Services (AISs). AISs are perhaps a unique feature of Indian federalism. They are federally recruited and trained by autonomous Union

agencies and allocated to the states and the Union (on deputation). Their antecedence goes back to the British Indian Civil Service, which in turn may be traced back, in terms of being the highest echelons of bureaucracy, to the Mughal *mansabdari* system and the Maurya *mahamatta* system. The decision to create the first two All-India Services — the Indian Administrative Service (IAS) and the Indian Police Service (IPS) — was taken at a conference between the Union home minister, Sardar Ballabhabhai Patel, and provincial premiers in October 1946 called by the interim Government of India. Under article 309 of the constitution, the Parliament enacted the *All-India Services Act*, 1951, empowering the Union government to make rules in consultation with state governments for the regulation of All-India Services. Article 312 (2) makes the services, IAS and IPS, “deemed to be services created by Parliament.” In consultation with the state governments, the Union government created a new All-India Service — Indian Forest Service — in 1966.

The tradition of having autonomous federal agencies established under the constitution prepared the way for autonomous statutory regulatory agencies when the market economy began in 1991.

Over the years there has been a tremendous proliferation of central agencies created by the Union government which have a significant impact upon centre-state relations, for example, the Reserve Bank of India (RBI), National Human Rights Commission (NHRC), National Minorities Commission (NMC), Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI), and a number of central paramilitary forces such as the Central Reserve Police Force (CRPF), Central Industrial Security Force (CISF), Railway Protection Force (RPF), National Security Guard (NSG), Border Security Force (BSF), Assam Rifles, and Indo-Tibetan Border Police (ITBP). Some of these agencies are created by Cabinet resolution, and some by parliamentary statutes.

In the backdrop of growing incidence of corruption and political vendetta, the judiciary in a recent historic judgement has intervened to lend greater autonomy from the Union executive's control to the CVC and CBI. (*Frontline*, 9 January 1998, p. 26).

Law and order being a state subject, state governments in the past have complained about deployment of central paramilitary forces in the states without their consent. But with the growing costs of maintaining law and order, the state governments are now demanding more and more deployment of central police forces within their jurisdictions.

Panchayats and Municipalities

Local political systems in India, after a "promising start," had been functioning unevenly in different units of the Indian federation. In 1993 local bodies were elevated from the statutory to the constitutional level. This was done by the seventy-third and seventy-fourth constitutional amendments (1992) relating to panchayats and municipalities respectively with a model legislation making it mandatory for the states to pass matching laws and holding regular elections under improved institutional and financial frameworks. A strong grassroots base would hopefully lead to a greater democratization and federalization of India. Panchayat Raj institutions have evoked a high degree of electoral participation. The seventy-third amendment is a pioneer in that it reserves one-third of the seats in the Panchayats for women (including the number of seats reserved for women belonging to the Scheduled Castes/Tribes), beginning a "silent revolution" (Mathew 1994). However, a qualitative transformation of local bodies into instruments of participatory and developmental agencies is yet to come. Nonetheless, it is more probable now than ever. In due course the Indian federal structure may become effectively one of three tiers of government.

Constitutional Amendments

The constitutional amendment procedure in India includes a flexible and centrally dominated process for territorial reorganization and incorporation, befitting a federation with previous internal boundaries dictated more by accidents of history than culture and geography. However, the core federal features of the constitution can only be amended by concomitant ratification by state legislatures. Judicial interventions and regionalization of the party system — both in Parliament and state legislatures — have further made constitutional amendments more difficult.

The federal provisions of the constitution may be amended by the following three procedures:

1. where it affects the admission or establishment of new states it can be done by simple legislative process by Parliament (article 2);
2. where it relates to the formation of new states and alteration of areas, boundaries or names of existing states it can be done by Parliament by the usual process of legislation but only after referring

the proposed bill to the affected state legislatures for expressing their views thereon (article 3); and

3. where it concerns the institutions of Union and state governments and division of powers and revenue resources between them, it can be done by Parliament by majority of the membership plus two-thirds majority of those present and voting in each House of Parliament and its ratification by the legislatures of at least half of the states (article 368).

The Indian constitution has been frequently amended but the changes have been rather marginal. In the judgements of the *Keshavananda Bharati* (1973) and *Minerva Mills* (1980) delivered by the Supreme Court of India, the amending power of the Parliament and/or aggregate legislatures have been forbidden to alter the "basic structure" of the constitution. The *Minerva Mills* judgement illustratively enumerates, among others, parliamentary federal features and judicial review as parts of the basic structure of the constitution.⁴

A "Federalarchy"?

Wheare (1964) pointed out an interesting contrast between the Canadian and Indian federations in the early 1960s by saying that although the constitution of Canada was quasi-federal, its governance had become federal in practice. However, in his assessment, both the constitution and government in India were quasi-federal. In my assessment, India by the 1990s had become more federal, as discussed below, despite its constitution, and the direction of this change continues into the new century. This change in federal functioning is largely attributable to two crucial factors, namely, the transformation of the Congress Party's dominance to a multi-party system of political pluralism with internal regional segmentation following the 1989 Lok Sabha election, and a new reorientation in judicial behaviour favouring an activist construction of judicial power supportive of the autonomy of states and human rights.

This federalization, however, has been reinforced by the economic liberalization in the 1990s and India's escalating integration into the global economy. With increasing deregulation and partial or full privatization of sectors of the economy, the administrative federal state is changing into a regulatory federal state, a theme to which we return in a subsequent

section. Independent regulatory authorities under Union and state statutes are being created in sectors such as electricity, telecom, finance, etc., giving rise to a phenomenon called "sectoral federalism."⁵

Institutions of federal relevance like the president and the governors, intergovernmental agencies like the National Development Council and Inter-State Council (Saxena 2001), and Union agencies such as the Election Commission of India are much more autonomous and federally oriented in their role today than ever before (Mitra 1998, ch. 5). Moreover, the prime minister and his Cabinet colleagues, indeed the Parliament itself, today function in a more amicably federal configuration with significant participation of regional parties in state governments and Union coalition and/or minority governments (Singh 2001). Even the parliamentary component of the government is generally more receptive to federal sensibilities and interests, which is evident in the differentiated party configuration in the popular and federal chambers of Parliament. These effects are reinforced by the coalitional and/or minority nature of the governments in India since 1989, although the federal coalition governments got off to a very unstable and bumpy start under the Janata Dal-led National Front government, which consisted of regional parties in the Cabinet coalition supported by the Communist parties and the Hindu Right BJP.

One particularly telling indicator of the increased federalization in the 1990s is a definite decline in the incidence of president's rule in states during the decade (Singh 2002a). And this is despite the pressures on the governments in New Delhi by coalition partners to dismiss the governments of their adversaries in the states to settle political scores.⁶ The manipulation of president's rule in states by the party or parties in power at the centre is made particularly difficult now. In the prevailing long tradition of gross misuse of this power by Union governments, irrespective of parties in power, the court has ruled that while the "satisfaction" of the president regarding the "breakdown of constitutional machinery" in a state contemplated in article 356 is "subjective in nature" to be exercised on Cabinet advice, it is a "conditional" rather than "absolute" power exercisable on the basis of some "relevant material."⁷

The process of federalization has been caused as well as conditioned by a phenomenal increase in the power of the judiciary in India. This trend is also reinforced by evident inactivity on the parts of the executive and legislative branches of governments. The court's power, of course,

predates the federal thrust in the 1980s, especially since 1990. It was first in the late 1960s, when judicial activism on fundamental rights was initially seen, that a mild and brief wave of federalization was triggered by the defeat of the dominant Congress Party in the north Indian states in 1967. The judgement in *Golak Nath v. State of Punjab* (AIR, Supreme Court 1967, p. 1643) was delivered within days of the electoral result. Judicial activism receded during Indira Gandhi's authoritarian emergency regime, especially after the habeas corpus decision (1976), which conceded an unqualified power of the executive over life and liberty. The end of the emergency regime in 1980 "allowed the court to invite and collaborate with, especially, a complex of social movements, social activists, socially committed academics and investigative journalists in constructing its constituency" (Ramanathan 2002, p. 30). In the 1990s the court's activism expanded to target corruption in public life and to articulate environmental concerns in cities and elsewhere. However, confronted with conflicting interests, the court was faced with the dilemma of deciding which interests should be allowed to prevail. Evidently the court is liable to get drawn into political controversies, especially since there has been a tendency to become converted into "a gigantic clearinghouse of all [kinds] of major political questions."

It is an indicator of the temper of the times that the recommendations of the Sarkaria Commission Report on Centre-State Relations (1987-88)⁸ for a more federally informed role on the part of the government functionaries has, after gathering dust for a period now returned to the forefront. Party system transformation, judicial intervention, federal empowerment of the constitutional functionaries, plus parliamentary empowerment of the speaker(s) has brought this miracle about.

In the period since the 1989 Lok Sabha election there has been a string of seven coalition/minority Union governments, more often both, punctuated by three mid-term elections (1991, 1998, and 1999) and one regular one (in 1996). These elections witnessed frequent electoral swings and realignments and shifting inter-party coalitions ranging from left-of-centre to right-of-centre. All these coalition governments have been minority dispensations, except the second Vajpayee government which is a majority, coalition arrangement. The number of parties participating in these coalitions have been as follows: National Front (1989-91), five; United Front (1996-98), ten; National Democratic Alliance (1998-99), 13; National Democratic Alliance (1999-to-date), 24. The NF and UF

may be characterized as left-of-centre and NDA, right-of-centre. It is difficult to neatly characterize the Rao Congress regime (1991–96) as in the past the party was broadly left-of-centre, but it pioneered in initiating neo-conservative economic liberalization reforms in 1991 as a minority dispensation in the midst of a serious balance-of-payments crisis. Under successive coalition governments economic reforms have continued, with a slower pace by the UF (whose Cabinet or parliamentary allies included Communist parties adhering to economic nationalism), and faster by the NDA (in spite of BJP's professed commitment to protectionist *swadeshi* — Indian industries first).

All these federal, coalition governments have included regional or state parties alongside national ones. Major regional parties ruling in some states have kept their top leaders in state politics as chief ministers (e.g., J. Jayalalitha, M. Karunanidhi, N. Chandrababu Naidu, Prafulla Kumar Mahanta, Prakash Singh Badal, Farooq Abdullah, Naveen Patnaik) and sent second-rung leaders to join the Union governments whom they could attempt to control from the state capitals. This has often weakened the Union prime minister and the collective responsibility of the Cabinet to the Lok Sabha, particularly at a time (1990–2002) when the presidents happened to be leaders with a Congress past elected as multi-party consensus candidates, and the Rajya Sabha has been dominated by parties (mainly Congress) sitting on opposition side in the Lok Sabha. This has provided an exceptionally federalized matrix in Parliament and the state legislatures, and Union and state executives. Combined with an activist judiciary, this setting has made it possible for a regime that can only be described by a neo-logism, namely, "federalarchy."

Fiscal Federalism

Under the constitutional provisions and the processes of planning introduced in the early 1950s, fiscal federalism in India has been a highly centralized affair. Fiscal transfers from the centre to the states are made by the centre on the recommendations of the Finance Commission appointed every five years by the president of India (under article 280 of the constitution) and of the Planning Commission (a non-statutory central agency set up by Cabinet resolution in 1950). By and large, constitutionally sanctioned plan and non-plan transfers, are made on the recommendation of the Finance Commission, whereas other substantial transfers, often called

discretionary, are made by the Planning Commission. The discretionary transfers include grants for state plans, allocation of finances from public financial institutions set up under the *Companies Act*, 1956, like the Life Insurance Corporation, General Insurance Corporation, and Unit Trust of India; loans and grants, and disaster reliefs; and grants from the Central Road Fund for maintenance of national highways.

Finance Commissions have enjoyed a considerable degree of legitimacy in federal relations as a constitutional body with mixed membership consisting of retired politicians, experts, and bureaucrats, more so than the Planning Commission, which is mainly a body of bureaucrats and politicians. The role of the Planning Commission has become partly diluted under the accelerating economic liberalization since 1991, but it has managed to survive these reforms as a government think-tank and an agency coordinating the relationship between the governments and the private sector: domestic and global. With the decline in public investment in economic liberalization at Union and state levels and gradual deregulation and privatization, there is less for the Planning Commission to plan. According to an official of the Commission, it does one-third of what it used to do.⁹ "During the heyday of planning, [the government] attempted to implement the Plan objectives, but since 1991 the budget has been the main forum for articulating the strategy of [economic] transition" (M.G. Rao 2002, p. 10).

Despite its wider legitimacy, even the Finance Commission reports appear to reflect changes in electoral equations and party system transformations. For example, beginning with the fourth Finance Commission Report (1965) there was a trend of increasing the net proceeds of non-corporate income tax distributed to the states: from 60 to 75 percent (Rao and Chelliah 1996a, Annexure I). This happened around the 1967 general elections in which the hitherto dominant Congress Party lost in half of the then 16 states. Furthermore, in the distribution of the states' share in the net yield from Union excise duties, the percentage of the states' share jumped from 20 to 45 in the seventh Finance Commission Report (1978) (Rao and Chelliah 1996a, Annexure II). This happened after the Congress Party suffered its first electoral defeat in the 1977 Lok Sabha election. Thus, the pattern of devolution of the two major taxes — the only ones shared between the centre and the states before the eightieth amendment to the constitution in 2000 — subtly reflected the new political realities of the

transformed party systems in the states and in the Union under federal coalition governments with strong regional representation. After the constitution's (eightieth) amendment (2000) the Union's entire tax revenue receipt became shareable with the states. The eleventh Finance Commission (2000–05) fixed the aggregate share of the states in the centre's divisible pool at 29.5 percent.¹⁰

The transfer of fiscal resources by the centre to the states had been heavily weighted in favour of more populous and economically backward states. Beginning with the tenth Finance Commission (1995–2000) the formula for transfer has been revised to a limited extent to reward efficiency and performance by the states. But the more developed states clamour for more revision. Economic liberalization and federalization have been reducing the capacity of the centre to curb regional economic disparities, which may be aggravated further in the years ahead.

Moreover, the eleventh Finance Commission also recommended the transfer of Rs. 1,600 crores and Rs. 400 crores for panchayatas and municipalities respectively to the states from the centre (Report of the eleventh Finance Commission for 2000–2005, paras. 6.16 and 8.27). This was the first occasion that a Finance Commission devoted a full chapter in its report to the problem of fiscal transfers to the local bodies. The seventy-third and seventy-fourth constitutional amendments since 1993 also require each state government to appoint a state Finance Commission to consider and make recommendations on the financing of local self-governing institutions.

INDIA'S GLOBAL AND REGIONAL INTEGRATION

For historical and contemporary reasons India's global and regional integration has been limited. Earlier committed to the policy of national self-reliance, even today India is a cautiously and gradually globalizing country. Indeed, the East Asian financial meltdown (1997), which affected India less severely, has reinforced its cautious approach. Because of regional tensions and the fear by South Asian countries of India's dominance in the region — which does not, however, result in an anti-India action — even regional integration of India via the South Asian Association for Regional Cooperation (SAARC) is limited. Nevertheless, being centrally placed, India shares land or sea borders with all its South Asian neighbours, which, in turn, generally do not have common borders.

India's global trade data are presented in Table 2. Computing percentages on the raw statistics, we find that India's largest exports in 1998 (the year for which complete figures are available) were with the industrial countries: 56.56 percent. Its largest imports were from developing countries: 51.36 percent.

As a region, South Asia is comparatively more integrated in global than in regional terms. Even though the entire region has a common Indian civilizational heritage and a common British hegemony in the late nineteenth and first half of the twentieth centuries, South Asia today is more pulled apart than pulled together. Early efforts by the British Commonwealth of Nations to promote regional cooperation among South and Southeast Asian nations in the 1950s in the form of the Colombo Plan soon petered out (Mendis 1991, pp. 1-2). Another major move in this direction was late in coming. SAARC was organized in 1985. Although it has survived so far and made some progress both in terms of institutionalization — it has now a common secretariat located in Kathmandu — and trade relations, it is constantly plagued by bilateral issues of conflict, especially between India and Pakistan and mostly over Kashmir. It has so far held nine summits marked by considerable enthusiasm and rhetoric. But the summit for 2000 was postponed because of the Kargil war between India and Pakistan and the subsequent military coup in Pakistan.

Security concerns in South Asia are festering thorns in the regional flesh. While India has been inclined to keep external powers out of the region, some South Asian countries are receptive to them as counterpoise to India's dominance in the region (Mendis 1991). Under President Clinton, the United States shifted its South Asia Policy toward India, recognizing India's preponderance in the region to block Islamic fundamentalism and China in Asia and the world at large, although the United States was forced to work closely with Pakistan in its post-9/11 anti-terrorism policy.

Intra-SAARC trade has been limited and to an extent was even declining until 1989 (Chisti 1994, p. 231). However, there was a major breakthrough in trade relations among the SAARC members with the signing of the South Asian Preferential Trade Agreement (SAPTA) at the seventh SAARC summit in Dhaka in 1993. With all the member countries having ratified the agreement, SAPTA went into effect on 7 December 1995, the date marking the completion of the first decade of SAARC's existence. India's total, as well as preferential, trade with Sri Lanka, Bangladesh, and Pakistan in 1996-97 were

TABLE 2

India's Global Exports and Imports, 1998 and 1999
(millions of US dollars)

	<i>Exports</i>		<i>Imports</i>	
	1998	1999	1998	1999 ¹
World Total				
IFS Data ²	33,626	26,829	42,742	32,806
DOTS Data ³	36,674 ¹	28,704 ¹	43,409 ¹	33,303 ¹
Industrial Countries	20,742 ¹	16,733 ¹	20,922 ¹	15,394 ¹
Major Partners				
United States	7,682 ^T	6,539 ¹	3,968 ^T	3,045 ¹
Canada	574 ^T	523 ¹	240 ^T	212 ¹
Australia	415 ^T	316 ¹	1,526 ^T	817 ¹
Japan	1,888 ^T	1,518 ¹	2,659 ^T	1,949 ¹
Belgium	1,223 ^T	993 ¹	2,827 ^T	2,631 ¹
France	1,002 ^T	817 ¹	857 ^T	692 ¹
Germany	2,118 ^T	1,579 ¹	2,411 ^T	1,630 ¹
Italy	1,244 ^T	940 ¹	1,202 ^T	948 ¹
Netherlands	689 ^T	560 ¹	472 ^T	420 ¹
United Kingdom	2,090 ^T	1,585 ¹	2,397 ^T	1,940 ¹
Developing Countries	15,226 ¹	11,508 ¹	22,296 ¹	17,737 ¹
Major Partners and South Asia				
Nigeria	197 ^T	133 ¹	1,115 ^T	834 ¹
Bangladesh	1,038 ^T	852 ¹	65 ^T	44 ¹
China PR: Mainland	858 ^T	554 ¹	1,192 ^T	846 ¹
China PR: Hongkong	1,703 ^T	1,507 ¹	690 ^T	855 ¹
Indonesia	543 ^T	402 ¹	740 ^T	566 ¹
Korea	522 ^T	379 ¹	1,793 ^T	1,323 ¹
Malaysia	399 ^T	339 ¹	2,059 ^T	1,299 ¹
Nepal	324 ^T	238 ¹	147 ^T	103 ¹
Pakistan	137 ^T	104 ¹	217 ^T	159 ¹
Singapore	553 ^T	480 ¹	2,496 ^T	2,042 ¹
Sri Lanka	534 ^T	378 ¹	45 ^T	37 ¹
Europe	1,445 ¹	1,066 ¹	1,214 ¹	1,265 ¹
Russia	633 ^T	409 ¹	693 ^T	803 ¹
Middle East	3,583 ¹	2,558 ¹	6,898 ¹	5,046 ¹
Western Hemisphere -Latin America	767 ¹	536 ¹	727 ¹	803 ¹
Oil Exporting Countries	3,506 ¹	2,493 ¹	7,384 ¹	5,493 ¹
Non-Oil Developing Countries	11,719 ¹	9,015 ¹	14,912 ¹	12,245 ¹

Notes: 1. Data available for the first three-quarters of the year.

2. Data published in *International Financial Statistics*.

3. Data published in *Direction of Trade Statistics*.

¹Consolidated data estimated by other methods, sometimes including the use of partner records; also used in world and area totals.

^TOne to five months of reported data and 7-11 months of estimates.

¹Consolidated data derived solely from partner records.

Source: IMF (2000, Intro. and pp. 121-22).

balanced in the sense of exports paying for the imports, except for a deficit (Rs. -555.75 millions) in preferential trade with Bangladesh.

There is considerable contact and movement of people across the borders in South Asia despite cross-border terrorism from Pakistan against Indian and Tamil separatist activities in Sri Lanka. India is indeed afflicted with illegal migrants, especially from Bangladesh, Nepal, and Pakistan. There is a regular bus service between India, Nepal, Bhutan, and Bangladesh. Pakistan has train service, now supplemented by bus. This service opened with much fanfare and the Indian prime minister, Atal Behari Vajpayee, travelled to Lahore in the spring of 1999. This goodwill has subsequently been threatened by the Kargil war in the same year and by the strained relations following the allegedly Pakistan-supported terrorist attacks on the Assembly in Srinagar and Parliament in New Delhi in the winter and spring of 2002. Well-meaning Indians and Pakistanis believe that the cold war between the two governments can be contained by Track-II Diplomacy at the personal level. Furthermore, after its war in Afghanistan, the US has attempted to reduce the influence of militant Islamic groups in Pakistan, including groups fighting against India in Kashmir.

The extent of global trade links in South Asian countries is evident from Table 3. India, due to its sheer size, naturally accounts for the largest global exports and imports in gross terms, both in merchandise and commercial services. However, when we consider the figures for the export of the percentage of total manufactured goods, all South Asian countries represented here are ahead of India. In view of the large domestic market in India, this is to be expected.

THE IMPACT OF GLOBAL AND REGIONAL INTEGRATION

State and Market

Since economic reforms in India were necessitated by a severe balance-of-payment crisis in 1991, we may start our discussion here with the impact of these reforms on this aspect of Indian economy. Although the country's exports expanded in the 1990s — from \$23,028 million (7.13 percent of GDP) in 1990 to \$47,419 million (10.31 percent of GDP) in 1998 — its imports expanded more rapidly — from \$31,485 million (9.75 percent of

TABLE 3
Global Trade Links in South Asia

Country	Merchandise		Merchandise		Merchandise Trade Balance	Export of Commercial Services Millions of \$	Import of Commercial Services Millions of \$	Trade Balance in Commercial Services
	Millions of \$	Mfg. % of Total	Millions of \$	Mfg. % of Total				
India	33,626	74	42,742	55	-9,116	11,067	14,1902	-3,125
Pakistan	8,594	84	9,415	55	-821	1,473	2,468	-995
Sri Lanka	4,735	*	5,917	**	-1,182	888	1,325	-437
Bangladesh	3,831	91	6,974	69	-3,143	252	1,180	-928
Nepal	474	90	1,245	42	-771	433	189	244

Notes: 1. Data about Bhutan and Maldives are not available in the source.

2. Data regarding Mfg. of total merchandise exports and imports in relation to Sri Lanka are not available for 1998. However, the missing values here for 1990 were 54 and 65 respectively.

3. Trade balance computed from data available in the source.

Source: World Bank (2001, pp. 312-13, Table 20).

GDP) to \$59,138 million (12.90 percent of GDP) in the same period (World Bank 2001, Table 15, p. 302). Thus, the adverse trade balance worsened from \$-8,457 million in 1990 to \$-11,719 million in 1998. But India's gross international reserves position considerably improved from \$5,637 million in 1990 to \$32,667 million in 1999 (World Bank 2001, p. 302).

There was an increase in India's GDP from \$322,737 million in 1990 to \$459,765 million in 1995. The structure of output in the economy has also been changing. The share of agriculture in the GDP declined from 31 to 28 percent, but so have the shares of industries and manufacturing — from 27 to 25 percent and 17 to 16 percent respectively. The service sector (including freight, insurance, travel, transport, communications, and financial services) is now the largest component of the economy: 42 percent in 1990 and 46 percent in 1999 (World Bank 2001, pp. 296-97, Table 12).

The impact of economic liberalization is also evident on the Indian economy in the growing share of private investment in the gross domestic fixed investment (up from 56.7 percent in 1990 to 70.1 percent in 1997), higher stock market capitalization (up from \$38,567 million in 1990 to \$184,605 million in 1999), a jump in the number of listed domestic companies (from 2,435 in 1990 to 5,863 in 1998), and a hike in foreign direct investment (from \$162 million in 1990 to \$2,635 million in 1997). The state subsidies as a percentage of the total expenditure have also registered a modest decline from 43 percent in 1990 to 40 percent in 1999 (*ibid.*, pp. 304-07).

India's global as well as its regional integration has still been rather limited. Its failure to globalize may be largely explained in terms of its inability to control the fiscal deficit (-7.5 percent in 1990 and -5.2 percent in 1998) (World Bank 2001, Table 14) and break the stagnation of the economy, and secondly, its failure to bring about conditions of sustainable economic growth reflected in a very slow change in the composition of its export and low and declining rate of foreign direct investment (FDI). In 1990-91, the year before the acceleration of economic reforms in 1991, India's exports were dominated by agricultural goods (24 percent) and light manufacturing products (54.2 percent); sophisticated manufactures formed 21.8 percent. By 1999-2000 the share of agriculture declined to 17 percent, light manufacturing remained at 54.2 percent, while sophisticated manufactured commodities had registered only a modest increase, moving up to 29.8 percent. FDI inflows

also were very tardy. Between 1991 and 1998, they actually reached only 21.7 percent of the \$55 billion of FDI approvals. Except for some investments in telecommunications and the final failure of Enron's Dabhol power project, the bulk of this inflow stopped short of establishing new enterprises exporting to global markets. Instead, the inflows were used to gain a majority share in existing foreign enterprises still hooked onto the huge Indian market (Jha 2002, p. 16). India failed to attract foreign investment despite its low labour costs because it could not supplement this advantage "by creating the infrastructure and institutions of advanced capitalism in the country as a whole," nor has it "tried to do so in the limited area of special economic zones either" (ibid.). Besides opening up a decade earlier than India, China was assisted by its diaspora with expatriate investment which pioneered export-led growth in labour-intensive manufacturing in Taiwan, Hong Kong, and Singapore. Later, when wages rose steeply in these locations, industries moved into China bringing huge amounts of foreign investment. This Chinese experience was not replicated in India — neither in terms of phase nor volume (Srinivasan 2002, review in *The Hindu*, 30 April 2002, p. 17).

India's integration within the region is limited due to inter-state rivalries and backward national economies in a backward region. Barring limited enclaves of affluence, mass poverty is considerable in all South Asian countries. The percentage of the population below the national poverty line is quite sizeable. Due to this degree of mass poverty as well as low productivity South Asia Preferential Trade Agreement (SAPTA) has not really picked up. Despite reducing preferential tariffs by India at a rate faster than its regional partners, there is no surge in imports "partly due to inelasticity of supplies in exporting countries" (Mukherji 2001, p. 306). Kewal *et al.* point out why South Asian Free Trade Agreement (SATA), which is to follow SAPTA, may not be a big deal. For the exports of almost all the economies of the region largely consist of the same kind of products, for example, agricultural commodities and basic manufactures. So there is little scope of mutual trade, trade complementarity, and intra-trade linkages.

Federal Institutional Innovations

There has been a greater impact of global than regional integration on the Indian federal system. The effects of economic reforms and trans-

nationalization are evident in areas such as industrial delicensing; financial sector reforms in banking, the stock market, and the insurance sector; telecommunications; electricity; mass media; etc.

Moreover, through a more open communications policy — the open skies of the 1990s in the field of electronic mass media — globalization has simultaneously affected cultural identities in favour of global and local cultures and weakened the national culture with its centralizing overtones. Until the 1980s the official electronic media played a strong centralizing role in India. Though their regional stations in the states catered to local languages, there was considerable national content in their news. Now the field is wide open to national as well as international private TV channels as well as direct-to-home telecasts (DHT). Book printing has opened up in India, though newspapers and magazines are excluded from foreign ownership by a 1955 Cabinet resolution of the Nehru government. Debates have often been triggered by the central government's intention to liberalize the print mass media as well, but it continues to be restricted.¹¹

An analysis of the impact of economic reforms on federalism must take into account the Seventh Schedule of the constitution dealing with the division of powers and revenue resources between the centre and the states. For example, industries figure in Union, State, as well as Concurrent Lists. Entries seven and 52 of the exclusive Union List include industries declared by the laws of Parliament as "necessary for the purpose of defence or for the prosecution of war" and "expedient in public interest" to be under the control of the central government. Subject to the above limitations, industries are on the exclusive State List, entry 24. However, factories are on the Concurrent List under entry 36. Economic and social planning is entry 20 of the Concurrent List. In the era of centralized development planning, industry was heavily under the control of the Government of India. Gradual deregulation of industrial licensing has provided a new opening to the state governments which now compete with each other to invite industrialists, both Indian and foreign, to invest in their states. The capitals of more developed states are now frequent destinations for visiting foreign dignitaries, including former US President Bill Clinton and World Bank President James D. Wolfensohn, along with many industrialists. Even the backward states offer incentives of expeditious land acquisitions, tax holidays, and "congenial" labour relations to those willing to locate their industries there. A few years ago, the

Government of Maharashtra hosted a conference of Australian entrepreneurs in Mumbai. In 1996 the United Front finance minister, P. Chidambaram, goaded by Telugu Desam Chief Minister Chandrababu Naidu, decided to have the World Bank focus directly on the states with the centre only playing the role of facilitator. In November 2000 Wolfensohn, during his visit to India, spent more time in the states than in New Delhi! Jenkins (1999, pp. 134-35) cites the fierce competition between the relatively developed states of Tamil Nadu and Maharashtra to induce the location of the Ford Fiesta assembly plant in their respective territories with Tamil Nadu finally winning in 1996. The estimated sales tax concessions offered to that multinational alone were placed at Rs. 2.9 billion. Deregulation in this area has notionally increased the autonomy of the states and reduced the centre's relative powers. But the competitive disadvantage suffered in this area by backward states is likely to worsen regional economic disparities even more than at present.

India's integration within has not produced any great impact on its federal institutions, except for some consultative role for the states in external matters of direct concern to them. Examples are Kerala in relation to the coffee trade, West Bengal in relation to the jute trade and the sharing of international river waters with Bangladesh, Bihar in relation to Nepal, and to Tamil Nadu in relation to Sri Lanka.

Globalization has had a mixed impact on the process of federalization in India. On the one hand, economic liberalization increases the autonomy of not only the private sector but also the state governments in the area of economic activities. On the other, when the central government signed the international trade agreement at the conclusion of the Uruguay Round of global trade negotiations and joined the World Trade Organization (WTO) in 1995 it bound the states in the Indian Union as well to the treaty obligations thus entailed. True, international trade is a Union jurisdiction, but some international multilateral treaty obligations such as the reduction of subsidies in agriculture, a state subject, also circumscribe the policy options of state governments. For the states cannot institute divergent policy regimes even in their exclusive jurisdictions functionally intermeshed with concurrent and Union subjects. Two cases — one each from the states of Tamil Nadu and Punjab — are pending before the Supreme Court precisely on the point of treaty-making power of the Union in the wake of the WTO regime.¹²

Since telecommunications, the stock market, insurance, and electronic mass media are Union areas, institutional innovations like the Telecom Regulatory Authority of India (TRAI), the Insurance Regulatory Development Authority (IRDA), and the Security and Exchange Board of India (SEBI) created under Acts of Parliament in the 1990s are central agencies with considerable autonomy from the government. The state governments have no role in them, but the entire economy is affected by these regulatory authorities. TRAI and IRDA regulate the pace of privatization as well as arbitrate conflicting interests of governments, the private sector, and consumers either themselves or through appellate tribunals set up under the Acts, subject to judicial review.

Another similar institutional innovation was introduced by the *Information Technology Act*, 2000, in response to the "need for legal changes" required by "the new communication systems" such as electronic commerce that "eliminate the need for paper-based transactions" "which should bear signatures" (Introduction to the Act, p. 1). The Act confers legal recognition on digital signatures and electronic records. As a signatory to the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law in 1996, India has now fulfilled its obligation to make suitable changes in its trade laws. The Act empowers the central government to frame rules and regulations in regard to e-commerce which would become effective after publication in the *Official Gazette* or *Electronic Gazette*. It also provides for the appointment of a Cyber Regulations Advisory Committee by the central government.

The *Information Technology Act* does not create an independent regulatory authority like, say, TRAI. The central government itself has reserved the authority to make regulations that are required to be placed before Parliament for approval, without, however, jeopardizing the validity of anything previously done under that regulation. However, the Act provides for the setting up of the Cyber Regulations Appellate Tribunal (CRAT) with considerable autonomy. The awards of the tribunal are subject to judicial review. Article 90 of the *Information Technology Act* prompts the state governments to make rules to carry out the provisions of the Act which are subject to approval by the state legislatures.

Proposals to create central regulatory authorities are being worked out for oil and gas as well as for coal. Political economists are already sounding warnings to avoid conflict between regulatory authorities in

closely interlinked sectors of the economy. The report of the competition committee, appointed to study the anti-competitive behaviour of firms, has recently proposed a new competition regulatory commission, whose jurisdiction must avoid inherent conflict with other regulatory commissions. In the opinion of one observer: "The correct thing would have been to make them part of one regulatory commission. But the bifurcation of ministries in the Union government will prevent this obvious correction." This analyst goes on to lament "a continuing lack of clarity about the respective roles of the Comptroller and Auditor General (CAG) and the industry regulators created for the purpose of regulating tariffs" (S.L. Rao 2002, p. 6).

The most interesting developments involving the centre and the states alike have occurred in the era of economic liberalization in the power sector. Electricity is included in the Concurrent List, while taxes on the consumption or sale of electricity are part of the State List in the Seventh Schedule of the constitution. Economic reforms have brought power sector reforms onto the active agendas of governments and business. The central government convened two conferences of chief ministers on this issue. The consensus arrived at in these meetings led to the adoption of the Common Minimum National Action Plan for the power sector. This plan considered it "necessary to create a regulatory commission as a step to arrest deteriorating conditions of the State Electricity Boards and to make plans for the future developments" (Introduction, *Electricity Regulatory Commissions Act* 1998) (ERC Act).

The electricity sector in India was developed until recently as a government monopoly. Over the decades it has run into a serious crisis situation. The Statement of Objects and Reasons to the first major parliamentary enactment, the ERC Act (1998) mentioned above, listed the following as the "fundamental issues" relating to the power sector: "the lack of rational retail tariffs, the high level of cross-subsidies, poor planning and operation, inadequate capacity, the neglect of the consumer, the limited involvement of private sector skills and resources and the absence of independent regulatory authority." As the first step in institutional reform, the Act set up the Central Electricity Regulatory Commission (CERC) as a corporate body consisting of a chairperson and three other members appointed by the central government on the recommendation of an independent selection committee. The incumbents of CERC are required to be persons with knowledge and experience and capability in

the fields of engineering, law, economics, commerce, finance or management. The chairperson is to be appointed from amongst persons who are or have been judges of the Supreme Court or Chief Justices of a high court. All appointments to the commission are to be made only after consultation with the Chief Justice of India. The Act takes care to ensure the independence and autonomy of the chairman and members of the commission by guaranteeing them security of service and emoluments.

The CERC is empowered by the Act to regulate the tariffs of electricity-generating companies in the central government sector, including those that are part of composite schemes for generation and sale of electricity in more than one state. It also regulates inter-state transmission of energy. In the new climate of experimentation with disinvestment and privatization the CERC is expected "to promote competition, efficiency and economy in the activities of the electricity industry" (clause 13, section d of the Act). The Act also provides for a 31-member central advisory committee giving representation to the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organizations, and academic and research organizations in the field. Appeals against the decisions of the commission to the high court is permissible. The Act also enabled the state governments to set up State Electricity Regulatory Commissions to ensure their integrity and autonomy to depoliticize the pricing and distribution of power.

Following the establishment of CERC in 1998, several states also set up SERCs. The process is still under way. After a series of formal and informal consultations the central government convened a meeting of power ministers in February 2000. The centre's proposal for federal legislation ensuring uniform patterns and standards was resisted by several states. Yet there was some consensus in favour of the centre's recommendation for "unbundling" and trifurcation of the State Electricity Boards (SEBs) mired in the populist politics of ruling parties in states and resulting in huge subsidies, heavy theft and loss of electricity in transmission, and predatory trade unionism among the employees. Trifurcation aims at entrusting generation, transmission, and distribution of electricity to separate corporations, some private and some public.

Citing the lack of public funds for investment in the power sector, privatization is parroted by governments as the solution. But there are few who are interested in privatization. There is not only an economic but also a political dimension to the problem involved. This is illustrated

by the classic case of the Dabhol power project in Maharashtra undertaken by the US company Enron. The power sector in Maharashtra is one of the most advanced utility suppliers in the country. But even there Enron started operating only after getting a counter guarantee from the Government of India as well as from the state government. The Enron project, although sanctioned by a Congress government in the state, was cancelled by the Shiv Sena-BJP government that was subsequently voted to power. However, the successor government finally renegotiated the deal with some changes. Enron went into operation, but the Maharashtra government wanted another review as the company's electricity was very expensive, nearly double the prevalent rate in India. Enron withdrew, and later went out of business for reasons not exclusively related to its Indian venture.

There is an interesting success story of a domestic private sector company, but with a smaller scale of operation. Tata Power has been generating, transmitting, and distributing electricity in metropolitan Mumbai since 1910. In 2001 it made a hefty 11.6 percent margin on sales of Rs. 3,361 crores. Incidentally, Tata Power, far from stampeding to leave India's power sector, is one of the bidders for the beleaguered Dabhol Power Company promoted by Enron Corporation.

Some hastily crafted independent power producers (IPP) programs in some states have been self-defeating for the State Electricity Boards "because in a situation where *basic* reform [curbing political interference and pilferage] was not pursued, private parties have successfully shifted nearly all risks on to the state sector." This kind of half-hearted privatization can be neither sustainable nor exhaustive of its full potentiality (Morris 2000, p. 1915).

Beginning with Orissa, several states have already set up independent regulatory authorities in the power sector. With some variations, most SERCs are designed to perform the basic function of determining the retail or distribution tariffs (Sankar and Ramachandra 2000, p. 1827). An analysis of the early tariff orders of SERCs suggests that tariff fixation has been mostly based on the following principles: (i) the cost of service methodology is the most appropriate for the determination of tariffs; (ii) efficiency gains can neutralize the need for realignment of tariffs to efficient levels; (iii) the developer must share the burden of adjustment under the reform process; and (iv) the burden of subsidies on public finance can decrease through reforms (Ahluwalia 2000, p. 3407). The study, however, questions the validity of the above assumptions, especially in

India. Its conclusion is: "The need of the hour is to forge partnerships across countries, states, agencies and institutions. In the end tariff reform has to ensure stability, continuity, efficiency and equity." It also advocates "an inclusive, participative, transparent and forward looking policy process" (*ibid.*, p. 3419).

To sum up, the recent economic reforms in India are marked more by the replacement of bureaucratic regulation by autonomous regulatory authorities and partial privatization than by globalization of trade and investment. To the extent that decontrol and privatization reduce the intervention of the federal state in the affairs of industry, business, and state governments, the forces of federalization (in contrast to parliamentary executive centralization) have been reinforced. Another notable development in the era of new economic reforms has been the creation of semi-judicial regulatory authorities at Union and state levels under legislative enactments in sectors such as electricity, telecommunications, etc. These agencies have replaced direct bureaucratic control by government departments in functionally intermeshed Union and state jurisdictions in certain sectors. Since this emerging centrist sectoral federalism tends to move away from the kind of "cooperative federalism" that has existed in the domain of political federalism for so long, it is imperative to curb jurisdictional conflicts. In Sáez's (2000) assessment India's federal relations are in for a change "from cooperative federalism to interjurisdictional competition." In view of the deepening cultural conflicts, this apprehension may not be too exaggerated. But India has a way of living in crisis.

FEDERAL AND CONFEDERAL CONCENTRIC CIRCLES

This section analyzes and speculates about the trends and prospects of India's supranational federal integration in regional and global economic, security, and political networks. India finds itself enmeshed in four orders of layered relations: (i) internal federal relations among states and nationalities constituting India's multicultural federal nation, (ii) associational South Asian regional orders of bilateral and multilateral integration, (iii) competing or complementary linkages between India and South Asian countries and powers external to the region, and (iv) India's United Nations connection.

In each of these relational segments India has adopted variable but complementary strategies of ordering its domestic and foreign policies. In the segment designated as internal federalism the objective has been the consolidation of the multi-ethnic Indian nation-state premised on parliamentary federal constitutionalism. Excessive centralization under the Indira Gandhi regime at least partly aggravated militancy in Jammu and Kashmir and Punjab and engendered milder protests elsewhere. These dysfunctionalities brought forth the systemic response of federalization and decentralization of the 1990s that still continues.

In the confederal relational segment India has pursued the double-pronged strategy of bilateral as well as multilateral relations in the South Asia and Asia-Pacific regions. India's multilateral relations in Asia have especially burgeoned since Prime Minister P.V. Narasimha Rao's Look East Policy (Wadhva 1999, pp. 40-54). Besides playing a leading yet constrained role in SAARC, India is now also a member of the ASEAN Regional Forum and a dialogue partner with observer status in Asia-Pacific Economic Cooperation (APEC).¹³

In the competing global relations segment the most important powers with particular relevance to South Asia are the United States, Russia, and China. With the recent shift in the US policy toward India, especially since the mutual visits of former President Bill Clinton and the Indian Prime Minister Atal Behari Vajpayee in the spring and autumn of 2000, and the revival of India-Russia "strategic" ties during the Russian President Vladimir Putin's trip to New Delhi later the same year, Pakistan could seek elusive security in drawing still closer to Islamic fundamentalism and China. As it happened, Pakistan reverted to the past pattern of closer ties with the US and other global powers in flushing out the Taliban regime in Afghanistan. In the changed scenario the United States as well as the major global and Eurasian powers appear keen to take a more balanced and legal stance in their relations with India and Pakistan.

That India is not an expansionist power is evident from the fact that it has routinely returned the lands captured from Pakistan in the 1960s, and did not stay in Bangladesh, Sri Lanka, and Malé after its legitimate interventions, by provocation in the first instance and the latter two by invitation (in 1971, 1987, and 1988 respectively). It also fought to remove the Pakistani intrusions in the Kargil sector in 1999 on its land without crossing the Line of Control in Jammu and Kashmir at any point, a restraint for which it received diplomatic acclaim worldwide. The spectre

of a war, at a time when India and Pakistan have both become nuclear power states since May 1998, still haunts the region. The developed world would do well to support democracy and development in South Asia in the interest of regional and global peace. Only sustained peace would create conditions for greater regional and global economic integration in South Asia.

Although the United Nations and its initiatives for the UN Conference on Trade and Development (UNCTAD) and New International Economic Order (NIEO) have been marginalized by a globalization led by the highly industrialized nations of the world in the WTO, India still continues to attach due importance to the UN world body as an agency for peace and security and multilateral cooperation for tackling common global goals like disarmament, human rights, ecology, and control of narco-terrorism. India's candidature for a permanent seat on the UN Security Council has been supported by the US and Russia, among others.

THE EFFECT OF ALTERNATIVE SCENARIOS OF GLOBAL GOVERNANCE ON INDIAN FEDERALISM

The history of India is a story of endurance. It is an epic empire that has survived over 5,000 years. It will undoubtedly be just fine in 15 years, regardless of what happens to the rest of the world. As a civilization unto itself, India can live in peaceful cooperation with other nations, or it can survive happily on its own. The question we deal with next is how Indian federalism might be affected by the four scenarios for global governance outlined in chapter 1. To do this, the text immediately below speculates (tells a hypothetical story) about how each global scenario might be experienced in India looking out to the year 2015 and how that experience in turn might influence Indian federalism.

We begin with the *shared governance* scenario. It entails a regulated world but with power widely dispersed. Looking backward from 2015, India's preferred foreign policy orientation, *Pansheel Raj*, can be seen as the real foundation of the shared governance scenario. The five principles of *pansheel* are mutual respect for territorial integrity and sovereignty, non-aggression, non-interference, equality and mutual benefit, and peaceful coexistence. India promoted these principles selflessly after the Bandung Afro-Asian conference in 1955. It just took 60 years for the West to accept these basic principles of international governance.

With the global acceptance of *pansheel raj*, India was finally able to convince the other great powers that it was in their interests to accept an elimination of nuclear weapons, and other weapons of mass destruction. India consequently endorsed the Non-Proliferation Treaty and the Comprehensive Test Ban Treaty and dismantled its nuclear arsenal. (Pakistan was forced to sign the respective treaties and dismantle its nuclear weapons, in exchange for a massive IMF bailout in 2006.) India contributed greatly to the development of international shared governance with its steadfast opposition to Islamic fundamentalism and terrorism in the first decade of the new century.

The stable regional and global environment created by international shared governance allowed India to complete and consolidate the dramatic federalization process that began in the 1990s. With a more stable global and regional environment, the centre grew less suspicious of state autonomy movements, while at the same time the states came to trust the central government as truly representative of India in international forums. The states also recognized that it was simply more efficacious to have one government representing all of India in these organizations. In short, the emergence of shared governance internationally facilitated the development of shared governance domestically in India. Sixty-eight years after independence, India finally obtained the optimal federal and constitutional arrangements envisioned by Nehru and Ambedkar in 1950.

The *global club* scenario entails extensive regulation with power highly concentrated. Again looking back from 2015, it has become quite clear that India blasted its way into the global club in May 1998, when it detonated five nuclear devices. Although the United States and other nations protested the Indian action, President Clinton's visit to India in 1999 actually signalled India's entry into the global club. While American Republicans historically tended to denigrate India, they came to realize in the early years of the twenty-first century that they needed a reliable partner to balance the role of China in Asia. The 11 September 2001 (9/11) terrorist attacks against the United States demonstrated to sceptical Americans that India was an important bulwark against Islamic fundamentalism in Asia. Furthermore, many Americans discovered that the Indians were actually much better capitalists than the Chinese, and they spoke better English.

India has envisioned itself as a global club member since independence; its entry into the club at the turn of the century was the realization of a national dream. India's global club status has had a mixed impact on

centre-state relations. On the one hand, Delhi has become a much stronger player internationally and this strengthened its position vis-à-vis the states, especially in relation to international treaties and their implementation in India. On the other hand, the improved security context for India as a whole and Delhi's new found confidence caused it to be less suspicious of the more autonomist state governments.

India has actually lived in the *regional dominators* scenario (concentrated power but not heavy global regulation) since 1971 when it decisively defeated West Pakistan and liberated Bangladesh. This event was significant for two reasons. First, Pakistan finally realized that it could never defeat India militarily. Second, the other states in South Asia discovered that India had no intention of conquering the region. Regional dominators is the status quo scenario for India.

The 9/11 terrorist attacks confirmed India's long-maintained position that Islamic fundamentalism in Pakistan and Afghanistan was a grave international security threat. By 2001, the centre had waged war against Islamic terrorism for 12 years in Kashmir, and this conflict followed on the heels of unrest in Punjab. The government of India was certain that both these conflicts had been aided and abetted by the Government of Pakistan and, at least indirectly, the Government of China. As such, the Government of India has felt compelled to maintain a vigorous position against regional competitors, as well as troublesome states within the Indian federation. While there have been no major wars on India's borders over the past 15 years, and no other states have overtly pursued secession, the Government of India has had no choice but to maintain, and employ when necessary, the emergency provisions of the constitution, which essentially subvert the federal character of the constitution. With the uncertain regional context, and with the fear that India's external enemies may seek to exploit regional animosities in India, the centre will continue to forestall the federalization of the country for the foreseeable future.

The fourth scenario examined is *cyberwave*. India in the 1990s was not dissimilar to this scenario (little regulation and dispersed power) and it demonstrated not only the ability to survive but to thrive in this environment. India has endured the assassination of prime ministers and former prime ministers; the imprisonment of former prime ministers; insurgencies and criminal gangs, and the complete fractionalization of both federal and state party systems. It is well practised in the politics of uncertainty,

and consequently it had a considerable comparative advantage over other countries as the world descended into this chaotic scenario.

India has succeeded in this world of uncertainty because of its extremely strong computer and space sectors. India's ability to produce, launch, and protect its own satellites has proven invaluable. As well, the huge non-resident Indian community around the world, which tends to dominate the computer industry in many other nations, has also proven very beneficial. The non-resident Indians in the computer sector, especially in the United States, channelled considerable intelligence to India, keeping India's computer sector one step ahead of the world. Indeed, its advanced software development capabilities, and its lower labour costs, put much more of a dent into the failing fortunes of Microsoft than the American anti-trust case against that company.

When Narashima Rao was imprisoned for corruption in 2000, it was a source of national shame in India. No one ever imagined that corrupt and wily politicians would be the key to India's success in the world. But working closely with Bombay crime syndicates, India's politicians were provided with some of the best intelligence available to any world leaders; this political-crime nexus also allowed India to capitalize on international financial transactions, and it ensured a ready supply of precious commodities: supercomputers, enriched uranium, and other critical technologies.

As this scenario is really just an extension of the 1990s, at least as far as India is concerned, it will have very little impact on centre-state relations in India. India's federal system has demonstrated a capacity to handle this sort of strain. While there may be a decentralizing thrust in this scenario, the federal government will continue to have significant constitutional powers to slow or reverse intolerable decentralization. This is the great virtue of the Sarkaria approach. In the 1980s, when the dangers of centralization were all too apparent and many people were demanding significant constitutional reforms to limit the power of the central government, Justice R.S. Sarkaria and S.R. Sen, a member of the commission chaired by Saarkaria, recommended in their mammoth report on *Centre-State Relations* that India did not require significant constitutional changes; they suggested only that India needed to adopt a federal political culture. It took more than ten years, and the collapse of the Congress Party system, for this culture to take root, but when it did these recommendations became self-implementing. Centralizing

constitutional provisions nonetheless still exist in the constitution, which gives the central government considerable leverage if the fissiparous tendencies in the country suddenly become too dominant. In the event of a global cyberwave, India will be well-served by Sarkaria's foresight and wise recommendations. Another 11-member constitutional commission, chaired by Justice M.N. Venkatachaliah and appointed in 2000 (it reported in 2002) to review the entire gamut of constitutional review and reforms, broadly reiterated the Sarkaria approach with minor constitutional amendments to consolidate case laws and positive conventions relating to federal relations.

The four scenarios accentuate current trends in global politics and, to the extent that the trends are divergent, they would have somewhat different impacts. The shared governance and cyberwave scenarios would support the current federalization of India, the latter more than the former. The global club scenario, which would strengthen the centre but also relax it, would likely consolidate the federalization process at its current levels of decentralization. On the other hand, the regional dominator scenario, which envisions a worsening of India's regional security situation, would reverse the federalization process in India and return the country to the more quasi-federal situation that pertained in the tumultuous years following independence. But resilience is perhaps the best description of the Indian character. India has survived all sorts of tragedies and calamities in its 5,000-year history, and India can endure all of these short-range scenarios without much change to the lives of ordinary citizens.

CONCLUSIONS

In summary, India, since the 1990s, has become considerably more federalized than before. This is evident in the increased political autonomy and revenue of state governments vis-à-vis the Union government; growing manoeuvrability of the constitutional heads of states — president and governors; growing salience of Union constitutional agencies like the Election Commission of India and intergovernmental agencies like the ISC and NDC; decline in the role of centralized planning; creation of a series of independent regulatory agencies and appellate tribunals under parliamentary statutes in such vital sectors of the economy as communications, electricity, insurance, finance, stock exchange, etc.; greater visibility of the Human Rights Commission, Minorities Commission, Scheduled

Castes and Tribes Commission appointed either under the constitution or a parliamentary statute; and the revival and constitutional entrenchment of local self-governing institutions of Panchayat and Nagar Raj, etc. This remarkable transformation is due mainly to factors such as (i) the change in the party system of Congress dominance to one of a multi-party system of federal segmentation resulting in unstable federal coalition/minority governments, (ii) judicial interpretation supporting the autonomy of states, (iii) more economic liberalization and globalization, rather than to formal constitutional amendments. Federalization has been strongly reinforced by economic liberalization and also to some extent by globalization. The federal state and its centralized role have been considerably reduced under pressure from above and below. The centralized federal state that relied on direct administrative mechanisms of control and the state-owned public sector is transforming itself into a regulatory state with semi-judicial autonomous statutory agencies and partially or fully disinvesting/privatizing public sector undertakings. Lloyd and Susanne Rudolph (2001) hypothesize that economic reforms in India since 1991 have created a "federal market economy" that facilitates a wider "sharing of sovereignty" within the state and the market.

The foregoing trends are supplemented by the creation or revival of institutions of civil society in two broad forms: first, proliferation of non-governmental organizations (NGOs) in the voluntary sector funded nationally and globally, and second, emergence of *new* social movements with a non-partisan temper centring around single issues on regional lines. The latter have often been in contrast to the old peasant and worker movements based on issues of production and distribution and politico-economic corruption and organized on macro-regional or national scales, for example, ecological and environmental protection, gender justice, bonded or child labour, victims of mega-developmental projects like big dams, grants of seed marketing and coastal fishing to multinational corporations affecting agricultural and fishing communities, etc. (Wignaraja 1993; Singh and Roy (1998, chs. 15, 16, 24). Calling these two major aspects of the civil society organization "Action Groups in the New Politics," Sethi (1993, p. 239) records their major contributions in terms of greater responsiveness to local situations and neglected sections of the population, along with an extension of politics and mass democratic methods to certain spheres of life traditionally considered non-political.

India's global and regional integration are still rather limited. Yet their impact on the federal system is evident in an expanded process of policy-making in political and economic matters in which state governments and a variety of national and regional parties in federal coalition government(s) have enjoyed greater access in the new atmosphere engendered by political federalization and economic liberalization. Even though state governments under the Indian constitution, or in practice, do not have any formal power to establish contact with foreign governments and join Indian delegations going abroad, except as observers by the courtesy of the Union government, state chief ministers have started going abroad in search of foreign investments, especially in countries containing sizeable Indian diaspora with heavy Gujarati, Maharashtrian, Punjabi, Bengali, Tamil, Andhra, Malayali, Karnataki, and Hindi concentrations. Also, states having borders with Nepal, Bangladesh, Sri Lanka, etc., have usually been involved with the Union government to some extent in an advisory capacity in bilateral issues with those countries relating to trade, river waters, infiltrators, migrants, and refugees.

The preamble to the Indian constitution proclaims India "a Sovereign Socialist Secular Democratic Republic" committed "to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation." The chapters on fundamental rights and directive principles of state policy guarantee legal civil, and political rights and promissory economic rights and social security in the future. Given this constitutionally entrenched political and economic constitutionalism, coupled with cumulative economic inequalities and regional disparities, it is difficult not to feel that there are important implications. In opting for an appropriate model of the role of the state in the regulation of the market economy, India can settle only for a state-market diarchy in which the state cannot be excluded from influencing economic development. But market mechanisms may have to have a balanced dualist role under compulsions of state failure attributable to an overspending populist and parasitic political class, overstuffed bureaucracy and public sector undertakings, and overstrained security apparatus. Historical traditions, state apparatus, and economic structure after more than a decade of economic reforms in India buttress the probability of continuing with the emerging model of state-market-civil society triarchy.

Economic reforms have proved to be irreversible, though with varying pace, under shifting coalition/minority governments, left-of-centre (United Front) as well as right-of-centre (Rao-Manmohan Singh Congress regime, National Democratic Alliance). In the post-anti-terror Afghan war scenario, which seems to herald the arrival of a mix between a global club and regional dominators in the world at large as well as in South Asia in the security domain, India can probably shed its paranoia and look forward to an era of greater global and regional integration in economic terms as well.

Admittedly, it would not be very easy. All South Asian countries, at least formally democratic excepting Pakistan since 1999, have minorities living on their borders as well as deep within. "Ethnic affinities are stronger than national identities ... [and] can be easily channelled into dissent and insurrection against the State or violence against other ethnic groups" (Chari 2001, p. 168). The temptation to aggravate these tensions with ulterior motives by all concerned is often too frequent to resist, especially in a culture of poverty, criminalization, and inter-state rivalries in a region with a feudal past and contemporary trends of militarization. Security in such a situation is primarily conceptualized in statist and elitist terms rather than in human and welfare terms. Yet South Asia must exit from this vicious circle of underdevelopment and militarization.

Ringed by patched pockets of affluence in Australia-Pacific, Central Asia, China, and the Persian Gulf, India holds out the double possibility of either growing into a zone of democratic development or into an "area of darkness," a land of "a million mutinies," or a "wounded civilization," in terms of the fictional trilogy of Nobel laureate Sir V.S. Naipaul. The land of Buddha, Gandhi, Nehru, and Ambedkar is haunted by the spectre of Talibanese terror from without and post-Mughal disintegration from within. India began its post-colonial multicultural federal nation-building experiment following the British Raj in the 1950s as an alternative model to authoritarian-communist China. Over half a century later, India must still stand out as a beacon of democracy and development with justice and equity. As Cohen aptly observes: "India's elites have ... demonstrated a flexibility that has been absent in other complex, multi-ethnic, multinational states such as Pakistan, Yugoslavia, and the former Soviet Union. Like a ship with many watertight compartments, India is relatively immune to the kinds of large-scale, or extremist, or totalitarian movements that have afflicted other states" (2001, pp. 299-300).

Notes

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1. *Madhav Rao v. Union of India*, *All India Reporter (AIR)*, Supreme Court (SC): 530.
2. *Maganbhai Ishwarbhai Patel v. Union of India*, *AIR*, Supreme Court, 1969: 783; *Ram Jawaya v. State of Punjab*, *Supreme Court Report (SCR)*, 1955: 225.
3. These aspects are not yet fully explored by research. On inter-state river water disputes, see Sondhi (1993). On NIC, see A.K. Singh (1997).
4. *Keshavananda Bharati v. State of Kerala*, *All India Reporter (AIR)*, 1973, Supreme Court (SC). *Minerva Mills Ltd. v. Union of India*, *AIR*, 1980, SC.
5. Reeta Chaudhary-Tremblay used the term "sectoral federalism" when she discussed my paper at the IIGR Conference in Ottawa (2000) on which this chapter is based. Indeed, there was and still is a regular exercise in sectoral federalism in the Union secretaries — comparable to deputy ministers (civil servants despite their political sounding designation) — who virtually become captains of state secretaries of respective government departments and sectors of the economy in their charge for official-level intergovernmental relations. Comment by Vijay Kapur, Lt. Governor of Delhi, in an international conference on Intergovernmental Relations in Federal Systems jointly organized by the Forum of Federations, Ottawa, and the Institute of Social Sciences in New Delhi, 22 April 2002.
6. In the BJP-led coalition government between 1998–99, "Jayalalita-Mamata-Samata" allies of the Union government pressured it to dismiss the governments of DMK, Left Front, and Rashtriya Janata Dal in Tamil Nadu, West Bengal, and Bihar respectively.
7. *Supreme Court of India*, *S.R. Bommai v. Union of India*, 1994.
8. Government of India (1987–88), Two Parts. The first part contains the recommendations of the Sarkaria Commission and the second, the submissions and memoranda to the commission by state governments and political parties.
9. Interview with Rajiv Malhotra, New Delhi, Autumn 2001.
10. It is notable, however, that in real terms even though the states' and Union territories' share in the total divisible pool has nearly doubled in figure from Rs. 20,593 crores in 1992–93 to Rs. 40,253 crores in 1997–98, in

- percentage terms there is a marginal decline: 27.6 to 26.2 (Sáez 2002, p. 202).
11. See, for example, *The Economic Times* (New Delhi), 31 October 2000, p. 13. On an earlier occasion a similar debate took place during the time of the Rao Congress government, and disallowed again in November 2000 by the NDA government. In March 2002 during the NDA regime a parliamentary committee report again recommended against foreign equity in the print media on the grounds that it might destroy cultural life and disorient the Indian mind (*The Times of India*, New Delhi, 23 March 2002, p. 11). The NDA Cabinet, however, has since allowed 26 percent foreign equity in this sector, with editorial and managerial incumbency remaining with Indian nationals (*The Economic Times*, New Delhi, 22 November 2002, p. 8).
 12. See also NCRWC (nd).
 13. For a perceptive analysis of the first decade of South Asian regionalism, see Khatri (1992). Prime Minister Rajiv Gandhi of India aptly observed at the second SAARC summit in November 1986: "Like embroidery, regional cooperation will have to be fashioned patiently, stitch by stitch" (SAARC 1990, p. 9).

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HOUR GLASSING SYSTEMS

7

The Impact of Global and Regional Integration on Decentralization in South Africa

Nico Steytler

INTRODUCTION

Emerging from the dark abyss of apartheid, the new democratic South Africa embarked on a process of decentralization domestically while, at the same time, it enthusiastically entered the international community that had played a significant role in the apartheid regime's demise. The question to be addressed in this chapter is how these two processes — decentralization domestically and global and regional integration — have interacted. More particularly, how do the processes of globalization and regionalization impact on the nature, direction, and operation of South Africa's system of decentralized government?

Globalization is associated in South Africa, and even more so in less-developed countries in Africa, with the shrinking of state sovereignty, particularly in the area of economic policy (Mills 2000a, p. 12). There are "laws" of the global economy which, like domestic laws, must be obeyed as there is no escape from the long arm of the international market. Global integration has also intensified the need for regional integration, for in numbers (be it countries, people, or finances) strength is sought. For South Africa's neighbours the drive toward political and economic integration of the region will compound their loss of sovereignty. Yet regional integration is accepted as an inevitable consequence of globalization and a bulwark against marginalization.

The impact of global governance, both formal and informal, is experienced acutely by developing countries, because their growth strategies have been linked to, and often made dependent upon, external intervention by the market and international institutions. In South Africa the global "laws" of the marketplace have penetrated domestic policy, which now reflects the need for fiscal discipline and good governance requiring efficient and lean government.

In this chapter it will be argued that South Africa's system of decentralization with its strong centralist features, is still in an evolutionary stage. With political ambivalence about the future of the middle-level institutions of government — the provinces — the demands of fiscal discipline and good government may give direction to their eventual fate. At the same time, the newly established strong local government structures, including mega-cities, dovetail with the second wave of good governance demands that see localization as the path to effective and efficient development. The result may be an hourglass federation — the provinces are squeezed between national and local government, with their width determined by the nature and direction of the process of globalization itself.

SITUATIONAL CONTEXT

Located on the southern tip of the continent, South Africa's geographical context ties its fortune to that of Africa. Whereas the apartheid regime sought to keep South Africa euro-centred, the new government places South Africa in the world through Africa (Pahad 2000, p. 48). Its key foreign policy, called the African Renaissance, aims at continentwide growth, development, and security. South Africa, then, as one of Africa's dominant players, has consciously sought to play a leadership role to this end.

Bordered by the Atlantic and Indian Oceans, the horizons to the east and the west of South Africa are also hazy. To the east, there are the rudimentary beginnings of cooperation around the Indian Ocean Rim. To the west, linkages with South American markets are in the offing. Facing north, and reaching both east and west, South Africa's "butterfly strategy" seeks south-south cooperation and integration (Mills 2000a, p. 331). While geographic location becomes less significant for global economic integration, South Africa's strategic position offers a challenging prospect for political and economic manoeuvring. Success, however, will depend on how it manages a number of crucial domestic cleavages.

South Africa is a multilingual, multicultural society. With 11 official languages, there are linguistic/ethnic divisions and in seven of the nine provinces there are linguistic majorities.¹ More importantly, President Thabo Mbeki describes South Africa as a country of two nations — white and black — divided by income, political persuasion, and identity. Coinciding with the black/white divide (but increasingly within the black group as well) are vast disparities in income, with 45 percent of the population living below the national poverty line; 61 percent of Africans are poor as compared to 1 percent of whites (UNDP 2000, pp. 55-56). And this divide is expanding due to the growth in the skilled service sector and increased use of technology.² The inequality divide further overlaps with a new division drawn by HIV/AIDS (see Karrim 2000). South Africa has one of the highest infection rates in the world, and the latest calculation is that the pandemic, if it remains unchecked, will claim the lives of between five and seven million people in the next ten years (UNDP 1999, p. 23).³ By 2003, AIDS deaths will outnumber all other deaths combined (Shell 2000, p. 22). Life expectancy will drop from 63.4 years in 1998 to 48 in 2010. With 26 percent of the economically active population becoming infected, needless to say, the pandemic will have a devastating effect on economic growth and prosperity (Quatteck 2000) while accelerating crime (Schonteich 2000). The devastation caused by AIDS will also pose a major challenge to peace and stability in sub-Saharan Africa (Mills 2000*b*).

The cleavages along ethnic, linguistic, racial, and economic lines may well be heightened by external economic pressures when global economic forces leave South Africa marginalized in the global competition for wealth. This in turn could stimulate centrifugal forces for geographically based ethnic self-rule.

With a gross national product (GNP) per capita of \$3,160, South Africa is classified as an upper-middle income economy.⁴ The GNP for 1999 was \$131.1 billion with a growth rate fluctuating below 3 percent.⁵ The years of apartheid rule bankrupted South Africa and its indebtedness to international and local banks means that 20 percent of its current budget is devoted to debt-servicing. Growth is premised on the inflow of foreign direct investment (FDI) and the development of the South African export market. However, both internationally and internally, there is a lack of confidence in the economy. Foreign direct investment, after an initial spurt, has not been forthcoming in the last few years. As an emerging market, in competition with other developing countries (particularly the new

economies of Southeast Asia), South Africa's economy is characterized by high levels of labour costs and low levels of skills and productivity. Domestic investment is at an all-time low and there is a continual drain of skills and finances. It was reported that for every dollar that came in during 2000, \$24 flowed out of the country.⁶

South Africa has made Africa the geographical centrepiece of its foreign policy and the creation of wealth and security its overriding goals (Mills 2000a, p. 28). Success on the world stage will greatly depend on regenerating Africa, the very goal of the African renaissance policy, and the reform of international governance. In participating in the major international institutions such as the United Nations and its organs, the World Trade Organization (WTO), the World Bank, and the International Monetary Fund (IMF), South Africa's objective has been the reform of those institutions to reflect a better deal for the developing world. To this end South Africa has sought to mobilize the south through institutions as diverse as the Non-Aligned Movement (NAM) and the Commonwealth.

As a major power on the African continent, international expectations are that South Africa will increasingly play a policing role. Thus far South Africa has been hesitant. Under the new government the defence budget was slashed from its peak of 17.7 percent of the national budget in 1988–89 to less than 5.2 percent in 1998–99 (Mills 2000a, p. 239). After a poorly executed military expedition into Lesotho in 1998, under the banner of the Southern African Development Community (SADC) and on a request by a beleaguered government, South Africa has been reluctant to venture further afield. While its neighbours, Zimbabwe and Namibia, sent forces to prop up the government of the Democratic Republic of the Congo, South Africa confined itself to committing a small contingent of 90 technical personnel to a UN peacekeeping force (Chigara 2000).

Some of these features of the South African landscape were ingredients in the constitutional negotiations of 1992–96 that produced the contours of its decentralized form of government.

CONSTITUTIONAL CONTEXT

The Union of South Africa that emerged in 1910 from four British colonies established a strong centralized state.⁷ Unlike the federal models in the British Empire in Canada (1867) and Australia (1901), the arguments for federalism were firmly rejected by the white polity in the National

Convention of 1909; a strong union was necessary to promote nation-building between the two British colonies (Cape and Natal) and the former Boer republics (Transvaal and Orange Free State) which had been engaged in war a decade before. As a sop to federal sentiments, an upper house, the Senate, was instituted to represent provincial interests (Welsh 1994, p. 243). Provincial legislatures and executives were created but had no original powers (see Boule, Harris and Hoexter 1988, pp. 123-24).

In contrast to the sentiments underlying the 1909 National Convention, apartheid's constitutional design was to separate and remove Africans from the white polity. Under the guise of ethnic self-determination, the grand apartheid design of "divide and rule," institutionalized inequality. While there was a high degree of devolution of power to "homelands," the system remained highly centralized with the purse remaining in Pretoria. In contrast, the 1983 tricameral Parliament sought to bring the coloureds and Indians into an alliance with whites; while each group had competence over "own affairs," all three had to deliberate jointly over "general affairs." This led to the disappearance of the provinces as a feature in the political life of whites; the Senate and the provincial legislatures were abolished while limited provincial executive authority was retained.

With the normalization of politics in 1990, federalism was one of the dominant issues in the constitutional negotiations between the outgoing government, represented by the National Party (NP) and the African National Congress (ANC). From the NP's perspective, with its support base dispersed across the country, decentralization was not necessarily linked to the protection of territorially based interest groups (although it had concentrated power bases in the provinces of the Western Cape and Northern Cape). Rather, it was seen as a brake on a strong central government.

The ANC saw federalism as a method of thwarting majority rule; creating strong federal units could simply be a method of legitimating the homelands and creating a separate white *volkstaat* (see Welsh 1994, p. 244). Moreover, a strong central state authority had to be created to effect the restructuring of the South African society. While the ANC softened its stance on decentralization largely due to the influence of the German model of cooperative government, the Zulu ethnic party, Inkatha Freedom Party (IFP), campaigned for a very loose form of confederalism, including the right of secession (Ellman 1993).

The interim constitution that was negotiated during 1993 did not establish a fully-fledged federation, but the state structure nevertheless

contained important federal elements.⁸ In an effort at peacemaking, constitutional amendments were effected shortly before the April 1994 elections, which enshrined the right to self-determination for the white right-wingers and greater provincial constitution-making powers as a sop to the ethnic sentiments of the IFP (see Steytler and Mettler 1998).

The interim constitution divided the country into nine provinces by carving the Cape Province into three and the Transvaal into four, in addition to Natal and the Orange Free State. Provincial legislatures had concurrent legislative competence with the national Parliament in respect of a number of listed areas. A second chamber, the Senate, was indirectly elected by provincial legislatures to cater to provincial interests.

While the 1993 constitution was a negotiated interim compact, the next constitution had to be the product of the democratic will. The democratically elected Parliament doubled up as the Constitutional Assembly, but was bound by the Constitutional Principles negotiated in the 1993 constitution which required, among other things, "legitimate provincial autonomy" (see Steytler 1995).

The 1996 constitution established three "spheres of government" — national, provincial, and local — with legislative and executive competences divided between them. Provincial legislatures have only those competences specifically listed in the constitution (Schedules 4 and 5). The national Parliament has plenary power over all other matters, but also enjoys concurrency with respect to almost all of the provincial competences (Steytler 2000*b*). Provinces have "concurrent" jurisdiction with the national government over a list of matters, and "exclusive" jurisdiction over a much shorter list. These exclusive competences are not, however, beyond the reach of the national Parliament, and legislation is possible in these functional areas of broadly defined grounds related to national security, economic unity, national standards, and prejudicial provincial action.

Local government has executive and legislative powers in matters listed in both the concurrent and exclusive areas of provincial competence. Where there is a conflict between a national or provincial law and a municipal bylaw, the former will prevail as long as it does "not compromise or impede a municipality's ability or right to exercise its powers or perform its functions" (section 151(4) of constitution).

In contrast to their substantive legislative powers, the provinces' powers to raise revenues are severely circumscribed and must be regulated

by national legislation. With no enabling legislation as yet in place, the provinces' main source of income is intergovernmental transfers; each is entitled to an "equitable share" of revenue raised nationally.

As a counterweight to the division of the state power into spheres of government is the obligation of cooperative government, a concept borrowed from the German *Bundestraue*. At the legislative level the provinces are drawn into the national legislative process, through the National Council of Provinces (NCOP). The power of NCOP is limited to provincial issues; where a matter falls within the area of concurrent or exclusive competency, the will of NCOP can be overridden only by a two-thirds majority in the National Assembly. NCOP also has an important reviewing function when the national government intervenes in the affairs of a province, or a province in a municipality. With regard to the ratification of international treaties, NCOP is, ironically, in its strongest position — it is co-determinous with the National Assembly. An international agreement, bar those of a technical, administrative or executive nature, binds the country only after it has been ratified by both the National Assembly and NCOP. While international affairs are excluded from the provincial competence, this provision is a quirky leftover from the 1994 Senate (Levy *et al.* 1999, p. 123).

At the executive level there is a statutory Budget Council, comprised of the minister of finance and provincial counterparts, which advises on the allocation of revenue raised nationally. Most intergovernmental structures are, however, informal and deal with the sectoral interests such as local government, health, education, welfare, tourism, and economic development.

The "federal practice" that is emerging is shaped largely by the dominance of one political party, the ANC, which received 66.5 percent of the vote in the 1999 election and governs seven of the nine provinces with large majorities. Although its percentage of the vote in the December 2000 municipal elections dropped to 62 percent, it captured five of the six megacities. The ANC's reluctant compromise on the provinces in 1993 has not turned into an embrace of the institution. Its initial ambivalence about their value has been strengthened by increasing party factionalism caused, among other things, by what it referred to as "creeping provincialism." As a result, all ANC candidates for premiers of provinces and mayors of megacities are centrally appointed (Steytler 1999b). Perhaps reflective of ANC thinking, the chairperson of the Municipal Demarcation Board, previously

an ANC member of the KwaZulu-Natal provincial legislature, has publicly questioned the need for provinces in light of the new local government dispensation.⁹ Even the ANC premier of the Eastern Cape has stated that while the "hybrid quasi-federal system" has served the country well, in the long term provincial powers must be devolved to local government "as a permanent function of cutting-edge service delivery."¹⁰ He argues that provinces should be stripped down to mere oversight bodies and the thousands of provincial civil servants be deployed to local government.

The scepticism regarding provinces is fed by their poor performance both as legislatures and administrators. Provincial legislatures have not been very active and their administrators have not been shining examples of excellence in service delivery.¹¹ Provincial corruption and incompetence have been recurring themes in the media. They are perceived mainly as agents implementing national policy, the product of an extreme case of vertical fiscal imbalance (see Abedian, Ajam and Walker 1997; Ajam 1998). For the fiscal year 1999–2000, 96 percent of the revenues of the provinces came from the central fiscus.¹² Although the intergovernmental transfer was 58 percent of the national budget (excluding the 22 percent for debt-servicing), provinces have little discretion as to how to divide the "cake." The bulk of revenue goes to education, health, and welfare, and the expenditures on these items are predetermined by national standards. The end result is that 85 percent of all the funds a province receives have already been pre-allocated by the national government. In addition, the Treasury exerts considerable financial control by closely monitoring provincial expenditure. A casualty of weak provinces has been the NCOP (Levy *et al.* 1999; Murray and Simeon 1999). Not only is it dominated by one party, but the provinces that must breathe life into the institution, have failed to do so.

In contrast to its ambivalence toward strong provinces, the ANC has favoured strong local government (South Africa. Ministry of Provincial Affairs and Constitutional Development 1998). The December 2000 elections drastically reduced 842 local authorities to six metropolitan, 47 district, and 232 local municipalities that will enjoy limited self-rule (Mastenbroek and Steytler 1998). Unlike the provinces, local government has a secure and constitutionally protected tax base which presently provides over 92 percent of income. The six metropolitan municipalities, in particular, will compete with the provinces for political and economic dominance. The mega-cities in Gauteng (three), Durban, Port Elizabeth,

and Cape Town, not only contain a significant proportion of the provincial populations, but form the industrial base of South Africa. The new City of Cape Town, for example, includes 75 percent of the Western Cape's population and economic output and its budget of R9 billion equals that of the province, but without the latter's limitations.

In sum, South Africa's federal system is dominated by a party that is ambivalent about the need for provinces. The provinces are not performing well and national control over their expenditure is increasing. About to emerge and compete with them is strong local government led by six mega-cities. This may prefigure an hourglass scenario with a thin provincial waist in the middle. The extent and direction of South Africa's global and regional integration will not leave the process and direction of decentralization unaffected.

GLOBAL AND REGIONAL INTEGRATION

After the years of apartheid isolation, the democratic South Africa entered the world arena with vigour, although not always with a consistent policy. An early promise of charting its foreign policy along a human rights and democracy track, foundered upon the harsh realities of the *real politik* of its economic interests and strategic partners (see Mills 2000a; Mawby 2000). Its foreign relations initiatives are, however, firmly embedded in the globalization discourse. As Foreign Minister Dlamini-Zuma recently told ministers of the NAM: "Globalization means that none of us is able to stand alone politically, economically, scientifically or otherwise. We have to work to ensure that our continent does not continue to be marginalized."¹³ Mills contends that South Africa assumed, consciously or not, "the role of a middleman between the North and the South in attempting to change the rules of the global economy and establish the necessary political architecture and institutions" (Mills 2000a, p. 279). This role is played out in both political and economic relations.

Political Relations

The South African government has set as its priority the creation of a rules-based system which levels the playing field between states where "the weak have the same voice as the powerful."¹⁴ Returning as a member of the United Nations, South Africa has been advocating the reform of the

institution which would include a permanent seat on the Security Council for an African country.

Given its apartheid history, South Africa has sought to internalize the rules of the international community, particularly as far as human rights norms are concerned. It has acceded to most UN human rights instruments and in the writing of the 1996 constitution in particular, there was a conscious and deliberate attempt to harmonize the domestic Bill of Rights with international norms. In addition to enshrining one of the most extensive Bills of Rights worldwide, the constitution also compels courts, when interpreting the Bill of Rights, to consider international law. Both the High and Constitutional Courts have complied with this injunction and in a number of cases international norms were determinative of the issue. In law-reform projects, international law has also been influential. For example, in the drafting of a new juvenile justice bill, the South African Law Commission consciously sought to implement the Convention on the Rights of the Child (Sloth-Nielsen 2001). Because the legal protection provided by the domestic Bill of Rights far exceeds that of international instruments, and with an active Constitutional Court implementing the rights effectively, the UN monitoring committees policing the human rights instruments have not, to date, been significant for domestic policy. This is in sharp contrast to Australia, where the absence of a domestic Bill of Rights has forced complainants of human rights violations to invoke the support of UN institutions.

Other multinational organizations in which South Africa participates have not progressed to the level of governance. The Commonwealth, a "loose trans-global organization" of 54 nations mainly from the old British Empire, which includes the world's richest and poorest economies and a quarter of the world's population, is an odd organization as it is not built around security, geopolitical or economic interests (Burford 1999, p. 86). This club of nations had, with apartheid South Africa as a focus, a sense of mission, but has since then found it difficult to exert much pressure on member states that abandon democratic rule or violate human rights. An exception could be the suspension of Nigeria's membership and the imposition of sanctions against the military dictatorship of Abacha; it may have played a part in encouraging the restoration of democracy in 1998 (*ibid.*, p. 88).

With the prominence of its newly won democracy, South Africa assumed a level of influence in NAM. This conglomeration of developing

countries, born out of the Cold War divide, is seeking to reinvent itself as the organized south. As chairperson and host of the last four yearly conferences, South Africa sought to direct NAM toward development and globalization issues (Mills 2000a, p. 78).

South Africa's leadership is perforce more pronounced in Africa where there is both the external expectation and the internal capacity to play such a role (*ibid.*, p. 303). The Organisation of African Unity (OAU) has proved to be a weak group for promoting democracy and human rights effectively.¹⁵ Perhaps due to its poor functioning, new initiatives are afoot for more effective continentwide political integration. In 1999 Colonel Gaddafi from Libya proposed a grandiose United States of Africa. This proposal was watered down at the extraordinary meeting of the OAU in Sirte, Libya, to an African Union based on the European Union concept.¹⁶ This organization, which is to replace the OAU, will have a Pan-African Parliament that can take binding decisions. At a meeting of 200 parliamentarians in Pretoria in November 2000, a concept document outlining the Parliament was signed and was to be submitted to the OAU summit meeting in July 2001 (*Beeld*, 7 November 2000; 11 November 2000). It is envisaged that this Parliament would at first have only consultative and advisory powers, but that within five years it would be able to pass laws. The aim, phased in over 25 years, is to give the people of Africa a direct say in the affairs of their continent, promoting good governance and democracy and protecting human rights. Already South Africa is promoting the idea that it would be a suitable host (*Beeld*, 11 November 2000).

The principle of a pan-African court has already been accepted. In 1998, a treaty was concluded to establish the African Court of Human and People's Rights, operating under the auspices of the OAU and enforcing the provisions of the African Charter on Human and People's Rights. The aim of the court is, as in the case of the European Court of Human Rights, to be a powerful guardian of human rights on the continent. The treaty comes into operation when 15 countries have ratified it, but to date only four have done so. South Africa, which drove the initiative and hosted the conference that concluded the treaty, has not yet ratified it because of the concern that this continental court will trump its own Constitutional Court. South Africans are, however, already lobbying for the court to be located in South Africa.¹⁷

African ambitions also cover continental economic integration. Under the auspices of the OAU, the African Economic Community treaty

was signed in 1991 by 49 of the 51 members of the OAU. The main objective of the treaty is to promote economic, social, and cultural development; the integration of African economies in order to increase self-reliance; and indigenous and self-sustained development (Peter 1997, p. 361). The community will be established in six stages over a period not exceeding 34 years. With the required ratification of two-thirds of the OAU members for establishment far from reach, it is still viewed as "an institution of the future" (*ibid.*, p. 362). With a poor record of effective pan-African organizations, the focus shifts inevitably to the southern African region.

South African Development Community

In response to the dominance of apartheid South Africa, the neighbouring southern African countries founded in the late 1970s the Southern African Development community (SADC) with the aim of not only reducing their dependence on racist South Africa but also of promoting equitable regional integration (Peter 1997, p. 365; Heiman 1997, p. 649). By 1992, the organization was replaced by the Southern African Development Community, and a democratic South Africa joined in 1995.¹⁸ The treaty calls for basic regional cooperation, relying on separate protocols to add the meat. For example, provision is made for a tribunal to adjudicate disputes relating to the treaty, but the composition, powers, functions, and procedures are to be provided for in a protocol. To date, 14 protocols have been signed, of which seven have entered into force (Pahad 2000, p. 49).

South Africa has sought to play a leading role in giving content to the SADC structures. However, sensitivities about its hegemonic role abound, and South Africa has to proceed cautiously so as not to alienate members (Mills 2000a, p. 337). The failure and resultant need for restructuring of the Protocol on the Organ of Security, Defence and Politics, controlled by President Robert Mugabe of Zimbabwe, was high on the South African list for reform (Breytenbach 2000; Chigara 2000). Its efforts were rebuffed by the other members and political progress has been slow. However, at the extraordinary summit in Windhoek, Namibia, in March 2001, the SADC leaders not only agreed on restructuring proposals to merge the organization's 21 sectors into four directorates, but also that the powers of the security organ would be whittled down.¹⁹ The

summit also revealed the fragile unity of the group. It was reported that Lesotho, Swaziland, and Botswana threatened to withdraw from SADC if the larger nations imposed their candidate for secretary-general.

One area where the political borders have come down in southern Africa is the establishment of the Transfrontier Parks that straddle international borders, allowing the free movement of animals and tourists. The first Transfrontier Park was established in 2000 by combining two game reserves along South African and Botswana borders in the Kalahari desert. A second Transfrontier Park, agreed upon in November 2000, will link the Kruger Park with reserves in Mozambique and Zimbabwe, creating one of the largest wildlife areas in the world.²⁰

While border controls remain in place, regulating the annual three million visitors from Africa to South Africa, there is an equal number of unofficial migrants that cross South African borders in search of economic survival. Along with the informal network of migration comes gun-running and other criminal networks. What is clear is that "South Africa cannot exist as an island of prosperity in a sea of poverty" (Pahad 2000, p. 48). The problem of economic migration can only be solved with a more balanced economic development of the entire region, a reality that emphasizes the important role of SADC.²¹

Economic Relations

After the years of apartheid isolation and protectionism, the stated goal of the new government was the reintegration of the South African economy into the global economy. The process has been painful and job losses have spiralled. Speaking to the left-wing trade union, NUMSA, of which he was a leading activist and theorist before 1994, the minister of trade and industry, Alec Erwin, noted that globalization had widened the gap between the rich and the poor, and said that "our response is not to say we are not going to be part of globalization, we have to have a clear strategic response to it."²² The government's strategic response included promoting trade through participation in formal institutional mechanisms and aligning domestic macroeconomic policies to attract foreign investment.

The return to the international fold has not led to a dramatic increase in foreign trade. Over the last ten years the share of exports in goods and services of the gross domestic product (GDP) has remained constant at 25 percent²³ while the share of imports is around 22 percent.²⁴

After reaching a peak in 1995, the percentage annual growth in trade has been declining, with exports showing no growth in 1999 and imports a negative rate of 7 percent (World Bank 2000a; South Africa. Department of Finance 2000, Table 2.3).

South Africa's trade partners have not changed much since 1994. In 1998, 48 percent of South Africa's imports were from Europe, 29 percent from Asia, 18 percent from the America, 3 percent from Oceania, and 2.5 percent from Africa. Of its exports, 31 percent went to Europe, 17 percent to Asia, 14 percent to Africa, 10 percent to the Americas and 1 percent to Oceania (South Africa 2000, p. 432). The major trading countries were the United States (ranked first for the first time in 1998); Germany (2); United Kingdom (3) Japan (4); China/Hong Kong (5); Netherlands (6); Italy (7); France (8); Belgium (9); and Taiwan (10) (*ibid.*). Trade with SADC is limited, imports from SADC totalled 2 percent of the country's imports while exports to SADC were 11 percent of the country's exports, giving a trade ratio of one to six (Thomas 1999, p. 117).

Foreign direct investment (FDI) in South Africa after 1994 did not materialize in the volumes hoped for and has proved to be inconsistent. Reaching the \$1 billion mark in 1999, there has been a rapid decline in 2000, recording a 52 percent drop to \$492 million FDI (*Business Report*, 23 January 2001, BusinessMap survey).

To advance its trade relations, South Africa has participated in a number of institutionalized forums on bilateral, regional, and global levels.

SA-EU Trade and Cooperation Agreement

With the EU, South Africa's major trading partner, and political sentiment on its side, a free trade agreement was an important objective. With negotiations dragging on for years, marred by petty protectionist demands from some EU member states on the use of the terms "port," "sherry," "grappa," and "ouzo," agreement was eventually reached in January 2000. It rests on three pillars: the three agreements on cooperation in the areas of science and technology, wine and spirits, and fisheries; South Africa's partial accession to the Lome Convention (Bertelsmann-Scott 2000); and a Trade and Cooperation Agreement to cover all aspects not addressed in the Lome Convention. The latter is most important as it includes a free trade agreement. The EU will fully exempt 95 percent of South African imports from tariffs within ten years, while South Africa need only liberalize

86 percent of the European imports within a 12-year period (ibid.; Stahl 2000). Reflecting the aid component of the agreement is the so-called "political dialogue" clause. At the commencement of the negotiations, the EU insisted on a discontinuation provision if South Africa violates respect for democratic principles, fundamental human rights, the rule of law, and good governance. South Africa resisted this clause as it feared a unilateral EU definition of its content. It was, however, included in the agreement subject to consultation before suspension of the agreement.

Southern African Customs Union (SACU)

South Africa's longest multilateral financial agreement is the Southern African Customs Union, dating from 1910, which includes the small states surrounding South Africa: Lesotho, Swaziland, Botswana, and Namibia. These countries' economies are both minute and extensively reliant on its larger neighbour. Until recently South Africa set the tariff rates for the union. The new democratic government committed itself to a more equitable dispensation and a deal recently struck gives its neighbours a greater say in running the affairs of the union (*Business Day*, 13 September 2000).

Southern African Development Community Free Trade Protocol

A larger market is the SADC region and a trade protocol, agreed upon in 1996, came into force in January 2000 with an implementation date of 1 September 2000. The protocol calls for a regional free trade area by 2008 (with 85 percent of all trade to be undertaken at zero tariffs) and total liberalization by 2012. The protocol deals with tariff schedules, rules of origin, dispute settlement and the elimination of non-tariff barriers. A protocol is being finalized to set up a tribunal. Again, as with other SADC initiatives, there is a gap between the paper protocol and national implementation measures. When the protocol became operational, only South Africa and Mauritius, an export driven island economy, had legislated the new tariffs and rules (Editorial, *Business Day*, 6 September 2000).

The intra-SADC trade is limited and currently stands at 10 percent of the total exports (as compared to 24 percent of Mercosur, 55 percent of the EU and 52 percent of NAFTA) (Pahad 2000, p. 52). The problem

with trade within SADC is not so much tariff barriers but other factors, such as low incomes, long distances between markets, weak transport infrastructure and political instability.²⁵ There is also no complementarity of products and it is feared that South Africa's dominance, with trade six to one in its favour, could end up impoverishing its neighbours (Thomas 1999, p. 117). To address this problem the agreement establishes an asymmetrical regime whereby South Africa would meet 97.6 percent of its obligations within four years, while other members have eight years grace (Pahad 2000, p. 52). The role of the protocol has thus been described as primarily being a mechanism to liberalize the other SADC countries' access to the South African market (Stahl 2000, p. 85).

Overlapping and competing with the SADC protocol, is the Common Market for Eastern and Southern Africa (COMESA), stretching from Egypt in the north to Swaziland in the south (Peter 1997, p. 366). Rivaling the SADC protocol, nine of the 20 members of COMESA (Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia, and Zimbabwe) agreed in November 2000 to launch their own free trade area, guaranteeing the immediate free movement of goods and services and the removal of tariff and non-tariff barriers (Games 2000). More ambitious plans are also in store. By 2025 a full monetary union is possible, including the use of one common currency issued by a common central bank.²⁶ The secretary-general of COMESA ascribed South Africa's abstention from this organization to its hegemonic role: "They are very protective. They want to control regional integration and development" (ibid.). Whatever the current political differences, it is foreseen that the overlapping jurisdictions will eventually lead to the amalgamation of COMESA and SADC (Mills 2000c).

South Africa Trading as an African Country

Although located in Africa, South Africa's advanced economy has disqualified it from benefiting from development trade packages. Full membership was refused to the Lome Convention (now the Cotonou Agreement) between the EU and the ACP (African, Caribbean, and Pacific) countries (Phillipe 1997). This distinction is not made in the recent US law — the *African Growth and Opportunity Act* — which came into operation on 1 October 2000. The Act allows duty-free US market access to African-assembled clothing. Conditions of access relate primarily to matters political and economic. The benefits are only available to African countries

declared by the US administration to have met broad political and economic conditions. These include "making progress" toward establishing market-oriented, trade- and investment-friendly economies in which the rule of law, property and labour rights are respected (Barber 2000a). These conditions include African governments taking steps that are consistent with the WTO agreement on clothing and textiles (Barber 2000b).

Indian Ocean Rim Association for Regional Cooperation

Looking east, a more recent venture has been the first tentative step toward cooperation with countries joined by the Indian Ocean Rim. In March 1997, 14 countries — Australia, Indonesia, Malaysia, Singapore, India, Sri Lanka, Oman, Yemen, Mauritius, Madagascar, Kenya, Tanzania, Mozambique and South Africa — established the Indian Ocean Rim Association for Regional Cooperation. The charter of this organization lists its purpose as promoting trade, facilitating investment, and advancing institutional and human development. It has been described as a case of "open" regionalism of a functionalist kind (Breytenbach 1999). The openness of the design, it has been argued, allows for the possibility that with the creation of free trade areas both in Africa (SADC and COMESA) and Asia (ASEAN) within the next ten years, there will be a changeover from regional cooperation to regional economic integration (*ibid.*). This possibility is not too remote given the growth in trade along the Indian Ocean Rim (Holden and Isemonger 1999).

Looking west, linkages across the south Atlantic are also in the offing in a concerted south-south bonding. The first stages of formal linkages between southern Africa and Mercado Comun del Sur (Mercosur) of South America are taking place. In December 2000 President Mbeki participated in the summit of presidents of Mercosur, while his trade and industry minister signed a framework agreement to launch negotiations on a South Atlantic FTA which could bring together Mercosur and the Southern African Customs Union (SACU), in time extending to SADC (*Business Report*, 24 January 2001).

World Trade Organization

Since the signing of the Marrakech Agreement in April 1994, establishing the WTO, South Africa has been an enthusiastic participant in its activities.

At the failed Seattle Round of talks, its mission was the restructuring of the international trade regime. While reform is still only an item on the agenda, the bite of the trade regime has been felt in an area critical to the health and well-being of many South Africans — the provision of affordable anti-retroviral drugs for AIDS sufferers. The *Medicines and Related Substances Control Amendment Act* of 1997 empowers the minister of health to procure cheaper drugs through compulsory licensing, which allows companies other than the patent holder to produce or import drugs (Du Plessis 1999, p. 63). The Pharmaceutical Manufacturers' Association of South Africa, consisting mainly of foreign drug companies, has waged a protracted three-year battle against the legislation. It is challenging the legislation on the grounds that it gives the government excessive ability to issue compulsory licences in violation of, *inter alia*, South Africa's international obligations in terms of the TRIPS Agreement (ibid.). In the wake of adverse publicity (putting profits before lives), the court challenge was eventually dropped (*Cape Times*, 20 April 2001). The battle continues, however, and the Pharmaceutical Research and Manufacturers of America (PhRMA) have requested that South Africa be put on a United States watch list for possible trade sanctions (*Mail & Guardian*, 9–15 March 2001).

The reform of the international trade regime is also pursued in other less formal settings. In February 1998 South Africa was admitted to the Cairns Group, an association of agricultural exporting countries²⁷ whose objective is to strive for fair and free trade in global agricultural markets (South Africa 1999, p. 286). South Africa has also joined the "middle-class" G20 group of nations aimed at reforming the institutions of global governance, including the Bretton Woods institutions (Mills 2000a, p. 353).

Bretton Woods Institutions

The International Monetary Fund (IMF) and the World Bank loom large on the South African horizon, although South Africa has thus far resisted the temptation to become a major client of these institutions. It has borrowed US\$67 million from the World Bank for small-scale development projects, but is considering a \$200 million loan to revamp public hospitals which, it is said, will be the first of a series of World Bank involvements in this sector. Significantly, the loan includes both finance as

well as assistance in economic and financial analyses in hospital management (*Business Day*, 30 August 2000).

Despite recent protest worldwide, the government remains committed to these institutions. At the meeting of the IMF and World Bank in Prague in September 2000, the minister of finance, Trevor Manuel, chairing the board of governors, said that he did not believe, like the protestors outside the convention centre, that the institutions should be abolished. But they must be reformed in a fundamental way. The task ahead was to ensure that the benefits of globalization are spread equally. First, the 4.38 percent voting right of the 43 African countries should be increased because they are the largest borrowers. Second, the manner in which the institutions implement lending programs in the developing world should be reformed. While there is resignation to the fact that structural and economic reform will come with loans, it was, however, objectionable to "micromanage the economies of sovereign states" through detailed conditionalities attached to loans.²⁸ Too often their country representatives are seen as "latter day colonial administrators" (Katzenellenbogen 2000).

The message from the IMF and the World Bank has been to shrink the state, cut social spending and drop trade protection and exchange controls.²⁹ More specifically, they have been urging the South African government for some time to reform the labour laws to ensure greater flexibility. The feeling is that the cost of labour is too high.³⁰

While the first wave of global governance was concerned with macroeconomic policy, a second wave is concerned with efficient government structures and good governance. The international development agencies and the donor community are increasingly positing that decentralization can be beneficial for economic development. Although much of the decentralization in the past decade, the World Bank notes, has been motivated by political concerns, it may be a case "where good politics and good economics serve the same end. The political objectives of increased responsiveness and participation at the local level can coincide with the economic objective of better decisions about the use of public resources and increased willingness to pay for local services" (World Bank 2000*b*). As part of the good governance ethic, decentralization thus becomes a means of improving public sector efficiency (World Bank 2000*c*, ch. 6; Dentier 2000).

While the formal linkages between South Africa and the IMF and the World Bank remain limited in the absence of any structural adjustment

programs, the informal network and buy-in are increasing. South Africa has already internalized the basic principles of structural adjustment programs in its growth, employment and redistribution policy of 1997, the objectives of which are the reduction of the budget deficit, privatization of state assets, restraint on wage increases, downsizing the public service and economic growth through greater private sector investment.

Despite having these macroeconomic policies in place, the South African economy is not achieving the 6 percent growth necessary to meet its unemployment challenge of absorbing the daily 1,000 new entrants into the labour market. In new initiatives to prompt growth, major players in the global marketplace are asked for advice.

President Mbeki first established an International Investment Council, consisting of leading international businessmen, including Jurgen Schrempp of Daimler-Chrysler and George Soros, to advise him on ways to improve the investment climate in South Africa. More recently, at a closed meeting called by Mbeki to devise strategies for economic growth, the guests included James Wolfenson, president of the World Bank and the deputy managing director of the IMF.³¹ In formulating policy responses to globalization, Mbeki noted after the meeting that one of the key issues was the relative cost of labour to the cost of capital, yet another way of saying that labour costs are too high.³²

The impact of global integration on domestic economic policy is intensifying, reducing the government's policy options (Abedian 1998, p. 510). The governor of the SA Reserve Bank, Tito Mboweni, a former minister of labour in the first ANC government and a former trade unionist, describes the impact in the following terms:

Globalization ... concerns the worldwide integration of financial markets. Therefore active participation in this integration process implies that [domestic] monetary and fiscal policies have to be subjected to the disciplines of the international market. Globalization mercilessly exposes the shortcomings in national economic policies in countries that do not apply the universal "laws" for prudent macroeconomic management (Mboweni 2000).

These "laws," Mboweni said, include "rigour and transparency in overall economic management; banking and financial sector soundness; reform of the institutions of the state in terms of seeking public sector efficiency; appropriate regulation; emphasis on the rule of law; independence of the

judiciary and central banks; anti-corruption measures; and growth that is centred on human development" (ibid.). For the Reserve Bank, it required the framework and banking structure of the country to be adapted "to comply with the international best practice as understood by international investors and regulators" (ibid.). It has thus far resulted in a convertible currency and the progressive reduction of the exchange control. More recently, the government has allowed the major industrial giants to move their primary listing from the Johannesburg Stock Exchange to foreign bourses such as London and New York.

In sum, the impact of global and regional integration on South Africa has been varied. While regional integration in both political and economic fields has been rudimentary, integration in the global economy has been profound. At a formal level, South Africa has bound itself to the WTO trade regime and sought bilateral free trade agreements. Perhaps more significant have been the economic "laws" of the global economy which have been incorporated into domestic policy. The net result has been that government's policy options have shrunk considerably. The question is now how these realities impact on the emerging decentralized system described earlier.

EXTENT AND IMPACT OF GLOBAL AND REGIONAL INTEGRATION ON INTERGOVERNMENTAL RELATIONS

South Africa's integration into the global economy is increasingly impacting on how the three spheres relate to each other and how they interact collectively and separately with the international community. With regard to international trade, the national government is covering the terrain shared with the provinces. As compensation there are some initiatives to draw the provinces into these trade relations. Provinces and cities are becoming increasingly aware of globalization and are both reaching out to the international stage and preparing for participation in the global economy. The most important impact of globalization may be the fiscal squeeze and the demand for good and efficient governance that the national government is applying to the other spheres of government.

Given the reach and effect of national commitments to the WTO, the national government will increasingly dominate the competencies shared with the provinces. Areas that provinces exercise concurrently with

the national government include trade, industrial promotion, provincial public enterprises, and agriculture. While provinces are constitutionally barred from imposing customs duties, conflicts may arise in the area of non-tariff barriers. Should this occur, national legislation will readily override provincial measures on the constitutional grounds that it is in "the economic interest of the country as a whole" or for protecting national economic policy (Steytler 1999*a*). Given the impact that national trade commitments have on provincial interests, the focus has shifted toward intergovernmental relations both at legislative and executive levels.

Sitting mostly in joint committee with the National Assembly, NCOP has become part of a more inclusive treaty-making process. Parliament has in the past been confronted with an all-or-nothing choice; it must either approve or disapprove an extensive international agreement. Because of this impossible choice imposed on it, Parliament has insisted on being informed earlier in the negotiation process. In 1998, the parliamentary Portfolio Committee on Trade and Industry played an active role in respect of bilateral agreements. During the negotiations of the South Africa-European Union Free Trade Agreement the Portfolio Committee made a number of submissions to the trade negotiations. In respect of the WTO, the Department of Trade and Industry (DTI) has also brought offers to the attention of the Portfolio Committee on Trade and Industry and sought a mandate for its negotiating position (*ibid.*).

With its power to veto the ratification of international treaties, NCOP can play an independent role in the ratification process. No evidence has yet emerged that NCOP has played such an assertive role. This is symptomatic of the overall marginal role that NCOP plays in Parliament. There are both institutional and political reasons for this role. First, provinces that must drive the NCOP process are lacking in the skills and knowledge to participate in debates on complex international trade relations. Second, the centralization of political power within the ANC hierarchy is not conducive to a more independent role for provinces (Steytler 1999*b*). With the premiers of the ANC-run provinces appointed by the central party structure, it makes it unlikely that they, as leaders of their provincial delegations to the NCOP, will publicly challenge government trade policy in that forum.

At the executive level, the Department of Trade and Industry (DTI) has also sought consultation with the provinces. This process takes place through regular meetings between the minister of trade and industry and

the provincial members of the executive councils (MECs) responsible for Economic Affairs, the so-called MINMEC (minister-MECs) meetings. These meetings serve as a forum for both information distribution and consultation. The DTI has also included provincial representatives in a number of their delegations to WTO trade negotiations (Steytler 1999a, p. 100).

On the whole, the provinces and local government have played a limited role in articulating provincial interests in trade relations. Not even the province with an extensive wine industry, the Western Cape, participated in the debate about the renaming of "port" and "sherry" during the EU free trade negotiations. Again, when the SADC trade protocol came into force, it was not the subnational units that raised concerns, but the trade unions and the textile industry. Their low-key position is attributed, again, to the current lack of maturity of the provincial system.

The discourse on globalization and its impact on subnational entities have not, however, passed provinces and cities by altogether and conferences on this theme have been convened.³³ In all provinces there has been a concerted effort to connect with the outside world. Twinning agreements with German *länder* and Canadian provinces has been popular. Although provinces do not have the constitutional power to conclude international treaties (that is the reserve of the national government), they have concluded "cooperation agreements" with other subnational entities (Berg 2000). The Western Cape has such agreements with the Free Province of Bavaria (Germany), Upper Austria (Austria), Tunis (Tunisia), Shandang (China), Madeira (Portugal), and Pusang (Korea). These agreements are aimed at joint projects that benefit communities within the provinces, strengthen cooperation and exchange of expertise and personnel (*ibid.*). In 1999 the Western Cape, along with Quebec, was admitted as the only non-European members to the Assembly of European Regions.

Although there is considerable potential, there is scant evidence of provinces and municipalities engaging in transnational enterprises. As part of SADC's development program, spatial development initiatives (SDI) have been initiated by the region's governments and some of these SDIs provide considerable opportunities for provinces to engage in cross-border transactions. The best known SDI is the Maputo Development Corridor which links Gauteng and Mpumalanga with the Mozambican port of Maputo (Pahad 2000, p. 51), an opportunity the Mpumalanga government is apparently not exploiting.³⁴ A further SDI with

transnational possibilities for KwaZulu-Natal is the Lubombo SDI, linking Southern Mozambique, Eastern Swaziland, and Northern KwaZulu-Natal in a large eco-tourism area (SADC 2000, p. 76). Metropolitan Cape Town is negotiating with Namibian authorities to pipe natural gas from that country to fire the city's power station.

There appears to be a realization in some provinces and cities that the national government will not necessarily be able to mediate the adverse effects of globalization and that they should engage actively with the issue. The more important response to globalization has therefore been the shaping of domestic policy to cope with the dangers of growing poverty, inequality, and marginalization that globalization may bring and to utilize the opportunities that it may also present (Western Cape 2000, p. 1). This has occurred both at the provincial and local levels.

The Western Cape provincial administration published in May 2000 a Green Paper entitled *Preparing the Western Cape for the Knowledge Economy of the 21st Century*. The premise of engagement is that globally particular regions (rather than countries) have been successful in promoting economic development, noting Bavaria and Upper Austria as examples. It argues that with increasing global governance, national borders have become less important, while "regional characteristics [subnational and transnational] are becoming increasingly significant in location decisions made by firms." For a region to succeed in an increasing international competitiveness, its advantage can come from either of two sources: low-cost leadership (particular low, but skilled wages) or product differentiation (through innovation, quality, and the development of a distinctive brand image). With regard to both sources, the province sees itself playing a facilitative role. The report is, however, fully aware of the underlying tension that the new knowledge-based economy inevitably entails; the employment and income gap will increase between skilled and unskilled labour. The province is further alive to the fact that the Cape Town metropolitan authority, with 75 percent of the population and gross geographical product within its area, will be the key engine driving development in the region (ibid., p. 26).

The Metropolitan Council, too, has engaged in this type of exercise. Again the strategy is, as a title of its 1999 policy document suggests, *Going Global, Working Local: A Strategy for [Cape Metropolitan Area] Co-operation to Reduce Poverty and Build Global Competitiveness in the 21st Century*. The dilemma is familiar: while globalization with knowledge-

based business as the primary engine of economic growth is seen to increase inequality between the skilled and the unskilled, the challenge for local government is to make Cape Town a globally competitive city and, at the same time, reduce levels of poverty. As with the Western Cape, it realizes the growing importance of regions and cities, rather than nations, as the centres of economic activities and that the future of the country depends on South African cities becoming globally competitive. However, with rapid urbanization, cities are also increasingly the centres of poverty. To take advantage of the knowledge-driven economy will prove difficult, as there is a critical skills gap between demand and supply; only 15 percent of the people in Cape Town between 18 and 65 have a postsecondary education (Unicity Commission 2000). The understanding is emerging that the new metropolitan city of Cape Town would have to move beyond the current emphasis on service provision, to one of facilitating development and providing civic leadership in the race to become globally competitive and to reduce poverty.

Arguably the most significant impact of globalization has been the way the national government relates to the provinces. Driven by the global "laws" of fiscal discipline and efficient government, the relations between national government and the provinces are increasingly being dominated by the national Treasury. Without taxing powers, provinces are held captive by the Treasury in an extensive system of financial supervision. While the provinces in 1996 received their equitable share of the revenue raised nationally in two tranches, currently it is done on a monthly basis. This is accompanied by extensive monthly reporting duties (*National Treasury's Intergovernmental Fiscal Review*, October 2000). An early warning system has been implemented which requires that provincial departments report monthly to the provincial Treasury which, in turn, does the same to the national Treasury. Where provinces have exceeded their budgets, they have been bailed out under strenuous conditions. In two provinces, the national government has intervened by issuing detailed directives on financial matters (Levy *et al.* 1999, p. 86). The overall effect of the fiscal discipline imposed by the national Treasury has been the shrinking of the provinces' room for manoeuvre.

Within the framework of good governance, the priority will be the reform of institutions of the state in terms of seeking public sector efficiency. In particular, the political ambiguity about the need for provinces will be fuelled by concerns about their inefficiency and poor manage-

ment. With democracy not enhanced, and little evidence of innovation and efficiency in the provinces, the drive toward good governance may well mean greater reliance being placed on local government as the engine for growth and the locus of subnational democratic accountability.

The global demands of fiscal discipline, efficient government and development through decentralization, may give additional impetus and direction to the debate around the future of the provinces. The "laws" of the new global economy may result in the hour-glass configuration where provinces are reduced beyond recognition by the pressures of national and local government. Much depends, though, on the form and direction that globalization takes over the next 15 years.

FUTURE SCENARIOS

The four global scenarios developed for this project — shared governance, global club, regional dominators, and cyberwave — are by nature speculative, representing accentuated models and discounting combinations of elements of the various scenarios. Whatever elements emerge dominant, South Africa's place and role in these scenarios will certainly be reflected also in the way decentralization evolves in South Africa.

Shared Governance

The *shared governance* scenario posits a world order where the equality and responsibility of states are recognized. It is a rule-based governance that accommodates the developing world, giving an egalitarian slant to trade relations and providing for extension of aid and the transfer of information technology. It is also a milieu for the environment and the preservation of cultural differences. It is a scenario in which South Africa played its bit part in creating.

South Africa's voice, speaking for the Southern African region and increasingly on behalf of Africa and the south, was heard in international forums. Advocating the principles of equality and global solidarity, the reform of the UN Security Council, giving a permanent seat to Africa, was the first milestone. Other international organizations followed and in the wake of the international protest, the reform of the IMF and the World Bank was swift, increasing the voting power of the borrowing countries considerably. The WTO implemented the principle of limited reciprocity

and made the dispute-settlement procedures more accessible to developing countries. The Cairns Group proved its worth and succeeded in persuading the remaining developed countries to abolish their protectionist agricultural policies.

With poverty alleviation an international concern, international assistance benefits both South Africa and Africa. The Millennium Africa Plan, presented by South Africa, Nigeria, and Algeria to the World Economic Forum in Davos in 2001, bore fruit.³⁵ Under the leadership of Mbeki, and with the backing of the US, EU, and Japan, efforts to promote foreign investment, trade concessions and flows of aid to Africa were coordinated. The major achievement of the African Renaissance, Mbeki noted in 2009, his last year in office, was that the conditionality to the plan — support for peace and democracy and the fight against corruption — was imposed and executed by African leaders and not the IMF and the World Bank. With South Africa's well-being intertwined with that of the region, equitable economic development is engineered through a highly developed SADC.

With increased access to the North American and European markets, the South African economy maintained a growth rate of 6 percent. Despite political opposition from the left, the ANC government was vindicated in that their conservative macroeconomic policy was the only correct route to follow. South Africa benefits significantly from the rise of the "green" ideology. Not only did "emissions trading" result in increased foreign direct investment in South Africa, but eco-tourism in and around the major "transfrontier parks" kick-started the economic development in previously underdeveloped rural areas. Southern Africa has become a prime tourist destination.

With a strong economic growth the pressure of fiscal discipline abates somewhat. Nevertheless, the government, moving under the banner of good governance, targets the provinces, claiming that their functions have been effectively usurped by efficient mega-cities and district municipalities. The latter have shown their mettle with necessary leadership becoming engines of economic development and poverty alleviation. However, efforts to reduce provinces to administrative agencies met fierce local as well as international opposition. The party discipline in the ANC melted and elites in some provinces couched their provincial interests in terms of the rising tide of indigenous peoples to self-determination. Ethnicity in the globalized world has become a commodity that in the

face of uniformity is treasured. With corruption under control and greater efficiency in place, provinces withstood the onslaught with ease. Other beneficiaries of the movement were traditional leaders and isolated pockets of Afrikaner "volkstasters" who were accommodated in local government structures. In terms of the shared governance scenario multi-level government is likely to be bolstered by this direction of globalization.

Global Club Scenario

In terms of the *global club* scenario — an extension and accentuation of the present — the outcome changes. Wealth and power are concentrated in few countries and multinational companies and they, forming a "club," come to dominate global affairs. No country in Africa becomes a member. Equality and solidarity are not guiding principles and the governance of the IMF and World Bank and the rules of the WTO remained unchanged. The prosperity that effective global governance brings, trickles down to developing countries, but the gap between rich and poor widens.

South Africa is not a club member and sees the riches in which it cannot partake. It voices the discontent of Africa, but the discordant notes are discounted by the club. The marginalization of South Africa caused it to turn increasingly toward Africa both as a market and a political terrain. The grandiose schemes of the OAU such as an African Parliament, an African Court of Human Rights, have come to naught. However, regional integration in southern and east Africa has deepened because South Africa, after a number of regional crises, plays a hegemonic role in the regional institutions to secure stability in the region. A free market of southern Africa is functioning, although the trade is still heavily weighted in favour of South Africa. The free movement of people is not formally allowed but the illegal migration continues unabated as the economic decline of its neighbours continues. As Africa has become difficult to police, the club has abandoned a direct policing role in the ever-increasing social turmoil and internal conflicts. Instead, the club assists South Africa and Nigeria to play the international policeman under the banner of promoting the African renaissance.

South Africa's economic growth strategy battles against the odds. Labour costs remain high and the AIDS pandemic causes the loss of 25 percent of the workforce. After a long fruitless battle to get "the balance between labour and capital" right, the ANC lost the election to a populist party, domi-

nated by organized labour. A skills and capital drain coupled with the inability to turn around the education system, did not produce an innovative and entrepreneurial culture. The technological gap between South Africa and its preferred markets of the club members has increased and the skewedness of the WTO trading rules has driven local businesses out of the market.

The lack of sustained growth has led to South Africa's increasing indebtedness to the IMF and the World Bank. Although the required macroeconomic policy was in place by 2000, the failure to implement it effectively resulted in the "micro-management" of policy and practice through a number of structural adjustment programs. One of the casualties was the political structure of the provinces. The ANC's ambivalence toward the provinces coincided with the demands for lean and mean government. The corrupt and inefficient provinces whose political elites showed increasingly independent tendencies, were sacrificed in the name of good government. The savings effected in eliminating 423 MPLs and the entourages of the provincial executives was acclaimed internationally as prudent housekeeping. Provincial appeals to the federal sentiments of club members, notably the United States and the European Union, did not receive a favourable hearing. The national government successfully argued that local government would more than adequately provide political accountability. Provincial claims, backed-up by threatened ethnic conflict, are met with increased powers to municipalities in the area of education, health, and welfare.

By 2015 more than 60 percent of the population will live in metropolitan areas. With 80 percent of all economic activity located in the mega-cities, they manage a level of financial viability. Within an overall national policy of fiscal restraint, the gap between the rural poor and the urban social net of services will increase.

Regional Dominators Scenario

In the *regional dominators* scenario, major geopolitical blocs, showing a high degree of internal integration, confront one another in a new struggle for economic and political advantage. International organizations, depending on cooperation, are increasingly irrelevant. With economic growth low, the inequality between the developed and developing worlds increases. The neo-conservative agenda also means less government. In Africa the developed worlds showed little interest in supporting economic development or intervening in local conflicts.

After years of lobbying, negotiating, and uniting African countries behind its efforts to reform the UN, South Africa took its permanent seat on the Security Council. However, the reform of the Security Council was symptomatic of its irrelevance and ineffectiveness, and it could do little to prevent the increasing tensions between the dominant blocs and aggressive competition. A similar fate befell developing countries' efforts at reforming the WTO rules making the international trade regime more equitable to the marginalized economies of the developing world.

Faced with two regional blocs showing only limited interest in the African market and raw materials, South Africa, and the regional formations it leads, faced a difficult choice: to choose between the spheres of influence of the North American or the European bloc. The advantages are limited. From the European bloc, development programs in the form of the Cotonou Conventions have long lapsed. Bilateral agreements in the style of the South African-EU free trade agreement are the order of the day. The North American bloc is less charitable. In developing its North American bloc, the US focused on South America and the black congressional lobby is only able to offer the *African Growth and Opportunity Act* of 2000 which, due to administrative manipulation and red tape, is a dead letter. In the end, the only choice South Africa could make was to opt for the European bloc.

With market access to the major economic blocs more and more difficult because of the breakdown of the WTO's rule-based system, South Africa turned inevitably to the African market, driving both the full implementation of the SADC free trade protocol, as well as its amalgamation with COMESA. With nearly half of the sub-Saharan countries in a free trade zone, the African Economic Union is slowly becoming a more realistic goal.

Riding on the back of the successful implementation of the Southern and Eastern African Free Trade Agreement, SADC has been reformed politically and South Africa plays a leading role in maintaining stability within the community. With the developed world showing little interest in local conflicts, South Africa is called upon to intervene, but act only in cases of direct strategic interest. Africa's other pet projects of continental integration have, however, fallen on hard times. The African Parliament, thought to be an attainable ambition 15 years ago, has been reduced to a "chat room" on the Internet.

The regional trade advances that South Africa achieved have displayed a poor return. African markets remain small and the growth rate seldom exceeds the population growth. The number of African countries on the UN list of heavy indebted countries has increased, since the debt relief efforts of the early 2000s withered away. Foreign aid has also declined.

South Africa's economic performance is no exception. Foreign direct investment did not materialize. The labour costs remained high and the AIDS pandemic has reduced life expectancy to 46 years and increased the cost of production by 25 percent. The only interest that multinational corporations show is in the traditional areas of raw materials. With poor growth, access to state machinery becomes an important resource for income and corruption is rampant. To control the burgeoning national debt, government cuts back on social spending. Following the example of the successful economies of the regional dominators, smaller government is the new mantra. The first and obvious target is the provinces. A costly echelon of politicians and senior officials has added little value to service delivery. The rampant corruption in the areas of social security results in little opposition from the public. Their death knell has long been rung by metropolitan and district municipalities which have politically eclipsed their provincial competitors.

The social unrest that has followed the increased disparities in income and the cutbacks in social spending has been primarily an urban phenomenon. Ethnic demands for greater provincial autonomy are muted and effectively deflected by granting greater powers to local authorities. To cope with the crime wave, security is taken over by public-private partnerships managed by municipalities. The metropolitan municipalities brace themselves as they become home for millions of illegal immigrants — economic refugees of the neighbouring countries. They deal directly with the countries of origin in futile attempts at repatriation. In rural areas the land-grabs of farms owned by white farmers are rife and ethnic tensions are defused by granting traditional leaders effective local government powers.

Cyberwave Scenario

The *cyberwave* is "characterized by rapid, unpredictable and continuous technological change that drives business and stimulates growth, but

frequently outstrips the ability of public institutions to stay abreast of change and respond effectively." A key feature is that rapid growth is skewed both within developed countries and between developed and developing countries. Both domestic and international political institutions weaken. The benefits of the cyberwave bypass the African continent altogether and the rapid and continuous technological change has left Africa further behind. With less financial aid from international organizations and market access to the West less secure, Africa struggles.

South Africa's desperate attempts to gain some advantage in the slip stream of the wave are met with limited success. It has not become a participant in the "new technology economy"; the human capital that drives the new technological economy is absent as the educational system fails to retool itself for the hi-tech knowledge industry. The cyberwave has, however, noticeable ripple effects on the country. One of the early biotechnological products is a vaccine for HIV. The price is, however, exorbitant in a free-falling exchange rate. The absence of IMF balance-of-payment loans places the cure beyond the open market. The parallel importation of a generic vaccine from southeast Asia, which has the capacity to copy the technological advances of the West at a fraction of the price, saves the day. North American companies are frustrated by the weakness of the WTO to protect their patents and police licensing agreements. Lacking support and financing by the leading capitalist democracies, the WTO has been unable to deal effectively with patent piracy on any significant scale. The decline in IMF lifelines compelled the South African government to ignore the remaining WTO-sponsored sanctions for its violation of the TRIPS agreement.

Given the public rejoicing in the HIV vaccine — the products of the new technological economy — the ideology that follows in the cyberwave wake finds receptive ground in South Africa. Political elites transpose the philosophy of the new entrepreneurial class to politics. Small government is best as innovation and experimentation are only possible in small units. Local communities have the best answers to social challenges. The national government was helpless in the face of the HIV/AIDS pandemic and it had no answer to the question of how to engineer economic growth. The government's view of smaller government — the elimination of provincial government — elicits the opposite response. Small government means less central government and its efforts to abolish the provinces falter before political opposition. The rigid and

hierarchical political structure of the ANC finally cracks, not on traditional ideological lines of the past, but on the basis of new regional interests. The newly formed regional splinter parties contest the future election and the ANC loses control. The glue of the new coalition government is the common belief in a weak centre and strong and autonomous provinces. Provincial individualism is encouraged and celebrated. Provincial powers are increased and provinces form alliances with the mega-cities, placing their faith in local entrepreneurs to provide practical answers.

The best future scenario, and the one South Africa is working toward, is shared governance. Growth and global interest and concern for ethnicity may save the day for the provinces. Under the cyberwave, the result is the same. Common to both scenarios is a weakened national government — in the case of shared governance because of the strength of global governance, while in the other, by its absence. The future of the provinces looks less rosy where global forces lead to strong central governments as in the case of the global club and regional dominators scenarios. In all the scenarios, the new mega-cities will emerge as key players on the domestic scene.

CONCLUSION

The constitutional compact of 1993 gave South Africa the rudiments of a federal system. The 1996 constitution entrenched decentralization and with the full implementation of the local government provisions in December 2000, which included the establishment of strong mega-cities, the legal architecture is largely in place. The present system can best be described as an emerging system of decentralized government the contours of which will evolve in the near future.

Although the system is a highly centralized form of federalism, provinces have not yet fully explored the constitutional space that is available to them. Within the present confines of the constitutional framework, the full exploitation of the current federal features can deepen the process of decentralization. For example, NCOP could become a powerful forum where provinces play a meaningful role in the legislative field and assert their weight in foreign policy through NCOP's power to co-determine international treaties. National legislation regulating the provinces' constitutionally-protected taxing powers could lead to more accountable and innovative provincial governance. Whether this would happen depends on a change in political circumstances.

The experience in India was that a quasi-federation, which lay dormant for several decades, underwent a dramatic process of federalization over the last decade. This occurred when the centralizing force of the Congress Party dissipated and a federal political culture emerged. Ironically, central party control undermined the popular structures of the Congress Party. The decline in the autonomy of the party organization in the states led to a weak and attenuated party and lack of stable loyalty structures (Hargraves 1975, p. 165). Could the same happen in South Africa?

The longer the South African system continues in its present form, the more likely it is that the federal elements would take root and deepen. Over time a federal political culture may well emerge within the current centralist ANC. It has been suggested that greater centralization, which is in evidence in the party today, would be at the cost of increasing organizational decay (Giliomee and Simkins 1999, p. 345). If there is little political reward for provincial and local leadership, it may impact adversely on the political organization at branch and grassroots levels (Steytler 1999*b*). The emergence of a federalizing process in South Africa similar to that in India, may, however, be pre-empted by both domestic and international developments.

The dominant ethos within the ANC leans at the moment toward the scaling down of the provinces. They were regarded as a necessary compromise in the early 1990s, but they have not excelled in clean and efficient government for service delivery. At a party political level, factionalism has thrived in some provinces. Given the state and role of provinces, it has been suggested that the newly established metropolitan and district councils could readily step into the provincial shoes.

Political opposition to the eclipse of provinces will come mainly from the IFP where the withering away of provincial political structures would relegate the party to the rural backwaters of KwaZulu-Natal. While the ANC could manage IFP opposition by drawing it into a closer alliance at the national level, the opposition from the Democratic Alliance (DA), drawing support mainly from white, coloured, and Indian communities, would be discounted. In any event, the resultant strengthening of local government would also benefit the DA which seeks to make the metropolitan city of Cape Town its showcase for good government and economic development.

Coinciding with the process of decentralization has been South Africa's enthusiastic participation in the international community. Because the process is unsettled, global integration may exert significant influence indirectly on the direction that this process takes. The argument of this chapter has been that the pre-existing tendency toward centralization and localization in South Africa may be reinforced by the pressures of global integration.

In the short term, South Africa's commitment to abide by the "universal 'laws' for prudent macroeconomic management" has resulted in domestic policies that entailed, among other things, fiscal discipline, downsizing of the public sector, and public sector efficiency. As a direct consequence, intergovernmental relations are dominated by the national Treasury; and provincial spending is carefully monitored and supervised, shrinking provincial space considerably.

In the long term, the ANC's ambiguity toward the provinces is reinforced by the very same economic laws. Lean and mean government does not require provinces since the service-delivery function could be done more effectively either by national or local government. Moreover, strong local government dovetails well with the second wave of global good governance which posits localization of government functions as an effective and efficient vehicle for development and accountability. The result will then be an hourglass federation — squeezed between the national and local governments, provinces lose many of their powers to the other two spheres of government.

The impact of globalization on the evolving process of decentralization is not, however, unilinear; globalization will not inevitably contribute to the decline of the provinces. The different routes that globalization may take, as described in the various scenarios, may have different outcomes. While the global governance scenario favours the position of provinces, as does the cyberwave scenario, they will do less well if the global club or regional dominators scenarios eventuate.

At present, the external influences on domestic policy flow from global integration. Because regional integration is currently so shallow it has had no impact on the process of decentralization. This may change, however. The pressures of global economic integration will certainly propel the regional integration process forward. In the past, the process of integration in southern Africa was largely driven by politics and not

economics as is the case in other regional integration projects. The impact of global economic integration may change this fundamentally. The establishment of the SADC free trade protocol signals a change in approach. When integration makes economic sense, political integration becomes more feasible. Regional integration may, then, bring to bear its own dynamic on South Africa's decentralized system.

Notes

1. Eastern Cape (isiXhosa 82.3 percent); KwaZulu-Natal (isiZulu 79.3 percent); Northern Cape (Afrikaans 66 percent); Western Cape (Afrikaans 62.2 percent); North West (Setswana 59 percent); Free State (Sesotho 57.4 percent) Northern Province (Sepedi 56.7 percent). *RSA Statistics in Brief* (1997, Table 3.9).
2. "Rich Are Getting Richer, the Poor Are Getting Poorer," *Business Day*, 9 November 2000.
3. Dr. Malegapuru Makgoba, president of SA Medical Research Council, quoted in "SA Could Face AIDS Holocaust — Makgoba," *Business Day*, 22 November 2000.
4. Countries with a GNP per capita of between \$2,996 and \$9,265 are classified by the World Bank as upper-middle income countries. These include Argentina, Brazil, Malaysia, Hungary, Poland, and Saudi Arabia. World Bank. *Data & Maps*. At <<http://www.worldbank.org/databytopic/class.htm>>.
5. For 1996 and 1997 the GDP growth rate was 3.1 percent, dropping in 1998 to 0.6 and rising in 1999 to 1.2 percent. World Bank. *South Africa Data Profile* at <<http://devdata.worldbank.org/external/.htm>>. The predicted growth rate for 2000 is 3 percent.
6. "FDI Plummet 43% in 2000, Survey Shows," *Business Report*, 23 January 2001.
7. This section is drawn from Steytler (2000a).
8. For a discussion on the classification of the interim constitution of 1993, see Elazar (1994, p. 29); Watts (1994, p. 75).
9. "Provinces could go, says Sutcliffe," *Independent*, 14 October 2000.
10. "Strip down provinces, says premier," *Sunday Times*, 18 March 2001.
11. For the first six years (1994–99) the average number of laws passed annually was 6.7 (excluding appropriation bills).
12. National Treasury's Intergovernmental Fiscal Review 2000, quoted in *Sunday Times*, 22 October 2000.

13. The Non-Aligned Movement Ministerial Conference at the 8th summit of the Inter-Governmental Authority on Development, reported in the *Cape Times*, 24 November 2000.
14. Jackie Selebi, Director General of Foreign Affairs, quoted in Mills (2000a, p. 329).
15. See John Dlodlu, "A weak OAU exposed by Cote d'Ivoire farce," *Business Day*, 6 November 2000.
16. The African Union (AU) was established in July 2002 at a heads of government meeting in Durban, South Africa. The AU replaced the OAU.
17. "SA bid to host human rights court," *Sunday Times*, 5 November 2000.
18. The 14 countries are: Angola, Botswana, Namibia, Lesotho, Swaziland, Zimbabwe, Mozambique, Tanzania, Zambia, Malawi, South Africa, Mauritius, Seychelles, and the Democratic Republic of Congo. Uganda is considering applying for membership.
19. John Dlodlu and Christof Maletsky, "SADC unity put to tough test," *Business Day*, 12 March 2001.
20. "Big plans for mega park," *Mail & Guardian*, 24 to 30 November 2000.
21. "SA must pave the way for regional trade development," *Business Day*, 8 September 2000.
22. "Globalisation needs union movement, says Erwin," *Business Day*, 23 August 2000.
23. It was 26.2 percent in 1989, 23 percent in 1995, 25.7 percent in 1998, and 25.4 percent in 1999.
24. Imports were 21.2 percent of the GDP in 1989, 22.1 percent in 1995, 24.4 percent in 1998 and 22.9 percent in 1999.
25. Thomas (1999, p. 113). See also African Development Bank report, quoted by Parsons "SA must pave the way for regional trade development," *Business Day*, 8 September 2000.
26. "Southern and eastern African states set 2025 as target date for monetary union," *Sunday Times*, 22 October 2000.
27. Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Indonesia, Malaysia, New Zealand, Paraguay, the Philippines, Thailand and Uruguay.
28. "Manuel to seek reforms in Prague," *Business Day*, 12 September 2000.
29. Patrick Bond in *Reconstruct*, 17 September 2000; IMF, *World Economic Outlook* 2000 first half, reported in *Business Day*, 20 September 2000.
30. Eduardo Aninat, deputy managing director of the IMF, reported in editorial *Beeld*, 7 November 2000; El Tigani Ibrahim, IMF's South African country representative, reported in *Business Day*, 7 November 2000.
31. "Wolfenson at SA workshop," *Business Day*, 3 November 2000.
32. "Mbeki in fresh bid to boost economy," *Business Day*, 6 November 2000.
33. See, for example, the Western Cape: from 5-7 June 2000 there was a conference in Bavaria on the theme of Consequences of Globalization and

Localization for Germany and South Africa, for Bavaria and the Western Cape. Three months later the Western Cape government hosted its own conference on the theme, "Globalization and International Relations: Challenges and Opportunities for the Provinces" 31 August–1 September 2000, Stellenbosch.

34. "ANC lambasts 'rudderless' Mpuma premier," *Mail & Guardian*, 17–23 November 2000.
35. "Leaders have plan for African poverty," *Business Day*, 27 November 2000; "Mbeki's grand plan for Africa's recovery," *Cape Times*, 29 January 2001. The New Partnership for African Development (NEPAD) was established in 2002, forming the basis for an economic recovery plan for Africa.

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TRANSFORMING SYSTEMS

8

Globalization and the European Union: Shared Governance on a Regional Scale

Liesbet Hooghe

INTRODUCTION

Globalization, as this chapter understands it, refers to processes — economic, military, environmental, and social — that thicken interdependence among individuals across different countries (Keohane and Nye 2000). Globalization undercuts the normal patterns of interaction in Europe, which, for much of the twentieth century, had been confined within the boundaries of the nation-state and regulated by sovereign national governments. Globalization, then, can be expected to create conflict since private actions and government measures often adversely affect neighbours.

A functional response to these externalities would be to internalize them in a global political unit, or more precisely, a multitude of political jurisdictions where, for each policy problem, the optimal territorial scope of government would be determined in light of externalities (Alesina and Spolaore 1997; Casella and Weingast 1995; Frey and Eichenberger 1999; for a critique of this neoclassical theory of authority, see Marks and Hooghe 2000). For example, one would want a global government to address global warming, a US-EU government to solve trade-related issues that affect both regional economies, and localized cooperative arrangements between subregional or local governments to deal with, say, externalities from waste disposal or urban planning.

Of course, reality is more complex. Actual responses to globalization differ from the ones predicted by functional imperatives. A major reason is that individuals do not agree on what is efficient or functional. Which solution is considered "efficient" or "functional" is the outcome of political struggle, not of value-free analysis. That leads us to examine the coalitional politics that underlies particular institutional responses to globalization.

In Western Europe, European integration has been the chief retort of national governments, political parties, and private actors to globalization. European integration accelerated in the mid-1980s, and again in the mid-1990s, and this acceleration was a direct response to problems attributed to globalization — augmented national vulnerability to trade and financial flows, eroding competitiveness for European firms, structural unemployment and labour market rigidities, and increasing immigration from its poorer eastern and southern Mediterranean neighbours into the European Union (EU). I do not mean to say that globalization determined how Europe's institutions, policies, and politics changed. "Domestic politics" — national and European leaders' preferences, and societal interests as expressed by producer groups and political parties — has mediated these changes. Yet I will show that the European Union has become a battleground for opponents and proponents of globalization. Some want the EU to be a bulwark against global pressures, and others want it to accelerate the pace of increasing *global*, as opposed to national or European, interdependence.

A CAUTIONARY NOTE

The European Union is different from the other political systems examined in this book. It is not a state because it is not ruled by a single regime. It is certainly not an established federation like the United States, Canada, Australia, or even South Africa or India. The European Union does not have a constitution; it is based on treaties.

There is more that distinguishes the EU from the other cases in this book. The EU was born out of the ashes of war. In technical terms, one could say it was a direct response to a security dilemma, military interdependence, in Western Europe 50 years ago. These links of interdependence have broadened into the economic and social sphere. At one level, therefore, the EU is not only at the receiving end of globalization but it is itself

an agent of globalization in Europe. Yet it is not a mere muscular brother of the North American Free Trade Agreement (NAFTA), or the World Trade Organization (WTO). That would miss the point about the European Union. Over the past 50 years of its existence, it has been transformed from a security and trade organization into a polity in which nation-states as large and as powerful as Germany, France, and the United Kingdom have ceded national sovereignty, the ultimate authority, over virtually all policy areas, and decision-making looks and feels very much like the kind of politics one finds in democratic federal states such as the US, Canada, or Germany. That transformation has happened at break-neck speed.

I find myself chasing independent variables. Is it European integration — the process by which interdependence between societies and groups in Europe is promoted and regulated through EU membership? Am I seeking to understand, in other words, how the European Union, as the specific embodiment of globalization in Europe, affects interstate and intersociety relations in Europe? Or is the independent variable the amalgam of global and regional economic, social, cultural, and other pressures that are pounding on the EU's institutions, policies, and politics as they are pounding on the Canadian or the German federation? This makes the European Union the dependent variable. I feel I need to address both, and that explains the somewhat different structure of this chapter.

I begin by positing the European Union as the dependent variable. In the next section, I will briefly sketch the history and institutions of the EU, and I go on to examine whether global pressures or domestic factors influenced the acceleration of European integration over the past 15 years. I then shift European integration to the independent variable side of the equation, and I examine how global and EU pressures have affected key dimensions of politics in Europe.

SITUATIONAL CONTEXT

The European Union was created in 1957, when six countries signed the *Treaty of Rome* that set out to establish a customs union by 1970. From the start, the European Union (then still called the European Economic Community) had greater ambitions than NAFTA, which is a free trade area only. France, Germany, Italy, and the Benelux (Belgium, the Netherlands, Luxembourg) completed the customs union two years ahead of time in 1968. The next boost to European integration came with the accession

of Britain, Ireland, and Denmark in 1973. Norway had negotiated accession as well, but a public referendum in Norway struck that down. It was not until the mid-1980s that European integration really took off, with three major treaty revisions in a row: the *Single European Act* (SEA) of 1987, which committed member states to the creation of a single market by 1992, the Treaty of European Union (*Maastricht Treaty*) of 1993, which paved the way for Economic and Monetary Union (EMU) — that is, a single currency — by 1999, and the *Amsterdam Treaty* of 1999, which shifted power in a range of non-economic policies, strengthened the institutions, and laid the foundation for a common foreign policy.¹ The European Union now resembles more a political federation than an international organization for economic cooperation.

Deepening of European integration went together with widening membership. In 1981, Greece became the tenth member, and in 1986 Spain and Portugal followed. In 1995, Sweden, Austria, and Finland left the European Free Trade Association to join the European Union, while the Norwegian people, for the second time, voted against. Ten more countries are set to join in 2004: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia, as well as Cyprus and Malta. By 2010, more countries may come in: Bulgaria, Romania, the newly created republics from ex-Yugoslavia, perhaps also Albania, and Turkey.

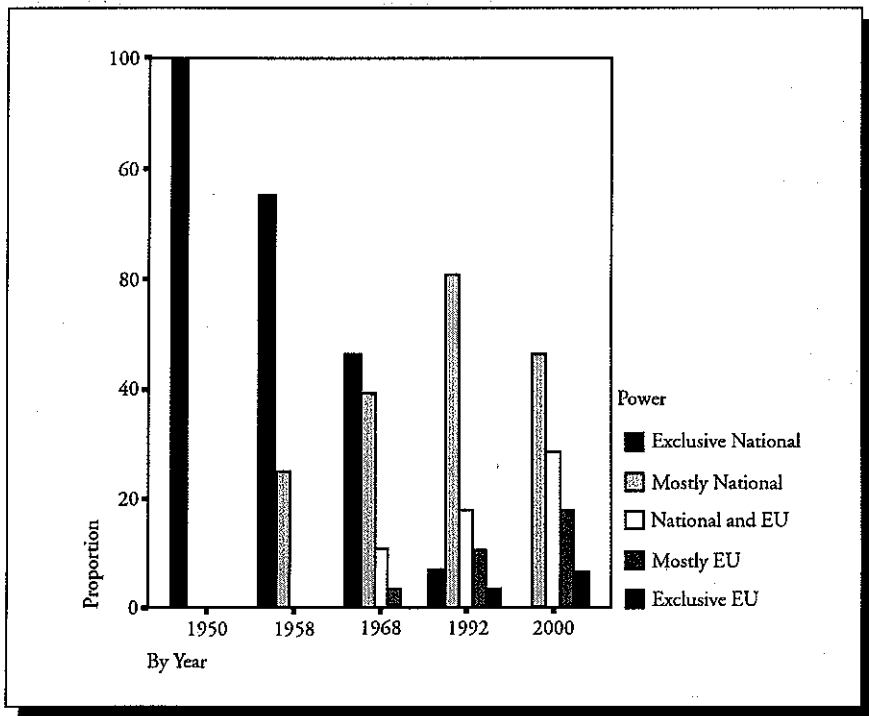
After the accession of the first ten countries, the population of the European Union will have grown from 374 million in 2000 to almost half a billion people. Its gross domestic product (GDP) per capita — now at over US\$22,300 per head — will decline by 18 percent; the average GDP per capita of the incoming countries is just below US\$3,300. The economic and socio-political differences between the current EU and the prospective members are unparalleled in EU history.

In the remainder of this section I highlight the changing division of authority between national and European institutions, and I introduce the EU's main decision-making institutions.

The Shift of Authority from the National to the European

Figure 1 and Table 1 provide a bird's eye view of how authority has been reallocated between the nation-state and the European Union since 1950. The bars in Figure 1 indicate, for each of five time points, what proportion

FIGURE 1
National and EU Power, 1950–2000



Source: Based on Hooghe and Marks (2001, Appendix 1).

of policy areas is exclusively national (score 1), mostly national (score 2), shared EU-national competence (score 3), mostly EU (score 4), or exclusively EU (score 5). Table 1 provides details on these shifts by policy area.²

In 1950, policy-making in all 28 areas was determined exclusively in territorial states. The state reigned supreme. This was the outcome of a process of state-building in Europe that lasted centuries, and that involved the creation of national legal systems, national armies, national systems of taxation, national parliaments, and over the past century, national welfare, national health, national education, and national industrial-relations systems. This changed to some extent when the Treaty of Rome was signed in 1957, which created the European Economic Community (EEC). Some areas in the economic field — regulation of goods and services, industry,

TABLE 1
Supranational Power, 1950–2000

	1950	1957	1968	1992	2000
ECONOMIC POLICY					
<i>Goods/services</i>	1	2	3	4	4
Agriculture	1	1	4	4	4
Capital flows	1	1	1	4	4
Persons/workers	1	1	2	3	4
Transportation	1	2	2	2	2
Energy	1	2	1	2	2
Communications	1	1	1	2	2
Environment	1	2	2	3	3
Regional policy	1	1	1	3	3
Competition	1	2	3	3	3
Industry	1	2	2	2	2
<i>Money/credit</i>	1	1	2	2	5
Foreign exchange	1	1	2	2	4
Revenue/taxes	1	1	2	2	2
Macroeconomic	1	1	2	2	3
SOCIAL/INDUSTRIAL POLICY					
Work conditions	1	1	2	2	3
Health	1	1	1	2	2
Social welfare	1	2	2	2	2
Education and research	1	1	2	2	2
Labour relations	1	1	1	1	2
LEGAL/CONSTITUTIONAL POLICY					
Justice	1	1	1	3	3
Citizenship	1	1	1	2	3
Participation	1	1	1	2	2
Police and order	1	1	1	1	2
INTERNATIONAL RELATIONS/SECURITY					
Trade negotiations	1	1	3	5	5
Economic-military aid	1	1	1	2	2
Diplomacy	1	1	1	2	3
Defence and war	1	1	1	2	2

Notes: 1 = All policy decisions at national level;
 2 = Only some policy decisions at EC level;
 3 = Policy decisions at both national and EC level;
 4 = Mostly policy decisions at EC level;
 5 = All policy decisions at EC level

Source: Hooghe and Marks (2001, Appendix 1).

transport, energy, competition — shifted from exclusively national to mainly national with some European Community (EC) competence.

In 1968, the EC completed the customs union, and this is reflected in the rising bar for shared EU/national competence. In three areas — competition policy, trade negotiations, and internal market regulation (to ensure free movement of goods and services) — the European Commission began to play a major role: it was building up precedent in competition policy, it began negotiating on behalf of member states in trade negotiations on goods, and it drafted proposals for harmonizing product regulation across the European Community. In addition, agriculture became primarily a European competence in the 1960s. Until the 1980s, the common agricultural policy (CAP) took up between 60 and 80 percent of the European Community's budget.

By 1992, national sovereignty, exclusive and ultimate authority to bind one's citizens, had virtually disappeared. The European Community, renamed as the European Union, was now involved in all but a handful of policy areas. The exceptions were some aspects of social policy, such as industrial relations, and some areas in the legal-institutional domain, such as police, law, and order. The acceleration of European integration was set in motion by the SEA, which came into force in 1987. The central objective was to realize full free movement of goods, services, capital, and labour (or persons) — a single market — by the end of 1992, by abolishing non-tariff barriers. But the expansion of EU involvement reached well beyond the internal market into environmental regulation, industrial policy, research and development, and a new ambitious regional policy (EU cohesion policy) to reduce regional and social disparities through the Union. This policy constituted by 1992 the second-largest item on the EU budget (after agriculture), representing one-third of EU funding, or 0.4 percent of EU GDP. Figure 1 also reflects the fact that the EU obtained exclusive power in trade negotiations.³ This means that the European Commission, not the French or German governments, negotiates on behalf of the European Union in the General Agreement on Tariffs and Trade (GATT) or WTO negotiations. This also entails that member states cannot unilaterally impose or lift trade sanctions against third parties. The Greek government experienced this when it tried to impose a trade embargo on newly independent Macedonia in 1995, but was barred from doing so by the European Court of Justice.

By 2000, the European Union had become an encompassing political system involved in all areas of life that governments usually care to

regulate. From agriculture to capital flows, to transportation, to education, defence, regional policy, energy, or environment, national governments share authority with the European Union. In 1999, monetary policy was added to the exclusive EU list for the 12 members of the Euro-zone.⁴ On 1 January 1999, national authority over monetary policy was ceded to an independent European Central Bank, and in conjunction with that, joint macroeconomic policy-making was strengthened. Members of the Euro-zone are legally bound to run balanced budgets over the economic cycle, and to incur no more than a 3 percent budget deficit in any year. Violators can be fined an amount up to 0.5 percent of GDP per year. The Treaty of Amsterdam, which came into force in 1999, shifted parts of asylum and immigration policy to the EU level, and it strengthened EU capacity in foreign and defence policy. In the second half of 2000, the European Union announced the creation of a rapid reaction force, a 60,000-person strong "European army," designed to take on peace-keeping and peacemaking missions independent from the North Atlantic Treaty Organization (NATO). While it remains to be seen whether this plan will succeed (at the time of writing, Turkey has lifted its veto of essential NATO assent), this completes the process of sharing authority in areas traditionally seen at the heart of national sovereignty: border controls, currency, diplomacy, and an army.

Institutions and Decision-Making Rules

Decision-making in the European Union evolves around five institutions: the European Council, the Council of Ministers, the European Commission, the European Parliament, and the European Court of Justice. The last four were created with the Treaty of Rome; the European Council was only formally added in the 1986 *Single European Act*, though it existed informally.⁵

The *European Council* is the summit of the government leaders of the member states (plus the president of the European Commission), which is held three or four times a year. The European Council has immense prestige and quasi-legal status as the body that defines "general political guidelines" (title 1, article 4 TEU, ex-D). This is the body where major deals are clinched and treaty changes are negotiated. But outside these roles, its control of the European agenda is limited. It meets only intermittently, and it provides the European Commission with general

policy mandates, and seldom with specific policy proposals. European Council mandates have proven to be a flexible basis for the Commission to build legislative programs.

The *European Commission* is the executive-bureaucratic body of the European Union. It consists of a political and bureaucratic layer. The College of Commissioners, one commissioner per member state and two for the five largest countries, is appointed every five years by the European Council and requires majority support in the European Parliament. The 4,000 plus policy-making bureaucracy consists of permanent officials who are recruited through a central exam. The Commission has the formal, and exclusive, power to initiate and draft legislation, which includes the right to amend or withdraw its proposal at any stage in the process.⁶ It is also the think-tank for new policies (article 221 TEC, ex-155). In this capacity it annually produces two to three hundred reports, white papers, green papers, and other studies and communications (Ludlow 1991). Some are highly technical studies about, say, the administration of milk surpluses. Others are influential policy programs such as the 1985 White Paper on the internal market; the 1990 reform proposals for the common agricultural policy, which laid the basis for the European position in the GATT negotiations; the 1993 White Paper on *Growth, Competitiveness and Employment*, which argued for labour market flexibility; or the 1997 *Agenda 2000*, which shaped the debate on enlargement to central and eastern Europe.

The Commission has significant autonomous executive powers in competition policy; it vets mergers of a certain economic size in the internal market, and it scrutinizes whether state aid — national, regional or local — is compatible with EU competition law. As mentioned above, it is the Commission that negotiates trade disputes and agreements with third parties on behalf of the Union, and this includes enlargement negotiations. The Commission reports back on progress to a committee of member-state representatives, as well as to the European Parliament. Complicated rules govern whether and to what extent the Commission needs approval for its actions, but the bottom line is that the Commission is an executive body without legislative power. So it does not vote on the final WTO agreement, or on enlargement, that is the task of the Council of Ministers and the European Parliament.

According to the original treaties, the Commission was not expected to perform ground-level implementation, which was left to the member states, except in unusual circumstances (such as competition policy, fraud,

etc.). Yet, in some areas this has changed. The most prominent example is cohesion policy, which was significantly expanded in the 1980s and again in the 1990s to counter the effect of the internal market program (and later EMU) on regional and social disparities. Policy-making involves regional and local governments as well as social actors in all stages of the policy process in "partnership arrangements" — the selection of priorities, choice of programs, allocation of funding, monitoring of operations, and evaluation and adjustment of programs. Each region or country receiving funding is required to set up monitoring committees with a general committee on top, and a cascade of subcommittees focused on particular programs. Commission officials can and do participate at each level of this tree-like structure (Bache 1998; Hooghe 1996).

According to the EU treaties, the main legislative body is the *Council of Ministers*, which is composed of national ministers. The actual composition varies depending on the topic; so there is a council for ministers of agriculture, an economic and financial affairs council, an environment council, etc. Member states have votes roughly proportionate to their population, though small countries are over-represented, and Germany is considerably under-represented.

Participation in the Council of Ministers no longer guarantees individual national sovereignty. The proportion of rules stipulating unanimity in the Council has steadily declined. Qualified majority voting, that is 70 percent of the votes, is now the rule for 80 percent of decisions. That includes the single market, competition policy, economic and monetary union, regional policy, trade, environment, research and development, transport, employment, immigration and visa policy, social policy, and education. Qualified majority voting also applies to some provisions of foreign and defence policy, and some issues on policy cooperation, justice, and immigration. The decision rules are complex, but the bottom line is clear: over broad areas of EU competencies, individual governments may be outvoted. The weekly *European Voice* estimated that between January 1995 and January 1998, Germany was outvoted most often in the Council, followed by Britain and, at some distance, Italy (*European Voice*, 15–21 October 1998, p. 4).

There are ways for national governments to defend national interests, but they depend on the consent of the other governments. For example, governments can build special safeguards into the treaties, a practice that has proliferated since the 1993 Maastricht Treaty. Particular

states have been granted derogations, or special exemptions. The United Kingdom and Denmark each have derogation from the European monetary union. Some countries achieved derogations in the areas of state aid, environmental policy, and energy policy. Sometimes derogations are written into special protocols, such as those attached to the Amsterdam Treaty that meet concerns of Denmark, Ireland, and the UK on border controls, and EU immigration and visa policy. The Amsterdam Treaty also inserted a new decision rule, constructive abstention, which allows a member state to abstain from voting on an issue and to formally declare that it will not implement a decision that commits other EU member states. Constructive abstention is, however, restricted to certain foreign policy and defence issues (Stubbs 1999). In addition, the treaties preserve unanimity for the most sensitive and contested policy areas, particularly major foreign policy decisions, nearly all decisions on justice and home affairs, and much of fiscal policy.

From the 1980s the Council of Ministers and individual governments became intimately involved in the executive powers of the Commission. The term for this is comitology, which refers to the practice of having a committee of national representatives assist the Commission in its executive work. Many EU regulations have their own committee. National governments often select people outside the central executive to represent them in comitology. Most participants are not national civil servants, but subnational officials, interest group representatives (particularly from farming, union, and employer organizations), technical experts, scientists, or academics. Though these representatives are selected by their national government, they have particular territorial or group interests, as well as the national interest, to defend. Comitology was designed to allow national governments to monitor the Commission, but it has unintentionally led to deeper subnational and group participation in the European political process.

The Council of Ministers shares legislative authority with the *European Parliament*, which has been transformed from a decorative institution to a directly elected co-legislator. The first direct elections took place in 1979. The European Parliament has three major powers. First of all, it can fire the European Commission, which almost happened in 1999. (The Commission pre-empted a vote of no confidence by resigning voluntarily.) Second, its assent, an up or down vote, is required over enlargement of the EU and over most association agreements and treaties between the

European Union and third parties (Falkner and Nentwich 1999, p. 26). And third, since 1993, under the co-decision procedure the European Parliament co-legislates with the Council of Ministers on single market issues, and most other policy measures; the main exceptions are fiscal policy, foreign and defence policy, police and justice cooperation, and monetary policy. The co-decision procedure gives the European Parliament the power to amend and veto Council legislative proposals. If Parliament and Council are deadlocked, a conciliation committee, consisting of representatives from both institutions, with a representative of the Commission as broker, hammers out a compromise. To become EU law, a compromise needs to be approved by a majority in the Parliament and a qualified majority in the Council. So the co-decision procedure comes close to putting the European Parliament "on an essentially equal footing with the Council" (ibid.). The Council of Ministers is still the stronger legislative chamber as it votes on all EU issues. But the trend is clear: the European Parliament has become a force to be reckoned with.

The final EU body is the *European Court of Justice* (ECJ). It may be argued that an impartial dispute-settlement arrangement is necessary to solve problems of incomplete contracting in international agreements. But the European Court of Justice is more than that (Alter 1998; Burley-Slaughter and Mattli 1993; Dehousse 1998; Mattli and Slaughter 1995; Stone Sweet and Brunell 1998; Weiler 1991). With the help of the Commission, and in collaboration with national courts, the ECJ has transformed the European legal order in a quasi-federal order.

ECJ case law has established the treaties as documents creating legal obligations directly binding on national governments and individual citizens. These obligations have legal priority over laws made by member states. Directly binding legal authority and supremacy are core attributes of sovereignty, and their application by the ECJ suggests that the EU is becoming a constitutional regime.

The Court has been able to get away with this expansive interpretation for several reasons. First, the failure of the treaties to delineate national and EU competencies has provided the Court with substantive reasons for expanding treaty law. The treaties set out "tasks" or "purposes" for European cooperation, such as the custom union (Treaty of Rome), the completion of the internal market (*Single European Act*), or economic and monetary union (Maastricht Treaty). The Court has constitutionalized European law and European authority in other policy areas by stating

that these were *necessary* to achieve these functional goals (Weiler 1991). Furthermore, article 234 (ex-177) of the Treaty of Rome stipulates that national and lower courts may seek "authoritative guidance" from the ECJ in cases involving EU law. In such instances, the ECJ provides a preliminary ruling that specifies how EU law should be properly applied to the issue at hand. The court that made the referral cannot be forced to follow the ECJ's interpretation, but if it does, other national courts will usually accept the decision as a precedent. Preliminary rulings expand ECJ influence, and judges at lower levels gain a *de facto* power of judicial review, which was usually reserved for the highest national court (Burley-Slaughter and Mattli 1993). Article 234 gives lower national courts strong incentives to circumvent their own national judicial hierarchy, and they have done so with gusto.

The substantive extension of European integration into all policy areas has gone hand in hand with an institutional transformation from a limited, primarily intergovernmental form of international cooperation to a system of multi-level governance, where autonomous supranational institutions — Commission, European Parliament, European Central Bank, and European Court of Justice — and institutions representing national governments — European Council and Council of Ministers — share authority. The result is a malleable and open system that is accessible to diverse actors. It is true that decision-making rules are biased in favour of governments. But in federalist fashion, the rules favour governments of smaller states more than those of larger countries. Decision-making rules also allow for other actors — political parties, subnational authorities, and national and European interest groups — to influence EU decisions. Politics in the European Union looks remarkably like domestic politics.

CRISIS, CHOICE, AND CHANGE: THE RELAUNCH OF EUROPEAN INTEGRATION

To what extent has the acceleration of European integration in the 1980s and 1990s been a response to globalization?⁷ And to what extent has it been driven by "domestic," that is, internal-European, developments? I will show that the push for European integration was motivated by a perceived inability of Europe's economies to compete with the US and Japan at a time when financial and trade flows were rapidly thickening. But to

understand why this integration took the form it took — not only market integration (internal market), but also political integration in non-market areas — one must take into account domestic developments.

Economic Recovery: A National, Global or Regional Strategy?

The two global oil crises of the 1970s precipitated a period of long-term sluggish economic performance in western Europe. Industrial productivity lagged US and Japanese figures. Europe was particularly uncompetitive in technology-intensive sectors. In 1981, the 12 largest European electronics firms issued a communiqué in which they highlighted Europe's paltry 10 percent share of global markets for information technology (IT) and its declining 40 percent share of its own markets (Peterson and Bomberg 1999, pp. 205-06). Europe's economies seemed to lack competitiveness, and this while several European economies, including the German and British economies, were more exposed to the world economy than the Canadian economy.⁸ Unemployment leapt to the high single digits or, in some countries, double digits for the first time since the 1930s. The social consensus of the 1960s and 1970s was under duress, and social unrest was on the rise. The world had changed, and Europe was not adjusting well.

The search for economic recovery led European governments to consider three strategies for reviving economic growth: a national, a global, and a regional path. First, several countries attempted to bolster national capacity for Keynesian economic management by tightening restrictions on trade and financial flows. They wanted to shut globalization out. Nowhere was this national option pursued as enthusiastically as in France, and its defeat there in the early 1980s pushed it off the table in the rest of Europe. After the socialist victory in the presidential elections of 1981 and parliamentary elections of 1982, the French government attempted to build "socialism in one country," which involved the nationalization of a dozen industrial groups and 36 banks; a Keynesian policy of demand stimulation through wage increases, enlarged social security benefits, increased government spending, and higher taxation of wealth and profit; and stronger capital exchange controls. But the policy failed. By the fall of 1982, unemployment was rapidly rising as more and more firms filed for bankruptcy, inflation was still 14 percent, and the

deficits in both the national budget and the trade balance were increasing at alarming rates. The socialist party split over the appropriate reaction to the crisis, with the left-wing wanting to radicalize economic policy behind protectionist walls, and the right-wing arguing for a reversal to a supply-side policy emphasizing budget austerity, low inflation, and industrial restructuring to encourage export-led growth. While the former wanted to insulate the French economy from global pressures — including potential withdrawal from the European Union, the latter maintained that French industry should become more competitive abroad — first and foremost by facilitating trade in the European Union. By early 1983, the latter had won the argument.

The failure of Keynesian economic policy was not simply the failure of a particular set of macroeconomic policies, but of a mode of policy-making that was distinctly national (Hooghe and Marks 1999). With trade and financial interdependence at such high levels in Europe, many believed that the cost of national regulation was too high. The search for alternative policies went in several directions, but common among them was a belief that the nation-state could no longer serve as the privileged architect of economic prosperity. There were two broad streams of innovation. One championed a general global shift toward *neo-laissez-faire*, and this faction was strongest in the UK and Anglo-American democracies. It also influenced to some extent societies where neo-corporatism was entrenched, such as Germany, where the Free Democrats and the pro-business wing of the Christian Democrats argued for neo-liberalism. The other stream wanted to open up national economies within the European region, and this group proposed the internal market project. In the end, the regional strategy won. The reasons for this are multiple.

Reasons for the Single Market

One reason concerns the density of *economic transactions*. By the mid-1980s, European economies had become open economies. Trade openness, measured in Table 2 by exports as a percentage of GDP, varied between well above 70 percent for Belgium and just below 20 percent for Greece and Spain, but the average for the EU was 39 percent, against 11.4 percent for Japan and 7.4 percent for the United States. The more export-dependent an economy, the more dependent it is on growth in demand, and access to that demand, in foreign markets (McKeown 1999). Economic rationality

induced European governments to prefer trade openness to protectionism. This is a fundamental reason for why the national strategy was not a viable option. But it does not explain why the regional path was preferred to the global path.

Aggregate trade and financial patterns suggest some functional reasons why European governments chose the regional strategy, but neither is conclusive. The simplest story concerns trade. More than half of a typical European country's trade was with other members of the European Community/Union, and this proportion was growing. Note the contrast with Canada, where, as Richard Simeon points out in his chapter, interprovincial trade was declining as a proportion of overall provincial trade. In contrast, European governments could expect an integrated European market to further boost this high intra-European interdependence. Still, that left a sizeable proportion of trade with the outside world, and this might have been enough to tip the balance in favour of a global strategy (see Table 3). In 1991, extra-regional trade (exports plus imports) represented almost 14 percent of EU GDP, against 11 percent for the US and 15.5 percent for Asia-Pacific. World trade is as important to the countries in the European Union as it is for the United States or Japan (Wolf 1994, pp. 13-16).

While trade patterns were first and foremost intra-European, financial flows were primarily transcontinental. European economies were critically dependent on foreign direct investment (FDI) from the United States, and to a lesser extent Japan. By the mid-1980s, 40 percent of US investment was directed to Europe, and between 20 and 30 percent of Japanese investment. At first blush, then, one might expect governments to prefer a global strategy to buttress these sizeable FDI flows. Yet, historical experience tells us that European integration is good for FDI in Europe. The two periods of rapid growth in the European share of total US direct investment — the main source of FDI in Europe — coincided with the two phases of most intensive integration among European economies: the early 1960s after the signing of the Treaty of Rome, and 1973-80 after the accession of the UK, Ireland, and Denmark. European governments could reasonably expect further European integration to give another boost to US and Japanese FDI. And they were right: as a response to the launch of the internal market program, US firms rushed into Europe, so that by 1990 the European share of US FDI abroad had risen from 40 to 50 percent. The European share of Japanese investment rose to 30 per-

TABLE 2
Trade Dependence
1958–1995

TABLE 3
Trade Concentration
1958–1995

	<i>Exports as Percentage of GDP</i>				<i>Percentage of Exports to other EU States</i>			
	1958	1973	1986	1995	1958	1973	1986	1995
Belgium	31.9	55.6	70.5	72.6	45.1	73.1	73.2	71.6
Luxembourg	77.3	88.1	98.3	91.8				
Netherlands	48.3	46.0	50.7	53.3	41.6	72.6	74.9	75.7
France	12.3	17.6	21.2	23.5	22.2	54.7	55.3	62.8
Germany	22.1	21.8	30.2	23.6	27.3	47.1	50.8	57.0
Italy	12.5	17.4	20.2	27.6	23.6	50.1	53.7	56.8
United Kingdom		23.7	25.7	28.4		31.8	48.0	53.9
Ireland		36.2	52.7	74.6		76.0	72.0	72.2
Denmark		28.5	32.0	34.5		45.3	47.0	61.6
Greece			17.0	16.5			63.7	55.5
Spain			19.9	23.7			60.3	72.3
Portugal			29.5	33.3			68.3	80.3
Austria				37.7				59.3
Sweden				40.9				56.9
Finland				38.0				56.7
EU*	34.1	37.2	39.0	41.3				
Japan	11.0	10.0	11.4	9.4				
United States	5.0	6.9	7.4	11.4				

Note: *Average of ratios for EU member states.

Source: Cameron (1998, pp. 193, 194) based on OECD statistics.

cent (Thomsen 2000). Financial investors want to place their money in vibrant, growing markets, and whether such growth is produced by national, regional or global trade liberalization does not seem terribly important.

In some respects, a European strategy of trade liberalization was not well-suited to problems at hand. Market competition in technology-intensive sectors and in financial services, the engines of the third industrial revolution, was more global than European. Many influential European

multinational companies believed that it made more sense to pursue a global strategy encompassing the US and Japan than a European one.⁹ The benefits of specialization through free trade were potentially greater between European and non-European firms than within Europe (Sandholtz and Zysman 1989). For these companies, the European strategy was second best.

All this suggests that, on purely functional grounds, governments could have gone either way — the regional course or the global path — though the balance was slightly tipped to the former.

A more compelling reason why governments preferred the regional to the global path is that they had at their disposal *ideas that could serve as focal points* for clinching credible regional commitments. A rich stock of ideas underpinned the European market project. Economic studies of the benefits of deeper market integration in Europe had been floating around in the Commission for years. By 1985 more than half of the internal market legislation was already in draft form (Cameron 1992; Ross 1995). Various economic studies were eventually bundled, updated, and coordinated in three famous reports: the Padoa-Schioppa Report of 1987, the Cecchini Report of 1988, and the Emerson report of the same year, all of which suggested that economies of scale and competition in an integrated European market would yield a cumulative benefit of between 4.3 to 6.4 percent of aggregate GDP (see Padoa-Schioppa 1987; Cecchini 1988; and Emerson 1988). There were also ideas about how to lower non-tariff barriers. Most important was the principle of mutual recognition formulated in 1979 by the European Court of Justice in the Cassis de Dijon case (Alter and Meunier-Aitsahalia 1994).¹⁰ This happened while, at the global level, the Uruguay Round had reached the impasse due to a dearth of ideas (as well as deep conflicts of interests between Europeans and the US, Canada or Australia on issues ranging from agriculture to intellectual property rights to services). At the level of ideas, plausible solutions to coordination problems, regional integration had a clear edge over global integration.

Furthermore, strong *pre-existing institutions at the European level* made it likely that agreements would be implemented. As we saw above, the European Commission's empowerment as competition authority and the European Court of Justice's jurisprudence establishing the supremacy of EU law preceded the internal market program. By the mid-1980s, these supranational institutions had the authority and the muscle to sanction free riders (Garrett 1992; Pierson 1996). Equivalent global institutions

for monitoring national commitments were lacking, or, in the case of GATT, far less authoritative than EU institutions. Even the WTO does not require a *de jure* surrender of national sovereignty because a member state can always refuse to comply with a ruling (though *de facto*, smaller or economically more dependent countries may find it difficult to exercise that sovereign right). In contrast, EU Commission fines and ECJ rules are *de jure* and *de facto* binding — for Luxembourg and Germany alike.

To say that the functional, ideational, and institutional conditions for a new policy are favourable is not to say that the policy will be pursued. A decisive source of the EU's market project was the *breadth of its support* among diverse constituencies: supranational actors, business community, national governments, and, with some delay, organized labour. In contrast, support for a global strategy was much weaker, and opposition was more organized. The character of this "domestic" coalition, more than functional pressures, explains why regional integration won out over global free trade.

One group of this coalition consisted of long-time proponents of a federal Europe, and this group was particularly strong in the European Parliament and the Commission. For them, the single market project was merely the first, but essential, step in a larger venture. Activists in the Commission were led to the market project because they thought that economic integration would lead to political integration. When Jacques Delors assumed the presidency of the European Commission in January 1985, he saw the market project as just the first of four major initiatives to deepen political integration; the three others were a European cohesion policy for the regions, the development of a citizens' Europe based on a stronger European Parliament and extensive social policy, and economic and monetary union. He achieved much of this agenda, except for an extensive social policy (Ross 1995; Grant 1994).

Business was interested in the single market project in and of itself because it had much to gain from lowering market barriers in Europe (Sandholtz and Zysman 1989). The core of this support was among multinational corporations. They had organized themselves into the European Round Table, which had among its membership giants such as Philips, Siemens, Volvo, ICL, Thomson, Olivetti, etc. This was a heterogeneous group: some firms conceived of the market project as a means to neo-liberal deregulation in Europe and, in a next step, the globe, while others

wanted a single market with a European-wide capacity for industrial policy (Ross 1995; Sandholtz and Zysman 1989; Cameron 1992; Cowles 1995). But all supported the internal market project, and the European Round Table became a highly effective lobbyist for the program. Support reached beyond these major multinational firms into the wider European business community. Virtually every member state had a large and growing constituency in favour of fewer national trade barriers, especially within Europe. While the United States has remained, in John Kincaid's terms, a 90 percent domestic economy, the European economies had become less-than-50 percent domestic economies, and much of this external trade was intra-European. The voice of mobile capital sounded all the louder because many sectors dominated by national capital did not expect to be affected by the internal market project, and so they had little incentive to mobilize against the project (Smith and Wanke 1993). The asymmetry in gains/losses between mobile capital on the one hand and national capital on the other helped proponents of liberalization to make a case for regional integration.

EU treaties are negotiated by national governments, and so one must ask oneself why they accepted to cede sovereignty on a vast range of policy areas. Ideological consistency provides a major part of the answer. In the mid-1980s, nine of the then-twelve member states — Germany, Britain, Italy, the Netherlands, Belgium, Denmark, Portugal, Ireland, and Luxembourg — were governed by right or centre-right parties which were favourably oriented to mobile capital and market competition. The one major exception was France, but by the mid-1980s the modernist wing of the socialist party had asserted control in the Mitterrand government.

Would history have played out differently if socialists or social democrats had been in power in the mid-1980s? The French government's position suggests that the internal market could also gain support left of centre. After all, Commission president Jacques Delors, who placed the plan on the EU agenda and lobbied hard for its acceptance, was a social democrat. Throughout Europe, traditional social democracy was in disarray in the 1980s, because its preferred strategy to deal with globalization, national Keynesianism, had proved ineffective. By the end of the decade, most social democratic parties had given up on demand-oriented Keynesianism and supported supply-side policies prescribing an altogether humbler role for government in facilitating market competition (Kitschelt

1994). Yet social democrats did not endorse the single market with the same enthusiasm as the right. For them, it was the second-best option after national Keynesianism. They liked it to the extent that it promised to strengthen EU regulatory capacity against globalization. They hoped to use these bolder EU institutions to entrench some social democratic priorities, perhaps Euro-Keynesianism, at the European level.¹¹ With social democrats dominant in the European Council, the internal market program might have stayed on the shelf a few more years, so the timing might have been different. More importantly, if social democrats had held the pen, they would have complemented economic market integration with more qualified majority voting on EU industrial policy, EU social policy, and EU environmental regulation. Social democrats wrote the 1999 Amsterdam Treaty, which helps explain why it is the first EU Treaty that talks little about market liberalization and a great deal more about employment, solidarity, citizenship, democracy, and human rights.

This unwieldy coalition of European, national, and transnational actors differed greatly in their ultimate goals: from British Prime Minister Thatcher's desire to extend neo-liberal policies across Europe, over the left's hope to replace ineffective national regulation by EU regulation, and European multinationals' desire to catch up with American and Japanese competitors by exploiting economies of scale in the European home market, to Jacques Delors' and the European Parliament's ambition to build a political union. Yet for each of them, the creation of the internal market was the necessary first step to more distant goals.

The creation of the internal market was sold as Europe's response to globalization, but the form it took owes much to "domestic" economic and political concerns. As far as hard figures go, the single market was more a response to Europeanization than to globalization: the economic or social transactions between, say, Germans and French have increased much faster than those between Germans and non-Europeans — globalization in Europe has been regional. Furthermore, while it is well-established that national Keynesianism becomes increasingly ineffective in open economies, there is less evidence that trade openness rules out public choice in size and role of government. As Fritz Scharpf and others have shown, different types of welfare states have proven relatively resilient in the face of "globalization," though there may be economic costs to maintaining particular programs or social priorities (Scharpf 1999; Huber and Stephens

2001). So when governments downsize social programs, it is usually not because they are pulled by global forces but because they are pushed by certain political coalitions at home. Similarly, European governments decided to cede sovereignty in a range of policy areas that went far beyond what functionality called for. They did so because they thought it would help them achieve specific political goals; by shifting authority to Brussels, they could divert blame for unpopular measures, or tie the hands of their successors (Marks 1996).

The key to the political success of the internal market program was its ambiguity; it was all things to all actors. The market program, a goal shared by many in 1985, became a point of departure for contending political agendas. For parties or interest groups with a neo-liberal outlook, market liberalization was a necessary step in limiting European integration to an economic enterprise administered by insulated government elites. But other parties conceived of the SEA as a jumping-off point for regulating capital at the European level in line with European social democratic and Christian democratic traditions.

Economic and monetary union, decided at Maastricht in 1991, was a replay of the politics of the internal market program. Neo-liberals perceive EMU as the crown on their project to insulate economic activity from political regulation. With monetary policy securely hived off to an independent central bank, national governments will be induced to compete for investment by reducing the overall tax burden and shifting its incidence from mobile capital to less mobile factors of production. Opponents of neo-liberalism, on the other hand, believe that EMU will trigger deeper political regulation at the European level. They expect that asymmetrical economic shocks will press national governments toward ad hoc redistributive measures and, eventually, to some form of European fiscal policy. The implications of EMU are no less ambiguous than those of the internal market program, which is why EMU has been able to attract support on the left as on the right.

What began as a reaction to globalization has become an authoritative structure with the capacity to deepen ties of economic, social, and cultural interdependence in Europe. Hence, in an unconventional way, one could conceive of the European Union as Europe's local producer and regulator of globalization.

THE EFFECT OF GLOBALIZATION AND EUROPEAN INTEGRATION ON EUROPE'S POLITICS AND SOCIETY

How have the twin forces of globalization and European integration influenced Europe's politics and society over the past decades? I organize my thoughts around four basic questions.

Has Globalization/European Integration Decreased or Increased Regional Conflict?

Perhaps the greatest achievement of European integration is its pacifying impact on centuries-old warring relations in Europe. Jean Monnet, Robert Schuman, Konrad Adenauer, Paul-Henri Spaak, and Alcide de Gasperi conceived the European Union as a response to the horrors of war in Europe, as a means to tame destructive nationalism. The founders hoped to weaken national animosities by establishing an international legal order that would constrain realist anarchy. They wanted to domesticate international tensions within stable supranational institutions. Fifty years after the Schuman Declaration, skirmishes between Germany and France are as inconceivable as a war between Ontario and Quebec. In the 1980s, EU membership was critical in consolidating democracy in the former authoritarian regimes of Greece, Portugal, and Spain, and now hopes are high that the European Union may pull off the same in completing the transition in central and eastern Europe.

That does not mean that conflict between nation-states — particularly national governments, but sometimes also national firms, national interest groups, or national electorates — is nonexistent. Territorial difference, and particularly national difference, is still a major cleavage in EU politics. Yet, while some states are more likely to form alliances than others, so far no permanent blocs of countries have emerged. On trade issues, an Atlanticist bloc comprising the UK, the Netherlands, and often Germany and the Scandinavian countries, tends to vie with a Europeanist bloc around France, Italy, and often Belgium and Spain. On environmental issues, countries tend to align differently, with the Scandinavians and Germany in the pro-environmentalist camp, France and Belgium in the middle, and the UK with Spain, Portugal, and Greece in the environmentally laggard camp. On social and employment policy, Scandinavian

countries sometimes join forces with southern countries. Moreover, these policy blocs change with the colour of governments or the changing political landscape. For example, the German government, red or black, was always a fervent supporter of the common agricultural policy, but it made a u-turn in the fall of 2000, pushed by the political fallout of mad cow disease, hoof and mouth disease, and other food scandals attributed to the industrialization of agriculture promoted by CAP.

Third countries sometimes manage to exploit divisions among EU members. For example, in trade negotiations the United States has repeatedly tried to drive a rift between the Atlanticist bloc led by the UK and the Europeanist bloc led by France. However, the fact that the European Union has exclusive authority over trade, and that the Commission is the sole negotiator, makes that a difficult and politically delicate exercise. On the whole, EU member states have learned that they tend to be better off when they stick together.

In conclusion, European integration has effectively defused interstate conflicts in Europe. Moreover, it has, so far, not led to the emergence of quasi-permanent regional blocs. This may be because the EU deals with a vast range of issues. While it is possible to frame some issues in terms of national interest, most issues are divisive within societies, and this ideological contestation is likely to undermine efforts to forge a "national position." Instead, groups are tempted to take their ideological positions from the national to the EU arena where they can find like-minded allies from other countries.

Has Globalization/European Integration Fuelled or Diffused Ideological Conflict?

Most political economists agree that increased economic globalization, or more specifically, market liberalization and trade, increases aggregate economic growth, but it also intensifies economic uncertainty, income inequality, and it creates economic winners and losers (Rodrik 1997; Garrett 1998).¹² Winners want to deepen market liberalization, while losers, or defenders of those who suffer, want regulation of global market vagaries. This contestation is often characterized as one between right, those in favour of market liberalization, and left, those in favour of more government regulation of markets. For simplicity's sake, I adopt this convention here.

The challenge for proponents of political regulation is that there is generally a mismatch between the territorial scope of the market and government authority. In a world where markets are increasingly transnational or global, international institutions with real authoritative capacity are generally weak or nonexistent. Absent international regulation, proponents of regulation can push for national regulation, but that risks being ineffective, or it may only be possible if one is willing to sacrifice growth. It is rational, then, for the left to be wary of globalization. That is why organized labour in the US and in Canada tends to be suspicious of NAFTA or the WTO (Marks and Down forthcoming).

The European Union is an exception. It is the one supranational institution with considerable capacity to regulate market forces beyond the national state. So the question then becomes how the existence of the European Union affects left/right politics in Europe? European integration encompasses a variety of particular policies and reforms with very different implications for left and right (Marks and Wilson 2000). Parties on the economic right should be in favour of market integration in the European Union, and policies that constrain government spending, but they should be wary of political integration that may strengthen re-regulation at the European level. Parties on the left and centre-left too should be weighing conflicting considerations. On the one hand, market integration threatens left achievements at the national level because it intensifies international competition while undermining Keynesian responses to it. On the other hand, deeper political integration may enhance the possibilities for social democracy by creating democratic authoritative institutions capable of pursuing employment, environmental, or cohesion policy at the European level: regulated capitalism. As a Flemish socialist exclaimed during a parliamentary debate on Belgian participation in EMU in 1996: "Why do you think that the German labour unions hope that the third stage of EMU will succeed? ... They know that EMU will create the foundations for a Rhine-land model on a European scale, for a project that will meet the needs of all Belgians and Europeans. That model will preserve our social welfare in a globalizing economy" (quoted in Beyers and Kerremans 2001, p. 144).

Because of these complex expectations among right and left parties one would not expect to see a clear relationship between left/right placement and support for European integration. And indeed, the overall

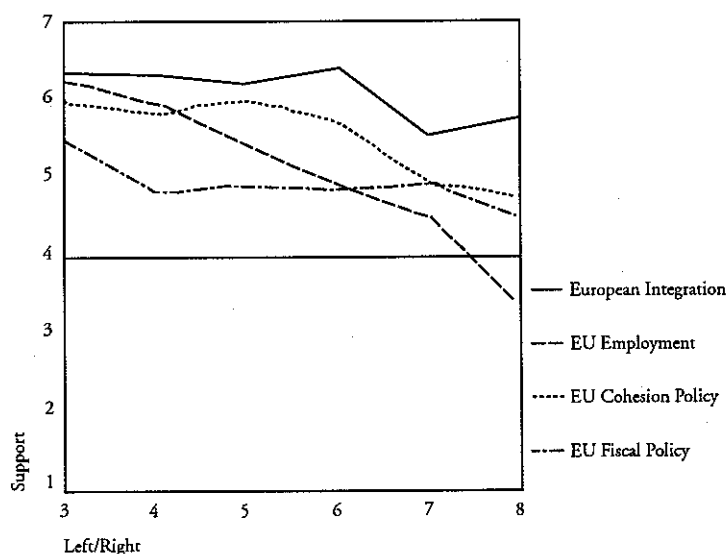
association between left/right and European integration is non-linear and weak.¹³ But this result conceals two divergent dynamics.

On the one hand, Euro-scepticism among radical left-wing parties pulls down the curve on the left side of the dimension. Opposition to European integration is deeply entrenched among the radical left. It is rooted in the perception that the institutions of the European Union have been irreparably co-opted by mobile capital. According to the radical left, the European Union is biased beyond repair, and so one should stay out of the European Union. For example, at the same time that the Swedish social democrats applied for Sweden to join the European Union, their main competitor to the left, Venstre, rejected such efforts on the grounds that "the message in the Maastricht Treaty was the construction of a capitalist block" (Christensen 1996, p. 534). The electoral significance of the extreme left is still considerable in Europe: 7.2 percent in 1999 (of which 85 percent is Euro-sceptical).

On the other hand stands an opposite dynamic among major parties, which represent approximately 80 percent of Europe's voters. Figure 2 displays the relationship between left/right positioning and European integration for parties in the major party families — social democrats, Christian democrats, liberals, and conservatives. When one simply asks whether these parties support or oppose European integration, there is a gentle slope from left down to right. The association of -0.20 just fails significance at the 0.10 level. Moderate left *and* right are broadly in favour.

The picture changes markedly when one examines particular EU policies. Support for EU employment policy and EU cohesion policy is powerfully associated with left/right positioning ($R=-0.67$ and -0.52 , respectively). EU environmental policy is also strongly associated with left/right ($R=-0.45$). So the moderate left in Europe wants to strengthen EU regulation of market forces: they support the internal market and EMU, but they also want more EU powers in employment policy, cohesion policy, and environment policy. The reverse logic is at work among parties on the economic right. As Figure 2 shows, the strongest opponents of EU employment policy tend to be parties with the highest value on the left/right scale, that is, the most neo-liberal parties. Parties on the economic right want to limit EU political regulation: they like the internal market and EMU, but they dislike EU capacity to re-regulate this freshly liberalized market.

FIGURE 2
Positioning on Selected EU Policies by Left/Right
Dimension for Mainstream Parties



Social democratic parties are not monolithically in favour of deeper integration. Minorities in some parties, particularly in Sweden, Denmark, and Germany, remain doubtful about the potential for a European social model, and argue that while European legislation may ratchet up social democracy in poorer countries, it stands in the way of higher standards in the social democratic heartland of Europe. But this is a minority view. Majorities in one social democratic party after another have come to perceive European integration as a means for projecting social democratic goals in a liberalizing world economy (Hooghe and Marks 1999; Ladrech 1997; Katz and Wessels 1999).

A broader point deserves to be emphasized here. Moderate left and right hold contending conceptions of what kind of political economy

should be created in the European Union: a "social model" built on European regulated capitalism versus a neo-liberal Europe based on market competition. These are not fluid disagreements on specific issues, but contrasting worldviews that motivate groups to form coalitions.

The neo-liberal coalition attempts to insulate markets from political interference by combining European-wide market integration with minimal European regulation. They reject democratic institutions at the European level capable of regulating the market, and seek instead to generate competition among national governments in providing regulatory climates that mobile factors of production find attractive. Neo-liberals want to import globalization into Europe. Proponents of regulated capitalism, on the other hand, propose a variety of market-enhancing and market-supporting legislation to create a social democratic dimension to European governance. This coalition seeks to increase the European Union's capacity for regulation, by among other things, upgrading the European Parliament, promoting the mobilization of a wide range of social groups, and reforming institutions to make legislation easier (e.g., by introducing qualified majority rule in the Council of Ministers). They want to regulate globalization in Europe.

The division between neo-liberalism and regulated capitalism has been alternatively described as one between a neo-American model and social democracy (Wilks 1996), between unfettered and institutional capitalism (Crouch and Streeck 1997), liberal market economies and coordinated market economies (Soskice 1992, 1999), or between the Anglo-Saxon model and the Rhine social market economy (Rhodes and Van Apeldoorn 1997). This is a fundamental division, yet if one compares it with historical divisions between left and right in Europe during much of the twentieth century, it takes place within relatively narrow parameters. European integration has altered left/right politics in Europe. It has highlighted, and hastened, the declining feasibility of national social democracy, but at the same time it has drawn attention to the capacity for regulation at a level beyond the national state. Loss has been sweetened by anticipation of future gains. This has resonated best with Europe's socialist and social democratic parties, which rely on the prospect of stronger regulatory capacities for the European Union to offset the electoral fallout of the breakdown of national Keynesianism. And here globalization and European integration differ profoundly. While globalization unmediated by international regulation has become the number one enemy

of the left outside Europe, for *Europe's* left, European integration has become a source of hope.

Has Globalization/ European Integration Hardened or Eroded National Identities?

The tension between the economic right and economic left has old roots. In contrast, the new politics cleavage is, as its name suggests, more recent. Since the 1970s, a set of broadly cultural issues has become salient in many advanced industrial societies: lifestyle, policies toward "others" (gays, women, minority cultures, immigrants) and cultural diversity, national sovereignty and patriotism, and ecology. A variety of labels have been attached to this phenomenon, including post-materialism/materialism (Inglehart 1990), new politics/old politics (Müller-Rommel 1989), green/traditionalist, left-libertarian/authoritarian (Kitschelt 1994). At one pole, this dimension is described by some combination of ecology (or greenness), alternative politics (including participatory democracy), and libertarianism. One may conceive of this as the Green/Alternative/Libertarian or GAL pole. The opposite pole is characterized by some combination of support for traditional values, opposition to immigration, and defence of the national community. This is the Traditional/Authoritarian/Nationalism or TAN pole. Although this type of new politics is more salient in Europe than in North America, Japan or the Antipodes, it is present in all advanced economies.

Scholars of this cultural cleavage, such as Ronald Inglehart and Herbert Kitschelt, link its existence to the emergence of a category of people with considerable economic security. Affluence and education — the main resources for economic security in a modern world — breed tolerance for the other, adherence to freedom and individual rights, and quality of life. Affluent and educated people demand policies that address these issues: equal opportunities for women, minorities and gays; tolerance to immigrants and asylum-seekers; privacy and expanded personal freedoms; and greater democratic participation. Conversely, people who are economically insecure are likely to reject these values and want regulation to sustain their familiar homogeneous communities.

How does globalization play into this? Globalization produces economic insecurity, and at the same time, it brings about increased cultural and social transactions that make it more difficult to insulate one's own

community from interference. Small, formerly homogenous cultures, are drawn into the global trading place. The law of the numbers predicts that, in a situation where two or more cultures interact, there is a good chance for the smaller culture to be ultimately assimilated by the larger one (Axelrod 1997). In Europe, as in Canada, the larger culture is Anglo-American. And so one may expect globalization to intensify cultural conflict between the GAL and TAN, and to strengthen particularly the TAN side.

For many EU citizens, European integration signifies increased economic, cultural and social interactions that cut across traditional communal identities. Yet, European integration also refers to a set of tangible institutions with the capacity to actively enact policies that sustain or undermine GAL or TAN values. For people and parties with TAN values, European integration exacerbates the disruptive effects of globalization. They perceive European integration, like globalization, as a threat, because it limits national culture, national community, and national sovereignty. The French anti-globalization hero José Bové, who became known for his attacks on McDonalds in France, is also an opponent of the European Union. The defence of "the national," conceived as a distinguishing, exclusive set of deeply rooted cultural and institutional characteristics that bind a national community, is the core of party ideology at the TAN pole. The empowerment of authoritative supranational institutions, and EU policies that weaken national control, challenge them directly. Extreme right parties — on average 6.1 percent of the national vote in 1999 — are deeply opposed to European integration: the French National Front, the Flemish Vlaams Blok, the Austrian FPÖ, the Italian Northern League, etc. In 1992, the then-leader of the French National Front, Jean-Marie Le Pen, described the Maastricht Treaty as "suicide national," "une entité supranationale qui passe par l'éclatement de la nation." The Euro-scepticism of these parties is linked to their opposition to immigration. They see themselves as defending the national community and culture against foreigners, and this leads them to oppose the free movement of people in the single market, a concern that has intensified with prospective enlargement to the east. Jörg Haider, leader of the Austrian Freedom Party, has opposed enlargement to the countries on Austria's eastern border: "From the moment we open our borders, 200,000 people will come here, settle, and look for jobs" (*The Economist*, 11 July 1998, p. 55).

But the effect of TAN reaches beyond the radical right. Among mainstream parties, the higher their score on TAN, the more Euro-sceptical they are. These include, for example, the British Conservatives, the Italian Forza Italia of Berlusconi, the Portuguese Partido Popular, and the French Gaullists. While they are not so extreme as radical right parties, these conservative parties defend national culture, national community, and national sovereignty against the influx of immigrants, against competing sources of identity within the state, and against external pressures from other countries and international organizations (Betz and Immerfall 1998; Kitschelt 1995). The French conservative right has gone furthest in emphasizing the alleged deficiencies of the European Union in relation to immigration and asylum. But other parties have also spoken in explicit language. In the spring of 2000, Forza Italia published proposals for highly restrictive legislation. In the ideological preamble to the document, Forza Italia made an explicit commitment to a "Christian" model of society based on the "primacy of the nation understood in the romantic sense, as a nucleus and base of values, religion, culture, language, dress and tradition." The document rejects "a universal, multi-racial society that is rooted in the markets" (Quoted in the *Financial Times*, 1 April 2000). And in the spring of 2001, the British Conservative leader, William Hague, made anti-immigrant statements that, according to *The Economist*, had a suspiciously ethnicist undertone.

The national orientation of these parties has an unambiguous bottom line for their position on European integration: the nation-state should be extremely wary in weakening its legitimate sovereign right to govern persons living in its territory. Euro-sceptical voices in conservative parties rarely seek withdrawal from the European Union, but they typically argue for a looser confederation. The Portuguese Partido Popular, for example, opposes the Europe of Maastricht and the EMU, which it labels the "federal peril," and argues for a Europe "respectful of the diversity and the Will of the nations of which it is constituted." The resurgence of nationalism, and the ensuing connection between the TAN and Euro-scepticism, is a major new development in the European Union.

The impact of European integration on GAL values is less clearcut (Bomberg 1998). This is because each one of the three constituent elements — greenness, alternative politics and participatory democracy, and personal liberty with respect to lifestyle — is two-sided. The *ecological*

implications of European integration depend on where one sits. Countries with advanced environmental regulations (i.e., the richer countries, in which green parties are strongest) may extend their own standards to less-developed countries with the help of supranational legislation, but their own standards are unlikely to be raised. Many ecological issues demand transnational cooperation, and the European Union is a more effective arena for dealing with them than either global or national arenas. The *democratic* consequences of European integration have been mostly negative for those who care about participation. The European Union stands for much that parties toward the GAL pole instinctively oppose: technocratic policy-making; secretive decision-making; distant institutions; and the dominance of intergovernmental bargaining (Bomberg 1998). Yet, democratic control over EU policies has been buttressed with the Maastricht and Amsterdam Treaties. Though far from perfect, the opportunities for a variety of actors to influence and co-decide are far greater in the European Union than they are likely to become in the foreseeable future in other regional or global regimes. Finally, from a *libertarian* standpoint, European integration is both liberating, in that national restrictions on freedom of movement are eased, and restrictive, in that it creates an additional layer of authority removed from individual control. So one would expect mixed support for European integration among green parties.

This ambivalence is reflected in green parties' stances on European integration — the more extreme parties on the GAL side. Green parties clearly support European integration in environmental policy and they favour EU-asylum policy as well as a strengthening of the European Parliament, but they are wary to wholeheartedly support an international organization that is democratically non-transparent. As Elizabeth Bomberg observes: "Greens in Europe ... face a strategic paradox: the incentives to work through the EU are great, yet how can they work through institutions that inherently violate green principles?" (Bomberg 1998, p. 4; Rüdig 1996, p. 268). The paradox of green opposition is that democratizing EU institutions demands a stronger European Parliament, in other words, more, not less, integration.

A major determinant of green party positioning on European integration is the relative weight of pragmatic ("realo") versus principled ("fundi") tendencies. A second, related, influence is whether the party is purely environmentalist or combines green and radical-left views

(Christensen 1996; Bomberg 1998). The more reformist and environmentalist the party is, the more likely it is to support European integration. In recent years, reformism has been ascendant in the larger green parties, including the influential German Greens. Back in 1984, the German Greens condemned European integration in sweeping terms as an attempt to create a European superpower. By the early 1990s, they had become supportive. In their 1992 policy reversal, they stated that, "especially in view of increasing nationalistic and racist opinions and attacks in Germany and elsewhere, the Greens emphasize the importance and necessity of European integration" (Policy statement of the Land Council, October 1992, quoted in Rüdig 1996, p. 263). Increasing support for European integration has been most pronounced in the larger green parties, particularly the Austrian, Belgian, Dutch, Finnish, French, and German greens. Green parties represented only 4.3 percent on average of the national vote in 1999, but their strength varies considerably from country to country. They are politically influential in Germany, France, and the Benelux countries. Moreover, most social-democratic parties also strongly support GAL values.

There is no simple answer to the question of whether national identity politics has been mitigated or hardened as a result of European integration. The empirical evidence suggests that it has been a bit of both. For radical right parties, nationalism and Euro-scepticism have come to fit snugly with anti-immigrant policies, alongside cultural traditionalism and authoritarianism. And this has carried over to mainstream parties on the conservative right. But at the same time, parties that espouse libertarian, alternative, pro-immigration and pro-cultural diversity views have come to embrace European integration, albeit with misgivings, as a bullwark against exclusive nationalism. So European integration seems to contribute to the polarization of identity politics in Europe.

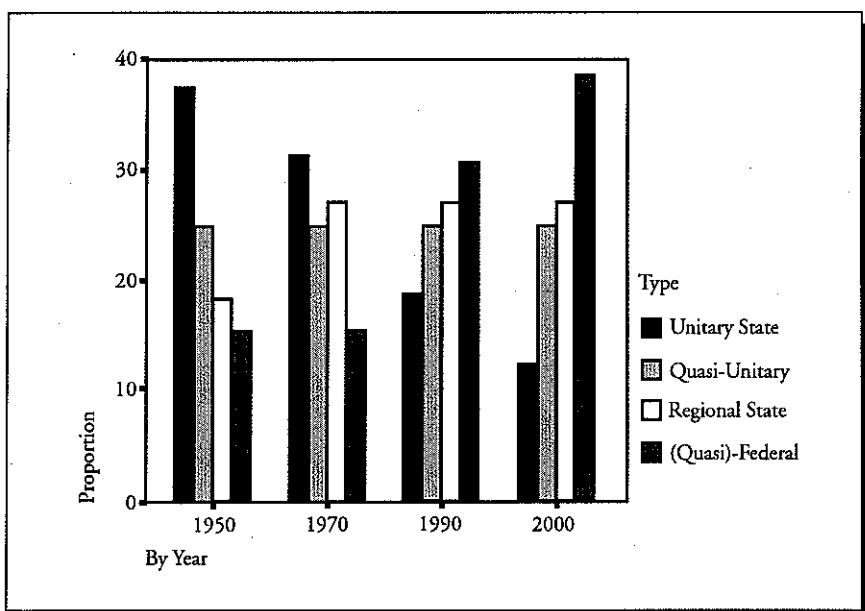
Has Globalization/ European Integration Spurred Centralization or Decentralization of Authority?

The deepening of European integration represents an unprecedented centralization of authority in Europe. Yet it would be wrong to argue that a European superstate has replaced national states. The system that has emerged in Europe is one where national states still play a major role —

in terms of Figure 1, a predominant role — in most policy areas. But they have lost the capacity to make *sovereign* decisions on policies. They share decision-making with one another in the context of the EU, and with autonomous EU institutions.

European politics, however, has been characterized by a second major development that further qualifies the impression of a European superstate. This concerns the empowerment of regions inside nation-states between 1950 and 2000. Figure 3 illustrates how much regions have gained in power within states since 1950. It is based on an index developed by Gary Marks and myself, in which we use four indicators to capture the extent of regional self-rule and regional shared rule in national decision-making (Hooghe and Marks 2001, Appendix 2). In 1950, six of the now 14 EU countries (15 minus Luxembourg) were purely unitary, four were quasi-unitary, three were regional, and only two (Germany and Austria) were federal. By 2000, only two (Sweden and Ireland) were purely unitary, four

FIGURE 3
National and Regional Power, 1950–2000



Source: Hooghe and Marks (2001, based on Appendix 2).

were quasi-unitary, three were regional, and five were federal or quasi-federal (Germany, Austria, Belgium, Spain, and Italy). The greatest changes have taken place in the larger countries — Spain, France, Italy, and Spain — as well as in Belgium. Except for periods of home rule in Northern Ireland, the United Kingdom remained the odd unitary state in one of the most populous and ethnically diverse countries in the EU. However, that was before the reforms of the past five years, which led to the creation of a Scottish Parliament and Welsh Assembly, and with assemblies for English regions on the agenda.

It would be wrong to contribute this regional empowerment directly to globalization or European integration. The main impetus has been domestic. Strong bottom-up regionalism and nationalism are far more important causes for regional empowerment in Belgium, Spain, and in the United Kingdom. Regionalization has also been pushed from the centre. There are several reasons why national politicians may want to shift power downwards (Marks 1996). They may do so to modernize policy-making, to shed unpopular or expensive policy tasks, or to increase democratic participation.

The direct effect of European integration on regional empowerment has been limited, although real. The most tangible impact has been through EU cohesion policy. The 1988 reform of this policy instituted "partnership" among the Commission, national authorities, and regional/local governments in designing, running, and monitoring economic development programs. Partnership became a powerful tool for the Commission to break open its two-level, dyadic relations with each national government into multi-level relations among supranational, national, and subnational governments (Hooghe 1996; Hooghe and Marks 2001). In some cases, such as Ireland, Greece, and to some extent Portugal, the European Commission has made EU funding conditional upon the creation of regional administrations. In other cases, such as in the UK, the Commission has built alliances with regional and local authorities, and by doing so strengthened their hand vis-à-vis their national governments. The Commission is following a similar strategy in the prospective member states of central and eastern Europe, where it is pushing reluctant national governments to put in place effective regional governance structures.

Yet the most important impact of European integration on regional empowerment has been indirect. European integration lowers the threshold for regions to demand power from their national governments because

they do not risk losing market access. While an independent Quebec would have to renegotiate NAFTA membership with the United States, Mexico and Canada, an independent Scotland or Flanders could simply accede to the EU *acquis communautaire* — the cumulative body of EU law. Membership of an economic and monetary union is qualitatively different from membership of a free trade association. National leaders, from their side, may find it attractive to devolve authority to the extent that, by doing so, they can shed responsibility for the implementation of unpopular EU regulation. European integration takes economic risk out of the equation, and it provides national politicians with opportunities to reduce electoral risk. The European Union sets the economic and political parameters within which diffusion of authority takes place.

THE FUTURE OF "SHARED GOVERNANCE" IN EUROPE AND BEYOND

European integration is both a dependent variable, influenced by globalization, and an independent variable, a specific embodiment of globalization. As an independent variable, it resembles most closely the model of shared governance set out in the scenarios in chapter 1. It is a mode of governance that transcends traditional interstate relations. Authority is diffused across national, subnational, and supranational actors. EU policy-making is decided primarily through negotiations between supranational and national institutions. And shared governance also includes subnational governments and domestic interest groups; this is more likely to happen in some policy areas (e.g., regional policy, environment, social policy, and industrial relations) than others (foreign policy, trade policy, competition policy), in certain policy stages (implementation stage) than in others (legislative process), or by actors other than national governments of some member states (federal countries, i.e., Austria, Belgium, Germany, and quasi-federal or regional countries such as Spain, Italy, and to a lesser extent France and the UK) than others (unitary states). National governments are still the most powerful players, but their exclusive control over EU decision-making, both individual and collective, has slipped away.

Shared governance in the European Union has helped a budding European public space, where basic options for European societies can be and are contested. The public space is still largely segmented into na-

tional public spaces, but political parties have begun to formulate explicit connections between domestic contestation and European integration. European integration has heightened unease with the erosion of national identity, and this has benefited the radical right. But it has also renewed hope (or tempered despair) for social democratic values beyond the nation-state, and this has benefited the centre-left.

The European Union will be, with the United States, the major player in shaping global governance. But it has an edge over the US, in that it is also the first serious form of governance beyond the nation-state. It is a laboratory for global governance. The kind of governance that prevails in the European Union may influence disproportionately the future of global governance.

So how stable, then, is the current EU model of shared governance? The model faces two major challenges over the next decades. First, it needs to deal with emerging global regimes such as the WTO, which may develop rules that constrain EU capacity to regulate markets. And second, as of 2004, another ten countries are virtually certain to become member states, with several other applications, from the Balkans, eastern Europe and Turkey, still pending. Taking account of these two challenges, what might be the affect of the governance scenarios, as laid out in chapter 1, on the structure and processes of the EU?

Global regulation of regime competition is bound to be less encompassing, less binding, and less specific than EU regulation. It would be confined primarily to negative integration: trade liberalization, while it would not create much in terms of political regulation of markets, and certainly not a level of environmental and social standards that is equivalent to the EU level. However, a *global club* scenario, with a WTO that has significant authority to regulate economic but not social matters, might constrain the EU from enacting positive regulation. That would almost certainly create major tensions within the Union. It might even paralyze decision-making, which rests on a delicate bargain between supporters of global markets, on the one hand, and of European solidarity on the other. In effect, this scenario could weaken the authority of Brussels in the EU and stall or even reverse the trend toward a more federalized EU. And there would be strong resistance in the European Union against this kind of outcome. The main purpose of proponents of regulated capitalism is precisely to strengthen EU capacity for authoritative regulation to avoid such entropic processes. A much weakened deregulated EU, however, fits

with the neo-liberal project. And neo-liberalism enjoys some support among liberal and conservative parties, among parts of the corporate sector and financial services, as well as some public opinion leaders.

In this sense, the global club scenario, in an EU context, could lead to results that are similar in direction, if not degree, to the *cyberwave* scenario. In both cases, the social contract (regulation of capital) of the EU would be undermined although, in the case of *cyberwave*, the effect for the EU would be even more fragmenting. In contrast, the shared governance global scenario would reinforce the shared governance that now characterizes the EU and thus reinforce the federalizing process within the EU.

Enlargement to the east is the more immediate challenge, and it may induce current "insiders" to reduce positive integration. This particular enlargement differs in two respects from previous rounds. First of all, the administrative and legal systems of the prospective members are less developed than those of any previous round, while the EU *acquis communautaire* — the accumulated body of EU law — is much more encompassing and constraining than at any other stage in EU history. And second, the ten newly entering members are economically and culturally more unlike the current EU members than prospective members have been in the past. For one thing, GDP per capita of these prospective new members is less than one-third of the average GDP per capita of the European Union. An extrapolation of current EU policies to these members would therefore necessitate a doubling of the EU budget, and this is not on the agenda. Instead, the European Union has chosen a mishmash of internal reshuffling of resources, policy reforms, and phasing-in of policy programs, all of which is aimed at controlling costs. To ease accession, prospective members have negotiated long transition periods in which they phase in compliance with current EU legislation in competition policy, environmental standards, and social policy, but they have also had to accept temporary exemptions from the EU's generous regional policy and common agricultural policy. The two policies are currently under review with an eye to reducing the overall bill. At the time of writing (August 2003), it is still unclear whether the current 15 will succeed in their efforts to rewrite the rules before the ten new countries become full voting members in January 2004. If they do, the enlarged European Union will be less attractive to the new members on the inside than it looked from the outside when they applied for membership.

The future shape of the European Union will influence global governance, though one can only speculate how. If shared governance prevails in the European Union, it would certainly help to bring about global shared governance. If it gives way to a deregulated authoritatively weak EU, as described above, this is likely to reinforce market pressures for a global cyberwave. But, given the existence of extensive authoritative institutions at the EU level and the electoral strength of political parties opposed to a cyberwave model, this may be the least likely outcome. Of course, as Sam Goldwyn once uttered, predictions are always difficult — particularly of the future.

Notes

1. The latest is the Nice Treaty, which comes into force in 2003. It changes decision rules to prepare the European Union for the accession of ten new countries in 2004. For example, it reweights voting in the Council of Ministers, and redistributes seats in the European Parliament. In 2001, many political leaders, from federalist German Foreign Minister Joschka Fischer to Euro-sceptical French President Jacques Chirac, began to campaign for a wide-ranging *constitutional* debate to perhaps lead to a European constitution (instead of a treaty). In February 2002, a "convention on Europe" began work on a blueprint for a European constitution. The composition of the convention is unusually open. There is an equal balance between governmental and parliamentary representatives: the European Parliament, the European Commission, and the national governments and national parliaments, not only from the 15 existing member states, but also from the accession countries (which have full participation and voting rights). The convention also sets up hearings for organized civil society. If the convention agrees on a blueprint by mid-2003, it will be submitted to an intergovernmental conference. In the end, then, national governments have the last word over the draft, before it is sent out for ratification by the national parliaments, or in some countries, by citizens through a referendum.
2. The scores in Table 1 are drawn from Lindberg and Scheingold's book *Europe's Would-Be Polity* (1970), from an expert survey conducted by Schmitter (1996), and from evaluations by Marks and Hooghe in 2000 (Hooghe and Marks 2001).
3. This exclusive competence was initially limited to goods and capital, while the status of services was unclear. But in 2000, the member states agreed

to give the Commission full competence to negotiate on their behalf in services as well.

4. Eleven countries joined in 1999, and Greece joined as from 1 January 2001. At the time of writing, Denmark, Sweden, and the UK are not part of the Euro-zone.
5. This section is based on Hooghe and Marks (2001, ch. 1).
6. Except for foreign and defence policy, immigration, and justice, where it shares this power with the Council of Ministers.
7. This section borrows its title from the classic: *Crisis, Choice, and Change. Historical Studies of Political Development* (Almond, Flanagan and Mundt 1973).
8. By one generally used measure of trade openness: imports and exports as percentage of GDP, the evolution for key countries was the following (McKeown 1999, p. 13):

	1960-73	1974-79	1980-89
Sweden	45	58	63
Denmark	60	61	69
Netherlands	92	96	110
Germany	39	51	61
France	26	39	45
Italy	31	41	42
United Kingdom	41	55	53
Canada	39	48	52
United States	10	17	18
Australia	30	31	33
Switzerland	61	66	73

9. In the strategic areas of electronics and telecommunications, many of Europe's largest firms, such as Bull, Thomson, Siemens, Philips, Olivetti, and ICL were more interested in alliances or mergers with US or Japanese firms than with European firms (Cawson *et al.* 1990; Sandholtz 1992).
10. Member states were compelled to recognize each other's standards as equivalent. The expectation was that market competition would ultimately make standards converge to the most efficient level. So *ex ante* politically negotiated harmonization would be replaced by *ex post* market-driven harmonization (Majone 1996). The Commission stated in a communication in 1980 that it would use the idea as the foundation for a new approach to harmonization (Alter and Meunier-Aitsahalia 1994).
11. The main exception was British Labour, which was still staunchly socialist and by implication, against European integration in the mid-1980s.
12. This and the following section are largely based on Hooghe, Marks and Wilson (2002).

13. This is based on data on party positions of 142 national political parties, which were collected through an expert survey conducted in 1999/2000 by Gary Marks, David Scott, Marco Steenbergen and Carole Wilson. The survey asks country experts for all EU member states (except Luxembourg) to evaluate political parties on where they stand on a new politics dimension as well as on an economic left-right dimension (ten-point scales, ranging from one to ten), and to place these parties on a seven-point scale with the lowest score representing strong opposition to European integration and the highest score representing strong support for European integration, and to do this as well for seven policy areas tapping into aspects of political and economic integration (Hooghe, Marks and Wilson 2002). The 1999 expert survey is an extension of a survey conducted by Leonard Ray, who gathered data on party orientations to European integration (but not on seven policy areas, nor on the economic left/right and new politics dimension) for four time points: 1984, 1988, 1992, and 1996 (Ray 2000).

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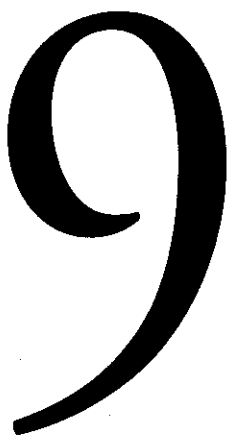
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The Effects of Global and Continental Integration on Cooperation and Competition in German Federalism

Rudolf Hrbek

INTRODUCTION

When it was created in 1948–49, the West German state adopted a federal political system. Since then, federalism and its concomitant features have significantly influenced the West German polity and its political process. Moreover, federalism as a basic constitutional principle has acquired wide recognition and acceptance in Germany. At the same time, certain features of German federalism have attracted the attention of other countries, both federal and non-federal, that have been searching for solutions to the territorial dimensions of their politics (e.g., Spain after the Franco regime). On the whole, the dynamics of the way the German federal system has developed make it an interesting case for research and analysis among federalism scholars.

The Federal Republic of Germany (FRG) is one of the six founding members of the European integration project, which started in 1951 with the establishment of the European Coal and Steel Community. The pact continued with the Treaties of Rome in 1957, which established the European Economic Community (better known as the Common Market), and EURATOM. These three communities formed the basis for the dynamic and relatively fast-paced development toward what is now the

European Union. Without doubt, the EU is the most highly developed model of regional integration in the world. For the FRG, membership in the EC/EU, and engagement in the deepening and widening process of continued integration has always been an important part of Germany's *Staatsräson*. That is to say: as a modern nation-state, belonging to the larger framework of the EU was regarded as crucially important to the continued existence and development of the West German state (and after reunification, for reunified Germany as well).

With its export-oriented economy, the FRG has always been involved in the global economic system, and, as a consequence, it continues to depend on globalization processes. Although membership in the EU is important for Germany's foreign economic relations (exchange of goods and services and foreign investment) there are also valuable economic partners among non-EU member countries as well. These include: the United States, Japan, Canada, China, and South East Asian countries. Additionally, the countries in central and eastern Europe that will soon become EU-members also have a role to play in the FRG's foreign economic relations.

As mentioned already, German federalism has undergone a dynamic transformation; it has adapted itself in response to both internal and external challenges. Unitarian tendencies, "cooperative federalism" and *Politikverflechtung* (Joint Tasks) are features of the adaptation to internal challenges. With respect to external challenges, the German federal system has had to cope, first, with the consequences of reunification, and thus integrate the five new Länder into its framework; and second, with the implications of European integration, adapt its structures to this new context.

This chapter is devoted to assessing the impact of global and regional integration on Germany and German federalism. Regional integration, for our purposes, is identical to the European integration project (or, EU-integration). The EU represents a treaty-based legal community, and from a political science point of view, it has also been perceived as a political system with good reason (see Hix 1999; Lindberg and Scheingold 1970). Since Germany forms one component part of the EU-system, both the EU-system and the integration process have influenced German federalism. In other words, EU-governance (Kohler-Koch and

Eising 1999; Hooghe and Marks 2001), which has emerged as a new framework, has been accompanied by adaptations and adjustments ("Europeanization") of the German polity within its federal system (Sturm and Pehle 2001). With respect to the impact of global integration and the various possible meanings of globalization, this chapter will concentrate on *economic* globalization, which can be defined as the "integration of financial markets and integration of product markets" (Deeg 1996). The following section will address, in more detail, both global and regional integration as it has influenced the German federal system.

It is the thesis of this contribution that both forms of integration, as phenomena of "de-bordering," have had a strong impact on German federalism (Albert and Brock 1996; Börzel 2002; Kohler-Koch 1998). The effects can be observed from the 1980s onward. During this period, globalization became more visible, while the European integration process accelerated and deepened simultaneously.

Unitarian tendencies and the emergence of "cooperative federalism" (vertical as well as horizontal) culminated in the 1970s in a pattern labelled as *Politikverflechtung* and are major features of German federalism (Scharpf, Reissert and Schnabel 1976; Scharpf 1985). These features are criticized by academic observers. In the past ten to fifteen years, political actors, most of them from the stronger Länder, have become visibly uncomfortable with these developments, and have begun making demands for substantial reform of German federalism (see Lehmbruch 2000; Große Hüttmann 2002). Their objective has been to encourage the growth of "competitive federalism," or at least the inclusion of competitive aspects in the German federal system. Here, I argue that the German Länder have been remarkably successful in strengthening their position by developing autonomous activities, especially in the field of economic policy; and furthermore, that they could enhance their participation in decision-making on European Union matters at both the domestic and EU-level. As a result, German federalism adopted some features of competitive federalism, but has not replaced the structures and practices of cooperative federalism. German federalism, therefore, is characterized by some tension between these two tendencies and structures, but neither of them prevails; instead they coexist, nourish the dynamics of the federal system, and have, on the whole, arrived at a fair balance between these two forms.

SITUATIONAL CONTEXT

Germany is geographically situated in the centre of Europe. During the Cold War, the dividing line (iron curtain) separated the two sections of Germany which became integrated into the Western and Eastern blocs respectively. The decision to establish the Federal Republic of Germany as a democratic political system also implied a decision to become an integral part of the West. This fundamental decision was implemented during the first few years of the development of the FRG within its political, economic, and military integration via membership in the Council of Europe (1950), the European Coal and Steel Community (1951), the Western European Union (WEU) and the North Atlantic Treaty Organization (NATO) (1955), and the EEC and EURATOM (1957). The eastern border of the FRG was also the Soviet bloc border. Eastern territories of the FRG situated on that border line were marginalized by their locale, and thus became dependent on special support for their development.

The commitment for the European integration project was linked with the development of the FRG from the beginning (Hrbek and Wessels 1984). The integration project was perceived as establishing a values-based community; a peace and security community; a larger economic area, where economic recovery and growth could be achieved more easily; and a framework that would contribute to problem-solving, since the nation-state was no longer capable of performing this task autonomously. Belonging to this overall framework, therefore, was regarded as the *Staatsraison* of the FRG. Since the second half of the 1950s, there has been no dispute on this general orientation among major political parties and forces. As a consequence, Germany has always been engaged in attempts toward the deepening and widening of the European Community and could rely on what has been correctly described as the "permissive consensus" of the population (Lindberg and Scheingold 1970).

As an export-oriented economy, dependent on external markets, the FRG made successful efforts to become integrated into the world market, and has continuously advocated an open, anti-protectionist, and liberal international economic system. With its strong economic weight, the FRG belongs to the founding nations of the G7. Another factor affecting Germany's international position is the fact that after the end of World War I, Germany no longer had the status of a colonial power.

Since the demographic development in the FRG was characterized by stagnation and a growing proportion of elderly people, the country has

been dependent on migrant workers. From the early 1960s to 2000, the number of migrant workers has increased to approximately two million; the total number of non-Germans is 7.3 million (which makes up 9 per cent of the whole population).

The reunification of Germany, as a consequence of the collapse of the Soviet empire, brought with it a series of changes. The centrality of Germany in the heart of Europe was again put into effect. Open borders offer opportunities (e.g., to be close to new markets and resources) and imply risks (e.g., transnational crime, migration flows); and they require efforts to manage new neighbourhoods. Accordingly, special bilateral and multilateral relations at the subnational level (cross-border regional cooperation) needed to be set up. In this context, economic and social disparities and historic legacies have to be faced as special problems. It is important to note that, due to geographic centrality, Germany has become a transit country.

German reunification has been a challenge in further respects. There is a dividing line between the old and the new Länder, which is due not only to economic disparities but to the differences in attitudes and political culture between the old and new Länder. Furthermore, there has been a continuous migration from the former GDR to the western Länder (approximately 2.5 million from 1989 to 2000), negatively affecting the chances of the new Länder to recover and catch up economically.

CONSTITUTIONAL/FEDERAL FRAMEWORK

Germany has a parliamentary system of government with a strong chancellor. The pattern, however, is far different from an "elected dictatorship." Consider the following points: first, there have always been coalition governments and the chancellor, as the political leader of the dominant governing party, has to take into account interests and concerns of the smaller partner (who will try to make its own indistinguishable profile visible).¹ A second factor reducing the power of the chancellor (and the federal government) stems from Germany's federal system. Federal governments have always had to take into account the interests of the Länder or a majority of the Länder, especially if the majority in the Bundesrat — in political party terms — is not identical to the political majority in the Bundestag.²

Negotiations between different political actors and forces, therefore, play an important role and give the political process in Germany a

special character. The emergence of neo-corporatist patterns and arrangements also fit into this context. In many respects, one can argue about whether the FRG does not belong to concordance-type political systems (with consensus orientation of major political actors) (Scharpf 1997).

The federal system is characterized by the "state" quality of the constituent entities — the *Länder* (Jeffery 1999; Kilper and Lhotta 1996; Laufer and Münch 1998). Only some of the *Länder* can claim to represent "historic" subnational entities, since most of them were created after World War II as more or less "artificial" entities; in the meantime, nevertheless, they have developed what can be considered "regional identities." The *Länder* have their own constitutions (these, however, must be in accordance with basic features laid down in article 28 of the Basic Law) and their own system of government (with some differences in aspects of the parliamentary system of government).

Federalism was introduced to the Federal Republic of Germany in 1948–49 primarily because of the "checks-and-balances" effect expected from and attributed to a federal structure. There was no fragmented or heterogeneous society in ethnic, religious or linguistic terms; and the millions of refugees from former German territories in the east have spread throughout the Federal Republic and become fully integrated.

With regard to the allocation of competences that the constitution provides, besides those that are concurrent, it also allows for exclusive competences for both the federation and the *Länder*. From the beginning, however, the development tended toward unitarian (not centralist) solutions and features. This was due, first, to vertical links between the federation and the constituent units (the *Länder*); and second, to horizontal arrangements (between the *Länder*). An additional feature that distinguishes German federalism from other federal systems is that, whereas the federation has legislative authority, it is the *Länder* that have the responsibility for administrative and executive implementation.

The fact that German federalism has never adopted the quality of "dual federalism" is due to a series of factors:

- The unique postwar situation, with sharp economic disparities among the constituent units and a general trend toward improving the living conditions on as high a level as possible, favoured unitarian solutions.

- With respect to the distribution of competences, there was, besides exclusive competences for the federation and the Länder, the area of concurrent competences. And the criteria within the area of concurrent competences allowed the federation to take action without being confronted with protests from the Länder (whose authorities had to take into account expectations and demands from the citizens for uniform and high standard solutions).
- Shared resources characterize the financial system as far as major tax revenues are concerned. In addition, a very comprehensive equalization mechanism emerged, which distributed funds from the federation to the Länder as a whole, to individual Länder, and among the Länder themselves (horizontal equalization), which became split between net-payers and net-receivers. This pattern has been a source of permanent dissatisfaction and conflict.
- The participation of the Länder in decisions at the federal level via the Bundesrat (a special type of second chamber containing representatives of Länder governments as members)³ contributed to the trend toward unitarian solutions. Since part of federal legislation requires the explicit assent of the Bundesrat, consensual solutions on the basis of a common denominator (frequently a compromise) have become the rule.

The pattern that emerged was not only one of cooperative federalism, but it was characterized by a high degree of interpenetration of the two levels, especially with the introduction (from the late 1960s) of the so-called "joint tasks," which prompted some observers to speak of "a unitary state in (federal) disguise." Scharpf coined the term *Politikverflechtung*, which may be translated as "interlocking federalism" (Scharpf, Reissert and Schnabel 1976).

The governments in the Länder vary greatly in terms of their political party composition. There have been one-party governments and coalition governments, but only some of them resemble the coalition pattern at the federal level. Party competition, therefore, coexists with consensus orientation, since agreement is necessary in many cases in order to arrive at a solution. Another feature of the German polity is that the local level is given some autonomy; but there are, with respect to competences and financial resources, severe restrictions. It has always been

a major concern for municipalities that they have been charged with special tasks, especially by the federation, which often does not supply the necessary financial resources.

There are no referendums at the federal level; several attempts to amend the Basic Law, in this respect, have failed. At the Länder and local levels, however, referendums are constitutionally possible. In practice, though, referendums have rarely been used. A last noteworthy feature of the German polity is the existence of the Federal Constitutional Court, which may be called upon during federal conflicts, in addition to the adjudication of other types of constitutional issues.

THE IMPACT OF GLOBAL AND REGIONAL INTEGRATION ON GERMANY

As shown earlier, the FRG has devoted itself from the beginning to the European integration process, which implies a reduction of autonomy, combined with and compensated by, an increase in the capacity to solve problems and fulfil tasks. Therefore, the integration process has been accompanied by a gradual transformation of the nation-state: it has not disappeared or faded away, but is losing the ability to exercise national sovereignty autonomously. Instead, the nation-state belongs to a larger entity, and must share its sovereignty with other nation-states.

In an attempt to characterize the political and legal quality of the EU, and to give more substance to the often-used label "*sui generis*," Wolfgang Wessels (1992) introduced the term "fusioning federal state" (*fusionierter Föderalstaat*), which is more precise than speaking of a "multi-level system" (Hooghe and Marks 2001). The latter term is useful to analyze the EU as a polity, the politics in this framework, and the policy dimension. "Fusion" refers to the exercise of sovereignty and a new form of governance "beyond the nation-state." The EU has already adopted the pattern of pooled and then shared sovereignties. The term "state" indicates that the institutions of the EU, the decision-making process of the EU and its policies (e.g., regulatory and redistributive policies) are similar to those we would normally associate with the nation-state. And the term "federal" refers to a structure characterized by different levels or orders of government forming one comprehensive whole. Parallel to the gradual extension of the functional scope of the EC (since the Treaty of Maastricht: the EU) over the years (and especially since the mid-1980s) the process

that created that pattern has accelerated and intensified. The Federal Republic of Germany, as a component part of the EU entity, has lost its ability to exercise autonomous action in many fields, as it has participated in steps toward the pooling of national sovereignties, and as it has accepted the new rules of the game in this special "multi-level system."

As mentioned above, the FRG as an export-oriented country is integrated into the global market and is therefore dependent on the global market's dynamism and development. Along with the ongoing and intensifying European integration process, developments in the global economy have affected the EU as a whole — as a "fusioning federal state" — and its individual member states. Inevitably then, the EU has reacted to global economic developments; and there have been, and will continue to be, special impacts from globalization on individual member states. Furthermore, as a consequence, EU member states have made efforts to respond on a national basis. This is particularly true for a country like Germany, which is so intensely interwoven into the global economy. Therefore, this section will deal with the impact of regional integration in the EU and of globalization on Germany. The next section will then investigate the impact of these two processes on German federalism — the core question of the whole project.

The Impact of European Integration on Germany

Integration can be defined with respect to several different dimensions of the process, and all of them need to be taken into account in order to assess the impact of integration on Germany.

One aspect of integration is the functional scope of the EU, which has been extended gradually. Four subsequent comprehensive treaty reform processes — the *Single European Act* (SEA) of 1986; the Treaty of Maastricht, signed in 1992 and in force from November 1993, following a long and difficult ratification process; and the Treaty of Amsterdam of 1997; along with the Treaty of Nice of 2000 — have sanctioned and legitimized this extension. In the meantime, more or less all policies have adopted a European (that is to say: an EU) dimension; this, in turn, means that EU matters have become domestic concerns in all member countries. Some examples should help to illustrate what this means for Germany: first, the project to establish and realize an internal market via mutual

recognition of norms and standards (liberalization) or harmonization has necessarily entailed the disappearance of the closed national market, and as such, there is no possibility for national economic policy to set rules for markets. This larger economic area without borders offers opportunities for all (goods, services, capital, enterprises, sectors, individual economic actors), which are efficient and competitive. The Internal Market program gave incentives for a large-scale privatization.

Second, the common competition policy established a strict subsidy control regime that does not allow national measures (subsidies), which are designed to support individual enterprises, in the field of structural or industrial policy. Third, the Monetary Union⁴ brought an end to national autonomous monetary policy. In addition, the Stability Pact implies the obligation for all member states to make sure that their public debts do not exceed an agreed-upon mark. For a federal system such as Germany this requires cooperation and coordination amongst the different orders of government; federation, Länder, and municipalities must work together to achieve this goal.

Fourth, new provisions on employment policy, introduced with the Treaty of Amsterdam, seem to follow the pattern of "open coordination" by jointly deciding on guidelines that the member countries are expected to meet. This may lead to political party disputes at the national level, if political parties advocate clearly divergent approaches and strategies in an attempt to reach this goal. Fifth, in the field of environmental policy, the EU may decide on a directive (which is a piece of communitarian legislation setting the goal), but leave the ways and means open to implementation at the national, regional, or even local level, depending on the distribution of competences pertaining to the particular issue. And finally, in the field of structural and cohesion policy of the EU, the five new Länder belong to the group of net receivers, and consequently Germany has a vital interest in maintaining this policy.⁵

Opinion poll data show, over past decades, a positive attitude toward the integration process, interpreted as diffuse support or "permissive consensus" (Hrbek 2002). In connection with the Internal Market project in the mid-1980s, support for EC membership reached a peak of 65 percent, and in 1990 (during the euphoria in connection with the German and European reunification) support reached over 70 percent. This was followed by a sharp and significant decline to only 50 percent support in

1993, and then another drop to less than 50 percent in 1996 — in connection with the debate on the establishment of the monetary union and the introduction of the Euro to replace the Deutschmark. The figures in the new Länder were even lower. Evidently, a utilitarian evaluation of EU membership prevails; speaking directly to the evaluation of gains and losses from EU membership, there has been a remarkable decline during the 1990s, and in the five new Länder the decline has been even more dramatic.

A second dimension of integration concerns the decision-making system of the EU. The institutions — European Council (the “Summits”), Council of Ministers, Commission and European Parliament — are linked with each other in a pattern of complex relations and the decision-making system became multi-layered with numerous complicated procedures, including “comitology” (with a large number of committees composed either of national civil servants or of experts with an advisory function) (Wessels 1998).⁶ There are additional actors involved in the decision-making process: political parties, interest associations, and NGOs. The emergence of a transnational infrastructure of such actors — they form Euro-organizations — is a special feature of the integration process.⁷ German actors participate formally and informally in this new framework and form part of it.

A third dimension of integration should not be ignored: public awareness of all of these aspects of integration and the “Europeanization” of politics is causing the emergence of a European identity that complements national, regional, local or “group” identities. Data collected in different EU-member states and in the EU Commission-managed “Eurobarometer” (two issues per year) discuss these tendencies. The fact that a majority of people declare that the national route is no longer effective at dealing with particular problems, and that European solutions should be achieved (e.g., on environmental issues) is one indication that there is an emerging European identity. Furthermore, a slowly growing number of people admit to feeling a sense of being both German *and* European; thus, one could indeed, speak of shared identities.

A fourth aspect of the integration process has to do with the question of which nations should gain admittance to the EU. Germany and its citizens have always advocated enlargement. Certainly the most ambitious and sensitive issue on the EU agenda is the prospect of eastern enlargement; here the support for EU enlargement is shrinking. In 2002, only

43 percent of Germans were in favour of enlargement. These figures reflect uncertainties or perhaps, even fear, concerning the possible negative consequences of an enlarged EU.

The Impact of Globalization on Germany

Economic globalization is alleged to reduce substantially "the ability of national governments to pursue macroeconomic policy strategies that differ significantly from those of other major industrial economies" (Deeg 1996). Globalization, therefore, represents a severe challenge for nation-states, since they must respond to the loss of (economic) policy autonomy. There are two major aspects of economic globalization: "the integration of financial markets and the integration of product markets" (ibid.).

First, concerning the former, it means greater capital mobility. This, "in turn, weakens the effective utilization of fiscal and monetary policies to control domestic growth, inflation and investment. Consequently, macroeconomic strategies such as Keynesianism and Monetarism are undermined" (ibid.). In order to respond to this challenge and to adjust their economies, political authorities in countries hit by globalization concentrated on supply-side policies and "submitted themselves to a process of policy convergence around the promotion of market forces through privatization, deregulation and a general reduction of state economic intervention" (ibid.). This is what happened in Germany, where it was not only the federal government, but also primarily individual *Länder* governments, that launched such new strategies.

Second, product market integration means much more competition for goods and services at all levels: from local to international. An individual enterprise, located at the local or regional level, will therefore find itself situated in this larger (often global) context. "For Germany, this means an accelerated decline of sectors based on low-wage, low-skill production (e.g., textiles) and sectors facing global overcapacity (e.g., steel)" (ibid.). The federal government has been providing support for such troubled sectors, but it was primarily the *Länder* governments that launched initiatives "to generate new growth sectors" and to systematically develop strategies to adjust their economies to globalization. "Thus, ... the globalization and regionalization of economic activity are directly related processes" (ibid.). Germany clearly illustrates this point.

The focus on supply-side policies has also been a focus on structural policy. In this field, one can identify three functionally distinct policy groups: sectoral policies, regional policies and small business or *Mittelstand* policies. With respect to sectoral policy, efforts have focused on "promoting the growth of 'knowledge-intensive' industries and managing the decline of old industries" (ibid.). In the meantime, the focus is on new industries, and it is here that the Länder have acquired the role of active promoters. All Länder began with their own technology programs, and many of them have invested in education policy as a complementary component to improve and upgrade the qualifications of individuals. Additionally, efforts have been made to encourage privatization and deregulation; here the links with developments in the European Union (Internal Market) are obvious.

In the field of regional policy, the federal government and the Länder governments were confronted with the strict competition policy regime of the European Union, according to which, subsidies for individual firms are not allowed. There is, however, one important exception: the five new Länder lagging behind the Länder of the old Federal Republic fell into the category of regions that qualified for special regional support, from the European Union as well as from the federation.

The *Mittelstand* policy (a policy in favour of small and medium-sized enterprises) is considered by the Länder to be "their 'natural' area of structural policy" (ibid.).

All Länder governments have special economic development banks that provide regional *Mittelstand* firms with loans for various purposes, such as business start-ups, firm modernizations, expansions and R&D projects. They subsidize business-consultation services for small firms, and their technology programs are overwhelmingly oriented to them.... In the 1980s, promotion of exports by *Mittelstand* firms becomes another focal point of Länder structural policy. In effect, several of the bigger Länder were aggressively pursuing their own foreign economic policy with the aim of cultivating direct economic links between their regional economies and foreign markets (ibid.).

State-visits of prime ministers of the Länder have become routine events during the past few years, and the delegation is composed primarily of representatives of businesses of the respective Länder.

In their attempt to respond to economic globalization, German Länder have developed an additional strategy: Länder governments gained the support of subnational societal organizations. Throughout Germany we observe the emergence of "regional policy networks" which

are characterized by stable, interorganizational relationships between Länder governments and regional societal actors for the purposes of policy making within clearly defined policy sectors.... Organizations that are typically part of a regional economic policy network include business and trade associations, public banks, Chambers of Industry and Commerce, Crafts Chambers, credit-guarantee cooperatives, equity-participation corporations, and, sometimes, unions. Such networks follow the logic of an exchange of resources, such as information, legitimacy, authority and money (*ibid.*).

Observers also note some politization (in political party terms) of the administration of Land governments in this context.

The analysis of concrete activities of such networks show not only similarities, but some interesting differences which can be taken as an indication that there is room for developing autonomous Länder policies related to special structural needs, political preferences, and available resources. For example, Baden-Württemberg created organizations, within this emerging network, that focus on small and medium-size enterprises (*Mittelstand*). North-Rhine-Westphalia followed a slightly different strategy by putting more emphasis (at least in the beginning) on larger corporations; it has since "discovered" the value of supporting small and medium-size enterprises. There are two other aspects that are noteworthy: North-Rhine-Westphalia (the biggest German Land) established 15 sub-regions; and some emphasis was put on the inclusion of the unions.

In the new Länder, efforts have been made to preserve "industrial cores," in order "to revitalize the most regionally significant firms" (*ibid.*). In Thuringia and Saxony, the establishment and promotion of industrial holdings with strong government support instead of privatization is featured. It is evident that there are disparities between the 16 German Länder. The richer and more developed Länder are more likely to maintain, or regain, some autonomy in their attempts to adjust their economies to economic globalization. There are, no doubt, two classes of Länder and this disparity has consequences for the pattern of German federalism, its

dynamism and development. This dimension will be dealt with in the next section.

There are other dimensions of globalization, beyond the economic. These have, however, only little effect, if at all, on German federalism. It is, therefore, sufficient to mention them only briefly. International migration (from those seeking asylum to those who would like to immigrate and settle in Germany) has been perceived as a severe challenge. Political parties disagree on how to respond and deal with these issues: with the Christian Democrats' more restrictive attitude versus a less restrictive approach favoured by Social Democrats and Greens; this cleavage becomes visible in diverging attitudes held by the federal and *Länder* governments. But all agree that international migration would require an EU-wide response. Since 1999, the issue has appeared on the EU agenda under the headline "An Area of Freedom, Security and Justice." The same applies to pressures from organized international crime and global terrorism: there is consensus in Germany that transnational/international problems cannot be dealt with at the national level but that an EU-wide policy is needed.

There is a growing awareness of global environmental issues and national responses are regarded as not adequate; and the EU has already been given a co-responsibility for these questions. On the topic of activities and policies that should be pursued, opinions differ along political party lines. Effects of global cultural flows can be observed in Germany, as elsewhere. But they coexist with still existing features of national and regional cultures. As concerns the latter, one can even speak of a renaissance of regional consciousness and identity.

THE IMPACT OF EUROPEAN INTEGRATION AND GLOBALIZATION ON GERMAN FEDERALISM

Both European integration and globalization can be understood (and have been described) as processes characterized by "de-bordering." Borders of nation-states have not disappeared, but nation-states have lost momentum, related to a variety of policy fields. This provokes the question: How far will new forms of governance — "beyond the nation-state" — become necessary or have already emerged? Processes of de-bordering can be expected to have a strong impact on federalism, and Germany can be taken as an example that illustrates the consequences. And when those

consequences are considered as a whole, they are ambivalent or even contradictory, and thus do not result in a uniform pattern. So, the major question is: Will these integration processes result in competitive or cooperative federalism, or will we be able to identify a complex blend of these two different patterns?

It is the thesis of this chapter that the change pressures on German federalism from European integration have been far more important than the change pressures coming from globalization. We argue that many problems resulting from globalization appear first (and automatically) on the EU agenda, since the functional scope of the EU has extended substantially, and make the Länder concentrate on efforts to adapt German federalism to this framework.

We further argue that European integration brings with it a large number of concrete challenges which demand immediate response, so that the Länder have further strong reasons to give priority to this dimension. In addition, the bargaining power of the Länder in the EU context was much greater since the ratification of EU treaty reforms requires the assent of (a majority of) the Länder in the Bundesrat.

Last, but not least, in terms of the response to the challenge of European integration, the Länder have agreed to strengthen their position vis-à-vis the federation via new and extended rights of participation, but they did not agree on what the adequate response to the challenges of globalization should be. The demand for greater autonomy for the Länder, put forward by those that are economically stronger, was not seen as a possible solution for the weaker Länder.

Globalization and German Federalism

Globalization creates an additional incentive for national governments to transfer economic policy competences, especially in the economic area, on supranational (and international) institutions. The European Union, understood as a "fusioning federal state," is a good example. Germany was among those countries to favour such transfers (or share sovereignty) in order to improve and strengthen its problem-solving capacity.

However, as we have already seen, economic globalization also put pressure on subnational entities (the German Länder) to become more active in economic policy-making and to acquire greater autonomy. German Länder (those bigger and economically stronger) can be regarded as

global market players which have increased their external activities. However, the term "paradiplomacy" (Aldecoa and Keating 1999) may be misleading since these independent activities of the Länder are not primarily political or "diplomatic" in character, but rather focus on the economic dimension; here we identify primarily efforts to support exports and to attract foreign investment.

This strategy — to make the Land an economically strong and competitive region and perform successfully as a global player — has given the Länder a stronger role as component parts of the German federal system. This is evident in economic policy and in related fields such as education. So, the pendulum has swung toward the Länder level, thus "promoting a shift from 'cooperative' to 'competitive federalism'" (Deeg 1996, p. 48). This implies vertical competition because the stronger Länder have made efforts to strengthen their position vis-à-vis the federal government (and also toward Brussels). It also implies horizontal competition, in that the individual Länder compete amongst themselves.

The reality of economic globalization, therefore, has become one core argument for those of the German Länder, demanding a thorough reform of German federalism toward competitive federalism (Große Hüttmann 2002, pp. 300-01). The points on this reform agenda include an increase in the scope of autonomous Länder legislation, including tax policies and a comprehensive reform of the system of financial equalization, especially horizontal equalization amongst the Länder.⁸ One should not forget, however, that it is the stronger Länder that put forward such demands, whereas the weaker realize that such a reform would cause them to lose financial resources, and/or make them more dependent on the federation. The existence of two classes of Länder — a pattern that has heightened since reunification — is one reason for this reform debate, and at the same time, it is a barrier against greater changes, since constitutional reforms require a two-thirds majority, that is to say: consensus. And as long as there are no changes in the pattern of German federalism, the need to continue with cooperative federalism will have to be recognized, even by the stronger Länder. Moreover, there is, as before, the need to coordinate horizontally between the Länder and, vertically, with the federal government and the EU level in Brussels.

There are two additional consequences for German federalism: first, the existence of two classes of Länder prevents them from forming a unified front or bulwark against the federal government. Political party

considerations also discourage the formation of a permanent front of all Länder against Berlin.

Second, Länder governments have strengthened their position vis-à-vis Länder parliaments. The decline of the parliamentary factor accelerated and intensified as a consequence of the emergence of the "regional economic policy networks."

In conclusion, economic globalization has generated more competition within German federalism, yet the competitive dimension does not dominate. There are, as we have seen, counterweights, such that cooperative behaviour continues to be a characteristic feature of German federalism.

EU-Integration and German Federalism

European integration can be understood as another "de-bordering" process. But contrary to (economic) globalization, the European integration process was launched consciously as a primarily political project designed to establish a new order for Europe. The integration process should establish, maintain, and further develop — via "deepening" and "enlargement" — a community of peace and security, and a value community (with a commitment to human rights, democracy, the rule of law, and social justice). Economic goals complemented these overall objectives and did not play an exclusive or even dominating role. The integration process established a legal entity, based on treaty provisions that have been subject to a series of amendments and reforms, especially since the mid-1980s. The EC/EU, as a result of the integration process, has rightly been conceived as a political system and we must discuss its impact on German federalism and the subsequent adjustments of the federal system that have taken place.

During the integration process, two different species of development can be discussed: economic dynamics and political dynamics. Regarding economic dynamics, we are facing a pattern similar to that of economic globalization. This is particularly true with respect to the Internal Market project. Its inherent dynamism requires greater competition. What we have said above on reactions of the German Länder applies equally here.

Since European integration has been primarily a political project, its political dynamics have to be carefully taken into account. Here political developments spurred the emergence of a new type of governance, beyond the nation-state, but, at the same time, it encompasses the member

states. The challenge confronting German federalism is how to come to terms with, and adjust to, EU multi-level governance.

The following sections deal with the question of how the German federal system responded to this challenge, and therefore, what has changed in German federalism (Hrbek 1999). The federal structures have the ability to adapt and achieve their goal: to maintain a balance between different levels of government. Therefore, it might be expected that, although competitive behaviour and patterns may emerge, they do not prevail; instead, cooperative approaches remain the characteristic feature of German federalism. "*Politikverflechtung*" will not become obsolete or substantially weakened in the integration process and within "EU-governance." Rather, it will continue in a more complex pattern of "multi-level governance." And "*Beteiligungs-Föderalismus*" (participatory federalism), not "dual federalism" remains valid for the German federal system within the framework of the political system of the European Union.

The Impact of EU Integration on the German Länder

The EU has continuously extended the spectrum of its functions over the course of its development. What this extension has consisted of is not so much a schematic transfer of competences from member-states to the EU, but rather the acquisition by the EU of co-responsibility and of possibilities of co-determination with the member-states in ever more policy areas. The activities of the EU range accordingly: from establishing law through projects supported largely by the EU budget, to encouragement of more cooperation and coordination of member-state policies. Since Maastricht, there is scarcely a policy area that is not, at least in part, dealt with within the framework of the EU.

The Treaty of Amsterdam has further intensified this pattern. The treaty contains a new chapter on employment policy: a sensitive (and from a political party perspective, controversial) policy field in Germany. Furthermore, the treaty introduced provisions of the so-called Stability Pact designed to maintain economic and financial stability in the framework of the Monetary Union. These provisions will have implications not only for the federal government, but also for Länder governments and even the municipalities, insofar as they have fiscal responsibilities. In addition, key issues in the field of justice and home affairs have been transferred from

the intergovernmental Third Pillar of the Treaty of Maastricht to the First Pillar where Community rules and provisions have to be observed.⁹

Under the Finnish presidency, in the second half of 1999, two ambitious projects were launched within the EU: the establishment of an Area of Freedom, Security and Justice (involving a series of detailed measures which have been compared, as far as their substance and impact are concerned, with the Internal Market program of the 1980s) and the development of a Common Security and Defence Policy. The German Länder regard this deepening of the EC/EU as a severe challenge.

The first challenge for the Länder arises from the fact that a number of these policy areas are ones reserved to the Länder in the internal allocation of competences in Germany. This applies, for example, to culture and the media, education and training, health, the environment, research and technology and, in particular, regional structural policy.¹⁰ The activity of the EU in these fields and the constraints placed on the Länder in this wider supranational framework of political interaction have the effect of considerably limiting the autonomy of the Länder to structural politics and policy within their territories.

The second challenge has arisen from the modalities of decision-making in EU affairs. The most important decision-making and legislative body has always been, and still is, the Council of Ministers, in which the Federal Republic is represented by the federal government. Therefore, it has participated in decisions in fields which not only impinge on Länder concerns, but also, in part, on their exclusive competences. While the federal government possesses no internal decision-making competence in such fields, it has the ability and duty (externally) to participate in decision-making processes under the terms of Community law.

Here, the Länder are further affected. Within the German federal system, they have extensive powers of implementation, and their rights of participation in federal legislation give them the possibility of co-determining implementation rules. Although the Länder are also responsible for the implementation of European law, they lack the ability to participate in such legislation. Furthermore, the Länder are under a strong degree of control by the federal government, which is responsible to the EU institutions for ensuring proper implementation of European legislation.

The Reactions of the German Länder

It was recognized from the beginning, though initially only by a small group of expert observers and those directly involved, that the Federal Republic's membership in the EC would have consequences for the federal system.¹¹ The Länder were therefore interested from the outset, in participating in internal decision-making on EC affairs, particularly in the determination of the positions the federal government would take in the Council of Ministers (Morawitz 1981; Jaspert 1982). What the Länder initially achieved in this respect was modest, but acceptable, given that the activities of the EC were initially quite limited and had barely noticeable effects on the level of the Länder. From the middle of the 1970s onwards, the situation changed. The European Regional Development Fund was established in 1975 and marked the start of a separate EC regional policy; this was clearly expressed in the treaty changes and supplements of the SEA in 1986 and the Maastricht Treaty of 1992–93. Henceforth, the Länder found themselves affected more and more by EC policies and the possibilities of participation open to them were, in their eyes, insufficient and ultimately ineffective. The Länder reacted to this new situation in three ways.

- Through defensive protest: by criticizing the “actionism” and “flood of regulation” stemming from Brussels and by urging the European Commission, in particular, to show restraint in the introduction of Community measures. Since the end of the 1980s, the Länder have continually demanded strict observance of the principle of subsidiarity in this context.
- Through the extension and strengthening of possibilities of participation: first, by embedding formal rights of participation in the internal discussion of EC matters; and second, by taking initiatives with the aim of direct participation in the decision-making process at the Community level.
- Through the establishment and development of autonomous EC activities: by establishing and using direct contacts of various forms — as it were, in circumvention of the federal government — with institutions and actors at the supranational level. The Länder countered criticism from the federal government that such activities amounted to a legally and politically inadmissible “auxiliary foreign policy” through reference to the emergence and existence of a “European domestic policy.”¹²

All of these strategies reflect the situation that emerged in an EC/EU characterized by a double *Politikverflechtung* (Hrbek 1986): the EC/EU had become a form of multi-level union with the Länder as an autonomous regional level. In such circumstances, it was necessary and legitimate for the Länder to establish themselves as players in an increasingly differentiated European decision-making apparatus. The experiences of the Länder in the day-to-day interaction of federalism within the Federal Republic proved a valuable basis for this enterprise. The different strategies are discussed and their effect assessed below.

The establishment of internal rights of participation in EU decision-making up to Maastricht. The concern of the German Länder to compensate for the (EU-caused) loss of intra-Land political autonomy and rights-of-participation in federal legislation by establishing internal rights of participation in European matters extends back to the founding treaties. As mentioned earlier, the success of the Länder was initially only modest, but over time, they managed to improve their position in the sense of a strengthening of "participatory federalism" (Morawitz 1981; Jaspert 1982; Hrbek 1992).

The Bundesrat procedure. Following the ratification of the Rome Treaties in 1957, the federal government was obliged to keep the Länder constantly informed of developments at the European level. On this basis, the Bundesrat had the opportunity to present opinions on proposed EC legislation. In the absence of any appropriate legal foundation, it was not, however, guaranteed that the federal government would take such opinions into account in discussions in EC bodies.

The Länder participation procedure. This procedure, established in an exchange of letters between the federal chancellor and the president of the Conference of Minister-Presidents in 1979, initially brought an improvement. The federal government committed itself to delivering more comprehensive information to the Länder at an earlier stage, and declared itself prepared to follow Länder views strictly if Länder competences were affected, and if no "foreign or integration policy" concerns stood in the way. In contrast to the Bundesrat procedure, however, the Länder had to establish a unanimous view, which required a considerable coordination effort. For this reason, the Bundesrat procedure proved to be the superior one, even if individual Länder could not have their views represented whenever they fell on the wrong side of a majority vote.

The establishment of rights-of-participation in the Law of Ratification of the SEA. The Länder exploited the opportunity provided by the Law of Ratification of the SEA (BGBl II 1986, p. 1104), which required Bundesrat consent to expand and legally entrench their internal rights-of-participation. Article 2 of the Law, passed on 28 February 1986, together with the supplementary Federal-Länder Agreement (1987, Sekretariat des Bundesrates 1988, pp. 428-34), extended the duty of the federal government to provide information and allowed for rights-of-participation for the Länder, graded in terms of the extent to which their responsibilities and interests were affected by proposed EU measures. The federal government was thus obliged to secure opinions of the Bundesrat before it consented to EC decisions, and to take these opinions into account in negotiations. If the federal government diverged from the Bundesrat view in any vote, it was obliged to explain and justify to the Bundesrat why it had done so.

The Law also provided for the possibility of representatives of the Länder being sent to negotiations on Commission and Council bodies, although the federal government still remained in overall control of the German negotiating position. While the Länder evaluated their experiences with the new participation procedure positively — as evidenced in the report of the Heads of the Länder Missions to the Federation of 16 May 1990 — they were still eager to strengthen their internal position (Hrbek and Weyand 1994, p. 90). The opportunity to do so came in connection with the Treaty of Maastricht, since the ratification and implementation of the treaty required internal constitutional changes.

The new Article 23 of the Basic Law (the "Europe Article"). The provisions of the new article 23 (BGBl I 1992, p. 2086), enacted as a quid pro quo for Länder ratification of Maastricht and the constitutional changes required by it, strengthened the position of the Länder, as well as the wider German federal structure in a number of ways. First, the *"structural security clause"* (*Struktursicherungsklausel*). The article confirms that the Federal Republic continues to be committed to the aim of furthering the integration process, that is, participating in the further development of the EU as well as remaining a member. The structural security clause establishes that the EU has to display certain structural features: democracy, the rule of law, the principles of the social state, federalism, respect for the principle of subsidiarity, and effective protection of human rights.

The federal structure of the Federal Republic is thereby implicitly confirmed.

Second, *the procedure for transferring sovereignty*. The procedural conditions for the further development of the EU were an important innovation. The basis for transfers of competence had hitherto been article 24/1 of the Basic Law ("The federation may by legislation transfer sovereign powers to intergovernmental institutions"). In 1948–49, the Parliamentary Council discussed whether constitutional (i.e., two-thirds) majority should be required for transferring sovereign powers. At the time, this was explicitly rejected with the reason given that the transfer of sovereignty should deliberately be made easy. The new Europe article reversed the situation. If certain conditions are met — namely, if transfers alter the content of the Basic Law or make alteration possible — then a constitutional, two-thirds majority in support of the measure is necessary in the Bundesrat (and the Bundestag). The simple legislative process is therefore explicitly restricted to legislation on treaty changes that do not materially alter the Basic Law. However, recent experience has shown that this provision is open to interpretation in individual cases, and can lead to conflict between the federal government (and its Bundestag majority) and the Bundesrat (Oschatz and Risse 1995).

Third, *rights-of-participation of the Länder in EU affairs*. Building on the provisions of the SEA ratification law, the new Europe article comprehensively regulates the rights-of-participation of the Länder in EU affairs. The "Law on the Cooperation of Federation and Länder in Affairs of the European Union" of 12 March 1993 (BGBl I 1993, p. 313) and the subsequently concluded agreement between the federal and Länder governments of 29 October 1993 (*Handbuch des Bundesrates 1994/95*, Bonn 1995, pp. 168–76) supplemented the constitutional provisions in the article. The federal and Länder governments attempted to find a *modus vivendi* through these comprehensive supplementary provisions, and thereby, possibly avoid future constitutional conflict. The examination of the federal-Länder agreement undertaken by the Länder in February 1997 found that "the regulations of the federal-Länder agreement have proved themselves without exception and represent a suitable framework for good and trusting cooperation." It did, however, point out that negotiations conducted with the federation on these regulations had left a number of open questions.

The regulations provide for the following: first, *the duty of information of the federal government*. Existing practice was essentially confirmed here. Cooperation between the federal economics ministry (responsible for distributing information) and the Bundesrat is described as "good" by those involved.

Second, *Bundesrat opinions*. Detailed and complex provisions set out a graded obligation on the part of the federal government to observe Bundesrat opinions. The general rule is that the federal government allows sufficient time for the Bundesrat to have the opportunity to present an opinion, within an appropriate period, on matters that touch on the interests of the Länder. Sufficient time means enough time for a Bundesrat view still to be adequately considered in further negotiations in EU bodies. If the proposed EU measure is in an area of federal competence, the federal government is required merely to take into account the Bundesrat view. By contrast, Bundesrat views must be decisively taken into account if the EU measure concerned falls within Länder competence. The federal-Länder agreement stipulates that in cases of disagreement the two sides should still seek to reach a compromise. If that fails, and the Bundesrat confirms its view by a two-thirds majority vote, then the federal government is obliged to hold to the Bundesrat view. The federal government still, however, has the final say in any cases in which decisions could lead to increased expenditure or reduced income for the federation.

Third, *the procedure with respect to the measures based on article 235 (now article 308) of the EC treaty* is especially controversial, and still needs to be clarified. Article 235, often known as the *Kompetenz-Kompetenz*, the competence to define competences, allows the European Union to take action even when it is not explicitly empowered by treaty to do so, if the member-state governments are unanimously of the view in the Council of Ministers that the measure in question should be taken to realize the aims necessary in the framework of the Common Market. In such cases, the procedure is that federal government approval on such a measure has to be backed up by the approval of the Bundesrat. There is, however, no agreement on whether Bundesrat approval is also required if the federal government abstains in a Council vote where the effect is one of not preventing the measure being taken. How this issue works out in practice will determine whether the federation and Länder find a *modus vivendi* or

whether disagreement will require adjudication by the Federal Constitutional Court.

Fourth, *Länder representatives in EU bodies*. The provisions on this question are intended to allow the Länder direct participation in negotiations in EU bodies. To this end the Bundesrat nominates Länder representatives, hitherto around 400, who then, on a case-by-case basis, form part of the German delegation in the negotiations. The effectiveness of this form of participation in any particular case will depend on how well-qualified the representative is to deal with the question at hand. While such participation is non-controversial as such, the question of transferring the lead role in the negotiations to Länder representatives does raise problems. The precondition for this is specified in the federal-Länder agreement as: whenever the matter concerned "centrally affects exclusive legislative competences of the Länder." Predictably, differences of interpretations occur, and, as a consequence, conflicts may frequently arise. Similarly, the participation of Länder representatives in discussions on the determination of the German negotiating position in EU bodies is open to the same problem. Here too, there will frequently be cases in which the Länder are dissatisfied with the extent of the participatory powers allocated to them.

The establishment of the so-called Europe Chamber (*Europakammer*) of the Bundesrat is also seen in connection with the new provisions in article 23 (Oschatz and Risse 1989). The chamber is a constitutional innovation to the extent that, unlike the committees of the Bundesrat, it is not just a forum for discussion, but one with decision-making powers. Decisions of the Europe Chamber have the same status as decisions of the Bundesrat plenary. The establishment of this new institution was justified by the fact that EU legislative proposals frequently need to be dealt with quickly. Given that the Bundesrat plenary does not meet often enough to ensure this, the establishment of the Europe Chamber was intended to make possible a prompt Bundesrat response. In practice, however, the normal rhythm of Bundesrat plenary meetings has proved adequate, and the Europe Chamber has rarely been convened. A second reason for the establishment of the chamber, which does not meet in public session, was to make it possible, where necessary, for Bundesrat votes forming part of the German negotiating position to remain confidential.

Independent EU activities of the Länder. The Länder have developed independent activities, in parallel to their concern, to entrench formal

rights of participation in EU affairs. These activities are diverse in form and collectively support the Länder's aim of acquiring European capacity (*Europa-Fähigkeit*) (Wessels 1986, p. 1); that is, the Länder are actively trying to establish themselves as players in the wider arena of European policy-making and thus generate a capacity to represent and carry through their concerns as effectively as possible.

Organizational measures by Länder governments. European policy sections were created throughout most of the Länder ministries during the 1980s. In the state ministries and chancelleries (the Minister-Presidents' departments) coordination centres were established with the intention of ensuring as optimal a level of agreement as possible in the European policy positions of the Land concerned. The incorporation of European policy questions into training programs was designed to improve the "Euro-qualification" of Länder civil servants. Competence in European affairs has already become a criterion in the appointment and promotion of civil servants. And the Missions of the Länder in Bonn (now in Berlin) have been explicitly allocated European affairs as a new responsibility.

Inter-Länder cooperation in European policy. The relations of the Länder to one another have an especially important role in German federalism. The Conferences of the Minister-Presidents and of ministers in particular areas (e.g., Finance, Justice, etc.) are important institutionalized forms of cooperation. They are concerned more and more with EU matters, illustrating how far Europe has permeated the most diverse policy areas. A new coordination institution focused specifically on EU policy — the Conference of European Ministers — was established in 1993 (Gerster 1993). It meets three times a year, supplemented by more intensive cooperation at the civil service level. Its agenda has consisted of questions concerning the European policy role of the Länder, debate on, and contributions to, the Maastricht Treaty revision Intergovernmental Conference of 1996–97, and selected European policy issues. The more specialized political issues are dealt with in the relevant sectoral ministerial conferences.

Information offices of the Länder in Brussels. The western Länder established information offices from 1985–87, with the eastern Länder following their example later. The offices were initially subject to federal government criticism which claimed that these offices represented instru-

ments of "auxiliary foreign policy," but they are now perceived and treated as normal. The federal government even committed itself to supporting the work of the Länder offices, in particular through its permanent representation in Brussels in the 1993 federal-Länder agreement. The functions of the information offices are diverse: they secure and pass on information; they are involved in the economic promotion of their Land and assist firms or other bodies in the development of projects in which EU institutions play a role; they act as representatives of their Land; and they are an important forum for discussion (Hahn 1986; Jeffery 1996). The number of staff in the offices has grown as work on behalf of their Länder has intensified.

The European policy role of the Länder parliaments. The Länder parliaments have hitherto played only a minor European policy role in comparison to their executives (Straub and Hrbek 1998; John 2000). The Conference of Landtag Presidents has called repeatedly for the incorporation of the Landtag into the European decision-making process, arguing in particular for the right to information by the Land's government and for the possibility of having influence on the formulation of the position represented by the Land government in the Bundesrat. But the role of the Länder parliaments remains marginal even though a number of Länder governments do inform their parliaments. Still, Landtag present opinions on EU matters; and specialist European policy committees have been established in some Landtag.

Lobbying activity in the framework of the Assembly of the European Regions. The Assembly of the European Regions (AER) was founded in 1985 in order to represent specific regional interests at the European level, in particular vis-à-vis EU institutions (Hrbek and Weyand 1994, pp. 103-07). Its aim, according to its statutes, is "to strengthen the representation of regions at European institutions and to facilitate their participation in the construction of Europe and in the decision-making process at the level of the European Community in all its concerns." The Länder originally distanced themselves from the new institution, with the Land Baden-Württemberg the first to join in 1987. The reason for this circumspection was the heterogeneous composition of the AER. The Länder, with their quality of autonomous statehood, initially saw no advantages in working with territorial units of varying and, in comparison to themselves, less legal and political quality. Only when it became clear that international coalitions of interest with other subnational territorial units could be useful in securing specific Länder concerns, did they commit themselves to

the AER. The AER has since clearly developed the most comprehensive European representation of regional interests. The influence of the *Länder* on the work of the AER has been considerable, most notably in the AER's adoption of demands formulated by the *Länder* in the debate surrounding the Maastricht Treaty.

Institutionalized participation at the European level. The *Länder* have never left any doubt about their positive commitment to the European integration process and their support for its further development toward a progressively deeper European Union. They have supplemented this general commitment with concrete views on how this union should be created and upon what structural principles it should be based. Among these have been statements about the position of territorial units below the level of the nation-state, that is, in Germany's case, the *Länder*, in the developing union, including the effective participation of these units in the legislative process of the Union. Their ideas on these matters have been systematically developed, in light of the deepening European integration, in the framework of the intergovernmental conferences since the SEA came into force. They have also been introduced into European-level debates, primarily via the federal government.

The starting point for this series of initiatives was the resolution of the Minister-Presidents' Conference in Munich in October 1987, where the goal of "a Europe with federal structures" was formulated (Bauer 1991). Two years later, the minister-presidents established a Working Group of the Minister-Presidents' Offices to report on the position of the *Länder* and regions in the further development of the EC. The comprehensive report, presented in May 1990 (*ibid.*, Document 4), contained concrete proposals for revisions to the Community treaties which were distilled into four points: the incorporation of the subsidiarity principle; models for the participation of *Länder* and regions in the Council of Ministers, the creation of a "regional organ" at the supranational level; and the introduction of an independent right of appeal of the *Länder* and regions to the European Court of Justice. These demands were confirmed in a resolution of the minister-presidents on 7 June 1990 (*ibid.*, Document 5) and in a Bundesrat resolution of 24 August that year (*ibid.*, Document 6). In addition, the federal government was called upon in the Bundesrat resolution to involve the *Länder* in the work of the intergovernmental conference, including the preparatory discussions that would define the German negotiating position. The federal government ceded this demand,

and only in the concluding negotiations of the heads of state and government at Maastricht were the Länder excluded. In the preparation phase the relationship of the Länder to the federal government developed in an extremely cooperative way. From the Länder perspective, the results of the intergovernmental conference, as reflected in the Treaty of Maastricht, can be summarized as follows.

The subsidiarity principle. The Länder could only be satisfied, in part, with the provisions on the principle of subsidiarity in article 3 b of the Maastricht Treaty (Hrbek 1994). The "principle of limited individual empowerment" confirmed in paragraph 1 met the Länder position insofar as they had criticized initiatives of the Commission taken without a legal foundation. Moreover, if the member states wanted to make use of article 235 of the EC Treaty — a general empowerment to fill in gaps in the treaty — they would now have to justify doing so much more carefully (Beutler *et al* 1993, p. 188). The underlining in paragraph 3 of the principle of proportionality of Community measures was also in line with the Länder viewpoint.

The wording on the subsidiarity principle, in its narrow sense, in paragraph 2 was, however, unproductive for the Länder. The provision only went as far as the relationship between the community and the member states, and left out the regional level. The ambiguous legal concepts in the formulation of paragraph 2, "not sufficiently" and "better," raised doubt about whether the subsidiarity principle is usable at all in this formulation as a justiciable basis for any appeal or whether it can ultimately, if at all, develop any restraining political effect. Practice hitherto indicated that the latter function is the one that has relevance.

Direct participation of the Länder in the Council of Ministers. The revised version of article 146 of the EC Treaty, which determines the composition of the Council, has given the Länder the opportunity to represent the Federal Republic in the Council.¹³ No clear view has yet emerged on how this new channel of participation has worked.

The creation of the Committee of the Regions. The demand of the Länder for a "regional organ" was only very imperfectly fulfilled with the creation of this new institution (Hrbek and Weyand 1994, pp. 125ff; Loughlin 1996). The committee is restricted to merely advisory functions. Its organizational infrastructure and its financial resources are extremely modest. But the main weakness is the wide heterogeneity in its composition. The regions represented differ considerably in terms of legal status

and political quality. The committee will therefore find it hard to develop an autonomous profile and grow into the role of noteworthy player in the European decision-making process. Given these weaknesses, it quickly became clear after the committee took up its work, that the Länder had considerably downgraded their expectations of it.

In contrast to the expectations and demands of the Länder, not all of the 24 German seats on the committee were reserved for the Länder; three seats were allocated to the three highest organizations of German local government. Each Land has one representative; the five biggest Länder send, in the first period of office, a second member. The executive branch dominates these; parliamentary representatives from the Länder are found only among the alternate members and the second representatives of the bigger Länder.

The right of appeal to the European Court of Justice. Neither individual regions (or Länder), nor the Committee of the Regions were awarded an independent right of appeal to the European Court of Justice. If the Länder wish to pursue an appeal, for example, against decisions of the Commission, they have to rely on the cooperation of the federal government. The preconditions for this process were established in the Law on Cooperation and the federal-Länder agreement, although answers to procedural questions about such an appeal process remain unclear.

More Recent Developments

As we have seen, the German Länder could strengthen their position vis-à-vis the German federal structure (see Hrbek and Große Hüttmann 2002; Hrbek 2001). This is clearly true for the period around the Treaty of Maastricht. However, one could observe that during the preparation of the governmental conference in 1996 (which in 1997 brought the Treaty of Amsterdam), demands of the German Länder at the conference were formulated with much less emphasis and agreement amongst each other.

At the Conference of the Ministers for European Affairs of the Länder, four demands were approved by the prime ministers and submitted to the federal government to be put to a vote before the Bundesrat.¹⁴ The demands were: to better operationalize the Principle of Subsidiarity; to decide on a catalogue of competences which should, as precisely as possible, allocate powers for the Community, the member states and subnational territorial entities (if these possess genuine powers); to upgrade

the Committee of the Regions; and finally, to give the Länder the right to appeal directly to the European Court of Justice. Both the smaller Länder and the new Länder (except Saxony) did not put the same emphasis on these demands as the others. This can be explained by the fact that some Länder feel satisfied by what had already been achieved (article 23 of the Basic Law); and that it would require great effort for them to properly exploit the existing possibilities for participation in European Union issues.

The same pattern of lack of coherence and agreement amongst the Länder can be seen in the day-to-day business when EU-issues are on the agenda. This is partly due to political party differences, and partly due to disparities in the structure of the Länder, which results in diverging interests and priorities. Here, examples include the reaction of the Länder to the question of which steps and measures should be started as a consequence of the new treaty chapter on employment. The majority vote in the Bundesrat, supported by the Social Democratic-led Länder governments, favoured more coordination and multi-lateral supervision, whereas the minority (Länder governments led by the Christian Democrats) was opposed. Another example is illustrated by the opinion of the Länder to the Commission proposal, *Agenda 2000*. There was, at first, agreement on a key question under the federal structure: What should the role of the Länder administrations be in the implementation of structural policy measures? Then, reactions to the Commission proposals concerning reform of the Common Agricultural Policy reflected structural differences amongst the Länder.

In connection with the intergovernmental conference in 2000, which resulted in the Treaty of Nice in December, the German Länder reached agreement again on some key issues as far as the federal structure and position of the German Länder are concerned. The position of the Länder can be found in a statement of the Bundesrat (4 February 2000):

- The Committee of the Regions should be given the right to appeal directly to the European Court of Justice and the right to put questions to the European Commission. This aims to strengthen the committee's position in the inter-institutional dialogue.
- The principle of local self-administration, laid down in the German Basic Law, shall be included in the EU treaties.
- The Länder demand, again, to formulate a catalogue of competences that would allocate the competences to the EU, the member states

and territorial entities at the subnational level. The Länder seemed to be satisfied — as most recent discussions show — provided that their core concerns are included in this catalogue. And they do not have an extensive, detailed catalogue in mind.

- Institutions in the field of “public services” (*Daseinsvorsorge*), which the European Commission in Brussels has been looking at in the context of its competition policy, are of particular concern for the German Länder. These institutions include: savings banks, at both the local and regional levels (Landesbanken); broadcasting companies under public law; and public welfare associations. The German Länder perceive these institutions as belonging to their “core substance,” which they are going to defend in order to avoid erosion in these areas.
- A totally new element in the considerations of the prime ministers of the Länder has to do with the voting procedure in the Council, which is one of the crucial issues on the agenda of the intergovernmental conference. On the one hand, the Bundesrat advocates majority decisions as a general rule, since this would improve the chances that the Länder will realize their concerns at the European level with greater efficiency. On the other, the Bundesrat underlines the fact that unanimous decisions, in certain cases, might be more likely to safeguard the competences of the Länder. Therefore, the Bundesrat has concluded that clearly defined competences, allocated to the different orders of government, are a necessary precondition before majority decisions can be regarded as the rule.

Two representatives of the Länder (from Baden-Württemberg and Rheinland-Pfalz) participated in the intergovernmental conference; they were part of the German delegation. Signals from the Länder were such that they could decide not to ratify a reformed treaty if their key concerns were not met. It was more than doubtful that such a scenario could become a reality. In the case of a conflict, the Länder would have to examine carefully what would follow from the principle of “federal comity” (*Bundestreue*). Their reaction to the results of the Nice summit was positive, although not all their demands have been fulfilled. They interpreted the decision of the summit, to continue the discussion on the future shape of an enlarged European Union, the so-called “post-Nice-process,” as their success; since one topic that had been included on that reform agenda is

of significant concern to the German Länder: to demarcate the competences between the EU and the member states, while observing the goal of the principle of subsidiarity. Their success can be taken as an indicator of their active role as co-players in the European arena. Two German Länder, Bavaria and North-Rhine-Westphalia, were among a group of so-called "constitutional" regions (regions with genuine legislative powers in specific policy fields) which asked to be included in the current reform debate. Walloon and Flanders had also taken this initiative, and completing this pressure group were Catalonia, Salzburg, and Scotland. The group's main concern was that their position as territorial entities with autonomous legislative powers would be taken into account in a new constitutional or treaty design for the European Union.

The EU summit in Laeken in December 2001 established a convention and gave it the mandate to prepare the next treaty reform/amendment, which would be decided formally by a governmental conference to be held in 2004. This body is composed of representatives of the governments of the member states, national parliaments, and the European Parliament. Also included as members, but in an advisory capacity only, are representatives from the Committee of the Regions and of the applicant countries from central and eastern Europe. The convention started to work (under the presidency of former French president, Giscard d'Estaing) in March 2002. From the German parliament there are two representatives: one member of the Bundestag and one member of the Bundesrat; Erwin Teufel, the prime minister of Baden-Württemberg, took this on.

The German Länder focus on the division of competences and the application of the principle of subsidiarity. Although they agree on these issues in general, their positions concerning details, differ. For example, there is no consensus on what should be included in a revised treaty: should it be a detailed catalogue with competences for the EU and the member states, plus regions, or should it identify only different categories of competences. Clearly, the German Länder have a recognized role in contributing ideas to the project of further constitutionalization of the EU. It is their goal to strengthen their position vis-à-vis the federal government and the European Union. Moreover, they view their engagement in the European reform debate as linked with their efforts toward reforming German federalism. It is, however, primarily the stronger German Länder that advocate greater autonomy. The Länder have always emphasized that

the major reason for demanding a thorough reform of German federalism lies in the challenges connected with changes in the international environment: European integration and globalization. Obviously, the focus of the Länder is on responding to EU-integration, but strengthening their roles and position within the EU system would, at the same time, support their efforts to adjust successfully to the challenge of globalization.

FUTURE SCENARIOS

In the previous two sections, we have analyzed the impact of global and regional integration on Germany and German federalism. We have tried to show that both forms of international integration had a considerable impact on German federalism and to describe how the German Länder managed to respond and adjust the German federal system to this dual challenge. Against this background, we now look ahead and discuss the impact of future scenarios on German federalism.

The four scenarios that are suggested here represent accentuated models for alternative developments in the world order. It is not the task here to discuss which of them could, or should, be the most likely to happen. Or, for that matter, if a combination might not be the most probable outcome. Nevertheless, we will take the four scenarios as independent variables and analyze their probable impact on German federalism, including responses from the component parts of the German federal system.

We have argued that membership in the European Union and active involvement in the European integration process has been a priority for Germany; and this is undisputed among major political parties and actors in Germany. In addition, we have argued, in accordance with the mainstream of observers and actors, that the European Union has acquired the quality of a legal entity and can rightly be understood and analyzed as a political system. It was, therefore, our thesis that the impact of European integration on German federalism was much stronger than the impact of globalization. For our discussion of the impact of each of the four scenarios on German federalism, it follows that we must analyze how the scenarios affect Germany as an integral part of the EU-system; also, we assume that the EU-system will continue to exist in all scenarios, perhaps with the exception of the *cyberwave* scenario, and that the European Union has been evolving in a way that is similar to the *shared governance* scenario

and diametrically opposite to the cyberwave scenario; these two represent the opposite alternatives, with the other two scenarios — *global club* and *regional dominators* — resting between them. Our considerations will, therefore, start with the two opposite scenarios.

Shared Governance

A major feature of this scenario is interdependence and its mutual recognition. In order to manage this complex interdependence, states and non-state actors will need to cooperate. We have already mentioned the emergence of particular types of networks that include public and private actors that are linked because they are mutually dependent on each other. This is a type of governance that we already observe in the present European Union. This scenario seems to be very close or almost identical in character to the present pattern. Therefore, the effect of this scenario on German federalism would be more or less identical to the impact of European integration on German federalism. Regional networks as aspects of a shift toward competitive federalism would continue to be given attention by individual Länder, primarily by the stronger. The Länder would continue to try to strengthen their position vis-à-vis the federal government and the European Union, but they would also be well aware that they are dependent on the federal government to bring about a formal change in constitutional rules in Germany and treaty provisions in the European Union.

Cyberwave

In this scenario, borders would continue to lose relevance; the process of de-bordering and of abolishing previous structures, rules and procedures would accelerate. This scenario seems to have as a premise the notion that an entity like the European Union would have been dissolved, or at least transformed into a very loose entity, leaving its members freedom to manoeuvre. It is not just for this reason that this scenario seems to be the most unlikely. The underlying premise of this scenario is that major changes will occur that are so fundamental that we find ourselves on uncertain ground, with the result that it will be difficult to make a forecast regarding consequences and reactions to such a new constellation. Here, there

seem to be more questions than answers; that is, regarding the probable tendencies within the German federal system in such a situation.

One could, for example, argue that economically strong Länder could try to emancipate themselves further, in order to prepare for autonomous activities and form entirely new coalitions or alliances. This would also mean an end to the unitarian tendencies, which have been characteristic of German federalism in past decades. These tendencies are the starting point for demands of especially stronger Länder for a substantial reform of German federalism toward "competitive federalism." The slogan: "diversity without unity" could then become appropriate for understanding German federalism. One could, on the other hand, doubt that individual Länder would be capable of "surfing" successfully in this cyberwave world. This would then be an argument calling for the strengthening of cooperative strategies between the Länder and the federal government and among the Länder themselves.

Global Club

One major feature of this scenario is that interdependence will become recognized throughout the world and that economic interdependence would increase. It seems to be a premise of this scenario that not only Germany, but also the European Union, as a legal entity would be club members. This scenario would bring with it incentives for more autonomous activities (especially in the economic field) of the Länder; particularly, it would be the stronger Länder that would gain (achieve more autonomous activities). The well-known pattern of two classes of Länder (as one feature of present German federalism) would become strengthened. In the political dimension, however, incentives for cooperative approaches will continue. As a result, the competitive character would become, to a certain extent, strengthened, but it would not dominate; instead it would coexist with well-known practices of cooperative federalism.

Regional Dominators

This scenario emphasizes the emergence of geopolitical blocs that would compete with each other; the pattern of this world order would be highly conflictual. Germany would continue to be an integral component part of the European Union, which would in turn be a part of one of these

blocs. And the European Union would be obliged to pay more attention to its external relations, as well as improve and strengthen the "domestic" basis, in order to perform in this constellation successfully.

Externally, vis-à-vis other blocs, the federal government — as a representative of Germany and, at the same time, as one of the larger EU member states — would gain and would play a more dominant role in the economic and in the political area. Germany would be one of the bloc leaders. This would encourage a trend to reduce or give up all claims toward autonomous activities of individual German Länder vis-à-vis other blocs or members of other blocs. But within the European bloc (the still existing European Union), Länder would continue the strategy we have explained in previous chapters. That is, the Länder would try to cope with the challenge by increasing their competitiveness, and thereby gain more economic autonomy.

Politically, however, the Länder would continue to follow a co-operative strategy since the European Union as a whole would need to be further deepened and strengthened in order to be better positioned in this conflict between competing blocs. This would result in a blend and co-existence of competitive and cooperative federalism, where we could identify, as before, two classes of Länder. The stronger would gain from this bloc-confrontation scenario; the majority, however, would play only a marginal role in their relation to the federal government and to the stronger Länder. The federal government would win, since weaker Länder would become more dependent.

CONCLUSION

The goal of this chapter has been to assess the impact of global and regional integration on German federalism. With respect to global integration, we focused on economic globalization, and with respect to regional integration, we dealt with the European integration process in the EC/EU. Since it is our premise that participation in European integration has always been a key concern and priority for Germany (*Staatsräson*), this chapter has put particular emphasis on the effects of European integration on German federalism and on its adjustment; the details given illustrate the ability of a federal system to adapt, as well as the richness of solutions and the new patterns found therein.

Our conclusion can be brief. A major point to be made is that both forms of international integration (as the phenomenon of de-bordering) had a strong impact on German federalism and that the German Länder managed to respond successfully and adjust the German federal system to this dual challenge.

The economic dynamics stemming from both forms of integration (economic globalization and the establishment of the internal market in the EU) have resulted in more competition and a shift toward competitive federalism. The political dynamics, on the other hand, were followed by attempts by the Länder to strengthen their position via autonomous activities. But at the same time, we observe that the pattern of cooperative federalism continues to be dominant: *Beteiligungsföderalismus* (participatory federalism), in connection with the Europeanization processes has been made more complex. This development has negative consequences for democratic legitimacy, which, in turn, means that cooperative federalism, in large measure, continues to be a characteristic feature of German federalism.

Both elements coexist, neither prevails, and thus they find themselves, on the whole, in balance. The ongoing dynamics of both forms of integration (EU development with deepening and widening, and globalization) will continue to represent challenges for German federalism. We may, given previous experience, expect that German federalism will manage to adjust in the future, as well. This applies to at least three of the scenarios discussed at the end of the chapter, since cyberwave is understood as the least probable development pattern.

Notes

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1. This was the case with the Liberals (FDP) as the smaller partner of the Christian Democrats (CDU/CSU) 1949–65 and 1982–98, and of the Social Democrats (SPD), 1969–82; and it is now the case since 1998 with the Greens as the partner of the SPD.

2. This is a well-known constellation since in political party terms *Länder* governments frequently differ from the federal government: in the *Länder* there have been one-party governments and coalition-governments in various compositions.
3. The votes of each *Land* (from three to six according to the size of the population) have to be cast as a whole.
4. In force since 1999 with 12 EU member countries. The UK, Denmark, and Sweden have remained apart.
5. This policy means that Germany, as biggest net-payer in the EU, can reduce the volume of its financial contribution. There have been, recently, proposals and demands from Germany (federal and *Länder* governments) to renationalize structural policy which would reduce the German contribution to the EU-budget and make more money available for autonomous structural policy in Germany.
6. In the 20-member Commission there are two German nationals, in the European Parliament there are 99 German deputies (total number: 626). In the Council there are either unanimous decisions — which give each member state the "right" to a veto — or qualified majority voting; in the latter case, 62 of the total of 87 weighted votes, depending on size, are required. Germany, one of the so-called four big member countries, has ten votes.
7. For political parties, see Gresch (1978) dealing with the beginning of these developments; or Hix and Lord (1997), giving a more recent overview. For interest associations see Greenwood (1997).
8. To an extent, this aspect of the reform follows the Swiss model.
9. Issue areas include migration, asylum, and refugees.
10. In this field the *Länder* have to observe the EU subsidy-control regime (articles 87–89 of the EC treaty).
11. On the early development of the EC through to the 1980s, see Birke (1973) and Oberthür (1978).
12. See Hahn (1986). The Rhineland-Palatinate Minister-President Bernhard Vogel dismissed the thesis of "auxiliary foreign policy" in a speech entitled "Gibt es eine Nebenaußenpolitik der Länder? Eine Klarstellung aus der Sicht eines Ministerpräsidenten," presented at the Deutsche Gesellschaft für Auswärtige Politik, 19 February 1987.
13. "The Council shall consist of a representative of each member state at the ministerial level, authorized to take binding decisions for the government of that member state" (after the re-numbering through the Amsterdam Treaty this article is now article 203 of the EC Treaty).
14. The demands of the *Länder* are formulated in a declaration of the Bundesrat of 15 December 1995 (see Bundesrat-Drucksache 667/95, Beschluss).

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Contributors

BRIAN GALLIGAN, Professor of Political Science, University of Melbourne

LIESBET HOOGHE, Associate Professor of Political Science, University of North Carolina

RUDOLF HRBEK, Jean Monnet Chair, Institute of Political Science and European Center for Research on Federalism, University of Tübingen

JOHN KINCAID, Director, Robert B. and Helen S. Meyner Center for the Study of State and Local Government, Lafayette College

HARVEY LAZAR, Director, Institute of Intergovernmental Relations, Queen's University

RICHARD SIMEON, Professor, Department of Political Science and Faculty of Law, University of Toronto

MAHENDRA PRASAD SINGH, Professor of Political Science, University of Delhi

JÜRIG STEINER, Professor of Political Science, University of Bern and University of North Carolina

NICO STEYTLER, Director, Community Law Centre, University of the Western Cape

HAMISH TELFORD, Department of Philosophy and Political Science, University College of the Fraser Valley, Abbotsford, British Columbia and Institute of Intergovernmental Relations, Queen's University

RONALD L. WATTS, Fellow, Institute of Intergovernmental Relations, Queen's University

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