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Quasi-Consociationalism in German Politics: Negotiated Democracy and the Legacy of the Westphalian Peace

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Abstract

Germany, although it was never included in the 'classical' cases of consociational democracy, can nevertheless be categorized as 'semi-' or 'quasi-consociational'. This does not just mean that Germany can be located somewhere on a scale measuring the degree of consociationalism with the established criteria of the earlier literature. It also presupposes reconsidering the notion of consociationalism itself, as a conceptual tool for comparative politics.

1 Redefining consociational democracy

In the last thirty years we have learnt that classical 'consociationalism' was a transitory phenomenon, and this insight permits us to place our earlier analyses into a larger evolutionary framework. What was once described as 'consociational democracy' is a specific manifestation, during a distinct historical period, of a particular repertoire of conflict management. But it often has deeper roots that go back to the process of state building. One of the big challenges in that process was often the existence of deep cultural cleavages. In some instances, such as in the French model case, the state undertook the suppression of such cleavages by the techniques of absolutist rule. However, the preliminary condition for such a strategy was the existence of a powerful central authority. Where this condition did not exist, these cleavages excluded an absolutist solution.

This then had many consequences in a later stage of development, namely, the process of mass democratization and political mobilization. Strong cleavages made it difficult to adopt patterns of political organization that favoured the emergence of majoritarian democracy. The original response to democratization thus consisted in the formation of organizations that were linked, often through interlocking elite directorates, into highly integrated interorganizational networks segmented along cultural lines. The so-called 'pillarization' was thus a specific (and transitory) stage in the development of

non-majoritarian systems. However, path dependencies generated in the process of state building favoured the survival of non-majoritarian regimes even after the 'de-pillarization', which has been described so often in the second wave of literature on consociational systems.

The evolutionary approach sketched above will be helpful in locating Germany in relation to the familiar universe of consociational countries. Consociational democracy has often been described as something specific to smaller countries, so it is not surprising that Germany was not included in the first literature on the subject.¹ Reconsidering the German case three decades later we have to take into account that, on the one hand, 'classical' consociationalism has undergone great changes and is now, at least in some respects, a matter of the past. About this there is undoubtedly widespread agreement. But, on the other hand, it has also become fairly obvious that consociational democracy can still be analysed fruitfully as one specific variety of the alternatives to 'classical' majoritarian democracy, particularly of the Westminster type. In such an analytic perspective, Germany is a particularly salient case because it does not neatly fit into a dichotomous classification. It has, on the one hand, a party system dominated to a large degree by bipolar competition. On the other hand, not only are there some residual elements of former consociational practices, but the specific institutional framework moreover results in patterns of policy formation where the majoritarian aspects are often more or less eclipsed in favour of 'quasi-consociational' power-sharing and bargaining. There is, in particular, a close relationship between the two quasi-consociational patterns: that of corporatist interest group politics and the particular German variety of federalism. In turn these different patterns, which I subsume under the concept of *Verhandlungsdemokratie* (negotiated democracy), operate in constant tension with the model of competitive democracy (*Konkurrenzdemokratie*), the other important element of the German political system. The modern German polity can thus be described as a hybrid of different repertoires for the management of political conflict.

2 Three German models of conflict management: hierarchical leadership, competitive and negotiated democracy

Consociationalism in the narrow sense was one historically specific component of a model of politics that is more important in German politics today than it was in the past. This model, which I labelled 'corporatist negotiated democracy' (*korporative Verhandlungsdemokratie*) in an earlier article (Lehmbruch 1996), is important for understanding not only the consociational legacy of Germany but also German corporatism and federal

policy formation. In brief, consociationalism, corporatism and interlocking federalism (*Verbundföderalismus*) are the three important manifestations of the model. Of these, the first has clearly declined in importance while the second and third continue to play an important, or (in the case of federalism) even a dominant, role. But not only are their action logics closely related, they can also be described as the outcomes of one important path of development in the process of state formation in Germany.

'Negotiated democracy' is a term I introduced in my analysis of German federalism (Lehmbruch 1976) as a typological construct opposed to 'competitive democracy' (in the sense of Schumpeter and of the Westminster model).² The adjective in the term 'corporatist negotiated democracy' stresses the importance of organized, or corporate, social groups as the core actors in such a system. In an ideal-type fashion corporatist negotiated democracy can be contrasted with competitive democracy as the two strategic models of policy formation that are competing in the present German system.

In a larger developmental perspective, these two models have been competing with a third alternative model, which was in fact the most salient in the past. This was hierarchical leadership in a strong state. The choice between these models, in the process of forming a national state, was determined by the way the cleavage structure of German society was perceived by the dominant (liberal as well as conservative) elites. Since the formation of the German Empire under Bismarck, the prevailing perception was increasingly that of a society riddled with deep ideological, social and regional cleavages, and hence menaced by disintegration. The existence of the Catholic and socialist subcultures contributed most to this perception. In Bismarck's eyes both were 'Reichsfeinde', enemies of the imperial system. For their part, the liberal elites, although they (and to some degree even Bismarck) were impressed by the capacity of the British parliamentary system to produce strong leadership, were concerned that in Germany a parliamentary regime based on a competitive two-party system would have disintegrating effects by giving a key influence to 'political Catholicism' and socialism, and would threaten the liberals' cultural hegemony. Hence many of them became convinced that strong hierarchical leadership was required to hold together the potentially disintegrating conflict structure of German society. And, with the breakthrough of mass politics, the idea also took root that such leadership needed a charismatic legitimacy. The most outspoken defender of such a position was probably Carl Schmitt. But even Max Weber, although he favoured the introduction of party competition and parliamentary rule, wanted to counterbalance it with a strong hierarchical authority personified by the Reichspräsident to substitute monarchical authority. The 'dictatorship paragraph' (article 48) of the Weimar constitution was the clearest institutional consequence of this view. Tragically, such ideas later also opened the way for

Hitler's seizure of power. In consequence, the hierarchical model of strong leadership was completely discredited after the defeat of the Nazi regime and no longer played a role when German politics was organized post-World War II.

Another model, which now in a sense came to replace the model of strong hierarchical leadership, was bipolar party competition for power. An important condition for its rise was the fusion of the erstwhile 'political Catholicism' with conservative and liberal Protestantism, which led to the founding of the Christian-Democratic Union (CDU). This was an important step on the way towards de-pillarization. In the first Landtag (state diet) elections of 1946/1947, the CDU and the SPD emerged as the two strongest parties, and it was a logical consequence of this changed configuration of the party system that both finished by considering themselves as the potential, but rival, contenders for political hegemony. To contemporary political observers this may not have been immediately apparent because at that time most state governments were led by bureaucrats turned politicians who continued to consider grand (or even all-party) coalitions as the most appropriate way to run a country devastated by war (Foelz-Schroeter 1974). However, the two emerging national leaders, Kurt Schumacher and Konrad Adenauer, both discovered the new strategic logic inherent to the new party configuration and successfully educated their respective parties to embrace bipolar competition as the basic option.

In this context Adenauer, just as Helmut Schmidt two and half decades later, explicitly stressed the prototypical importance of Westminster democracy for relaunching West German democracy. However, Bonn came to diverge from Westminster by the necessity to include smaller coalition partners, so that alternating coalitions took the place of alternating party government. This signified the insertion of coalition bargaining as a 'nested game' (Tsebelis 1990) into the bigger game of bipolar competition.

3 Religious peace and the origins of a consociational repertoire in German politics

The key concept of Germany's quasi-consociationalism is 'Parität' (parity). Its origins can be found in the peculiar pattern of state building in Germany, and it was developed by state actors to cope with fundamental social cleavages. That the process of state building in Germany differed from the classical absolutist trajectory is often overlooked. To be sure, when attention is focused on the major German territories (as is often done), it is obvious that Austria, Prussia and part of the smaller principalities followed the path of absolutist state building. But it is easily neglected that the empire, as the overarching political unit, never became a state in the modern sense (as defined, for

example, by Max Weber). The attempt of the Habsburg emperors (notably Charles V) to extend hierarchical control beyond their Austrian domain to include the German empire hurt the interests not only of the Protestant princes but also of the dominant continental powers of that time, France and Sweden, and was therefore defeated in the Thirty Years War. The resulting stalemate had important institutional consequences because it paved the way for a new type of rules to deal with fundamental social conflicts. The impact of the religious conflict on the formation of the modern state after the 16th and 17th century thus set Germany clearly apart from the other larger European nations.

In the majority of cases, as we know, the absolutist state settled this conflict by privileging one of the churches (Catholicism in France and Spain, Protestantism in Sweden and England) and discriminating against other rival beliefs. In Germany, similar attempts of the Habsburg emperor were frustrated, and so a historical compromise had to be struck in the German Empire. The peace treaty concluded in 1648 in the Westphalian cities of Münster and Osnabrück – which served as the constitution of the Holy Roman Empire until its destruction by Napoleon – granted privileges to three denominations (Catholicism, and the Lutheran and Calvinist varieties of Protestantism) and established the representation of Catholics and Protestants as corporate bodies (*Corpus Catholicorum* and *Corpus Evangelicorum*, as representatives of the Catholic and Protestant territories) in the constitutional organization of the Holy Roman Empire (Schilling 1989).³

One may suggest that the settlements of the religious conflict in the 16th and 17th centuries, through the processes of collective learning that they set into motion, served as models that determined to a remarkable degree how modern states would continue to handle fundamental societal conflict. Reformation and counter-reformation were the first important societal conflicts that could not be mitigated or suppressed in the traditional ways. Lipset and Rokkan have taught us in their classical study how this had far-reaching consequences for the emergence of 'cleavage structures' (Lipset & Rokkan 1967), which became 'frozen' to determine the pattern of party politics for later centuries. But one can also go one step further and suggest that these conflicts also prefigured later strategies of cleavage management, through the invention of specific models of political conflict resolution that exhibited remarkable variations across nations, but also remarkable path-dependent persistence over time.

How such a variety of patterns of religious conflict management came into being was the object of an important comparative study of the religious peace settlements in France, Switzerland and Germany carried out by the French historian Olivier Christin (Christin 1997). His cross-national comparison of these different cases sheds an important light on the origins of different paths of institutional development leading to clearly de-lined national models of

conflict regulation. One might – in a stylized fashion – distinguish a statist model of conflict regulation that emerges with the French kind of religious peace treaties whereas Switzerland and subsequently Germany innovate by combining federalist and corporatist devices to limit the applicability of the principle of majority decisions.

The first important innovation in this field was the first Swiss Landfrieden of 1529. In the Tagsatzung (diet), the Catholic cantons held a majority, but the powerful Protestant canton of Zürich succeeded in pushing through its demand that, for specific religious matters, decisions should no longer be taken by majority voting (Christin 1997: 136 ff.). This meant the introduction of a decision mode that was subsequently called *amicabilis compositio* (amicable settlement).⁴ The institutional basis of *amicabilis compositio* was clearly the veto potential of strong minority actors within a federal system. Until then, the majoritarian principle, which had taken root with the adoption of Roman law, had been the normal way of conflict regulation, but now there was recognition that certain essential interests of the minority had to be protected by suspending majority voting. These Swiss innovations were studied attentively in the neighbouring countries and adopted also in Germany, first in the religious peace agreement concluded at Augsburg in 1555, and finally in the Westphalian Peace Treaty of 1648. The *Instrumentum Pacis Osnabrugense* added two additional institutional devices, parity and *itio in partes*, to *amicabilis compositio*. As a fundamental rule for the relationship between Catholics and Protestants, the peace treaty specified the principle of parity, that is, the strict equality of the established religions. The Imperial Diet (Reichstag) was divided into two religious bodies, the Corpus Catholicorum and the Corpus Evangelicorum, and controversial claims could not be decided by majority vote but only by 'amicable settlement'.⁵ The treaty even stipulated that when their corporate interests were at stake these corpora might convene in separate assemblies (*itio in partes*) to determine their respective positions before issues subject to the rule of 'amicable settlement' were submitted to the plenary assembly (Heckel 1978).⁶ Parity, in turn, meant that offices had to be filled by representatives of both religions, normally in equal strength. This concerned in particular the Imperial Courts (Reichskammergericht and Reichshofrat).

In contrast to Germany, the principle of majority decisions continued to apply on the local level in France, and, although it was often used to outvote the religious minority (Christin 1997: 142 ff.), it also permitted personal and collective choices

for affirming a logic that differed, or was even superior, to exclusively denominational logics, and that facilitated the elaboration of compromise solutions which were then

imposed in the name of the public good – in one word, for rendering politics autonomous (sc. from religion) (Christin 1997: 145).

Yet the most important institutional solution in the French case was the transformation of the royal authority into an arbiter capable of 'de-confessionalizing' the issues of religion and subordinating them to a new understanding of the *bonum commune*. This idea of a common good, which should be upheld by an authority transcending the religious quarrels, was put forward in particular by Michel de l'Hospital and the legal scholars known under the significant name of the Politiques, and it also became the basis of Bodin's doctrine of sovereignty. However, the revocation of the Edict of Nantes by Louis XIV in 1685 made clear that the absolutist, 'statist' formula of religious peace was not a self-stabilizing regime and could degenerate. It was different with the federalist formula that prevailed in Germany and – after more than a century of conflicts – it finally permitted the establishment of a stable religious settlement.

At the time of the Westphalian Peace, the principles of amicable settlement and parity were a historical compromise that applied to the level of federal organization but not to the internal organization of the member territories. Except for in a certain number of Imperial Cities (Freie Reichsstädte), for which the principle of parity had been explicitly introduced, within the territories of the Federation the princes originally had the power to determine the religion of their subjects (the principle of *cuius regio eius religio*), and those individuals who did not want to adapt were left with nothing but the right to emigrate.⁷ The same mix of principles for the resolution of religious conflicts applied in the Ancien Régime of Switzerland.

The system established by the *Instrumentum Pacis Osnabrugense* was remarkably successful. As Christin emphasizes, the traditional reproach, that the combined devices of parity and *itio in partes* paralysed the institutions of the Empire, is not well founded. In the limited number of cases where these provisions applied, they played an appeasing role and helped the Empire to experience a long period of religious peace, even though tensions persisted for a considerable time (Christin 1997: 142). I definitely subscribe to this author's conclusion that:

...generally, federalist state structures, without a strong central state, seem to have managed the challenge of a denominational explosion better and, above all, seem to have been better at finding compromises which assured very diverse territories a quite long period of common peace (the Swiss cantons, Poland, German Empire). Is it necessary to remember that the peace of Augsburg was never abolished in the Empire, even during the Thirty Year War, and that the treaties of 1648 only took over and developed their fundamental principles? The weakness itself of the central state, the importance of its entities which became more or less sovereign in religious matters

(princely states, cantons, cities...) and the existence of institutional procedures of negotiation and arbitration opened the way for political balances and complex systems of peace, combining acknowledgement of differences and the preservation of the general interest defined in very wide terms, and which should therefore be defined as states of law (Christin 1997: 203 ff, own translation).

4 From religious peace to 'negotiated democracy': the career of parity in the strategic repertoire of German politics

After the 16th century, parity began a long and remarkable career. Originally, it was a rule that applied mainly at the federal level of the Empire. As is well known, the larger member territories of the Reich adopted the then predominant constitutional model of absolutist rule, and consequently the monist solution of the religious conflict prevailed within their boundaries while the rule of religious parity governed the relations between the different German territories. This system underwent a profound transformation with the Napoleonic age. Indeed, one of the most important interventions of the victor in the institutional make-up of Germany was the radical redrawing of its internal borders (1803 to 1806), which was later sanctioned and completed by the Congress of Vienna (1815). Many of the smaller territories lost their autonomy within the Federation and were integrated into larger states (Prussia, Bavaria, Württemberg, Baden, Saxony). As one consequence, however, the surviving enlarged territories lost their erstwhile religious homogeneity that had been due to the principle of *cuius regio eius religio*.⁸ After the French revolution, this principle had become obsolete and religious freedom could no longer be seriously challenged. Most of the new states now had to accommodate members of different denominations, and this was done by modernizing the principle of parity. Parity was reformulated to mean the corporate equality of the established religions within the individual member states of the German Confederation or (in later times) of the new German Reich. It was hence no longer a rule governing federal relationships but rather transmuted into a basic principle determining the constitutional position of the (established) religious minorities within the territories. It is important to distinguish this principle from religious tolerance. To be sure, such tolerance, which left the individual the freedom to choose whichever religion he wanted (or none at all), was progressively introduced during the early nineteenth century. Nevertheless, alongside this the state continued to privilege those churches that had been recognized by the treaty of Westphalia: the Catholics and the Protestants. Parity in this context meant the legal equality of the established churches.

As a legal principle, however, corporate parity did not really involve equal treatment of the individual members of the established churches. In Prussia,

in particular, Catholics found themselves strongly discriminated against as far as access to public office was concerned. So the Catholic organizations that sprung up after the mid-19th century for their part redefined parity as a principle guaranteeing the equality of established religions also in political patronage (Bachem & Hankamer 1897; Baumeister 1987; Hunt 1982). The Catholics' long fight for parity in Prussia (and later also in the Wilhelminian Empire) – notably for 'paritary' access to the civil service – contributed greatly to the career of this institutional formula. Against the background of religious pillarization, parity became the German equivalent of consociationalism, with the connotation of the state performing the functions of arbiter and guarantor for the equality of established denominations.

The Catholic campaign for parity was not without success, as Max Weber has repeatedly stated. Increasingly, Catholics made tangible progress within the bureaucracy. And it is safe to assume that, in the perception of organized Catholicism and Catholic bureaucrats, parity had become a key concept within a strategic repertoire. However, the idea had an impact reaching far beyond the Catholic camp.

The further career of the concept of parity from the late 19th century in the language of German politics has not yet been sufficiently explained. But there are good reasons to conjecture that the concept of religious parity was the model for the later quest for parity in labour relations and social policy and that it became a key formula for historical compromises in social conflict. Parity has indeed become a key formula that is employed by the German state and other corporate actors for the institutional pacification of industrial relations (Rabenschlag-Kräusslich 1983; Teuteberg 1961), for the social security system and for the public health system. And at the time when the concept began its career as a 'peace formula' in the domain of social politics, the original meaning must still have been vividly present in the minds of contemporaries. Significantly, at the beginning of the 20th century, Imperial gained control of the Imperial administration of social security and later (in the Weimar Republic) of the ministry of labour, and consequently social policy became strongly impregnated by the principles of social Catholicism. The high-ranking Catholic bureaucrats who were thus responsible for social policy must have been aware that their advancement was due to the successful Catholic lobbying for parity in the civil service.

However, the real breakthrough of parity came with the democracy of the Weimar Republic. Parity was one important element in the development toward corporatist labour relations that began with the integration, in 1916, of organized labour in the war effort (Hilfsdienstgesetz, see Feldman 1966), and with the Stinnes-Legien agreement of 1919 about the establishment of the Zentrale Arbeitsgemeinschaft of employers and labour unions (ZAG) to cope with the post-war crisis (Feldman 1981; Feldman & Steinisch 1985). As Franz

Leopold Neumann (1937; English translation. Neumann 1957) put it persuasively, the Weimar republic was based upon a series of social compacts between the big forces of German society: "Hence, the Weimar democracy rested to a decisive degree on the idea of parity – a parity between social groups, between Reich and states, and between the various churches" (Neumann 1957: 49). The 'old Federal Republic' revived this idea, and it became a pivotal element of the corporatist repertoire of strategies. The programme of a Bündnis für Arbeit (alliance for work) is the most recent manifestation of this strategic tradition.

But parity can also be established in a top-down strategy by the state, as has been largely the case in the social insurance systems since Bismarck. In these systems, parity is employed to delegate the implementation to representatives of social groups constituted and empowered by statute, and one may speak of 'corporatization' (as coined by Döhler & Manow 1992) as an administrative strategy. Bargaining relationships between these partners are limited in their scope, because essential parameters continue to be controlled by the state, and the state can intervene strongly in a crisis situation.

Parity can thus be said to have different, but closely related connotations or meanings. In the context of university reform it related to a strategy of involving the representatives of different corporate groups in decision-making. The university was thus transformed into a negotiation system. Another aspect is that this representation is not based upon relative numerical strength but governed by a specific formula, which may mean strict numerical equality in some cases but in others may diverge from that criterion. The denotation that the term had for 'political Catholicism', equal representation of corporate groups in patronage, is then a specific instance that has become less important compared to the newer usage just discussed. But all these usages can somehow be traced back to the Westphalian Peace when all these elements, the equal representation of corporate groups and also the establishment of a federal negotiating system suspending the use of the majority principle, were part of its meaning.

The career of parity is thus a history of compromises between corporate social groups. The emphasis of traditional historiography on the authoritarian tradition in German political history has for a long time somewhat eclipsed the importance of these compromises. In Germany, after all, it was not Bodin's and Hobbes' sovereign absolutist ruler who managed to guarantee peace between the warring religious groups. Rather, it was the proto-consociational and federalist formula of the Treaty of Westphalia that demonstrated how critical social conflicts could be settled peacefully. And when the authoritarian model collapsed during the catastrophe of Hitler's war, the countervailing consociational principle of parity – together with the closely related principle of federalism – gained in importance. German quasi-consociationalism thus

grew out of a specific institutional strategy for coping with social cleavages; one which distinguished the process of state building in Germany from that of other larger European countries. And the parity of corporate social groups, to whom representational monopolies had been granted early on, became a central element of a strategic repertoire for managing conflicts of interests between such groups.

5 Cultural segmentation and quasi-consociational elements in the modern German polity

The second German republic – the old Federal Republic of Germany as it emerged after the Second World War⁹ – was thus characterized by several features which reminded observers of consociational practices as these had been described for a number of smaller European countries. But Germany does not, of course, neatly fit the typological construct of consociational democracy, in particular because of the importance of bipolar party competition. Grand coalitions, as they had existed in most states in the immediate post-war period did not long outlast the formation of a federal government led by the Christian Democrats and opposed by the Social Democrats (Jun 1994). The only example of a grand coalition on the federal level lasted for less than four years (1966-1969), and it remains very much a neglected subject in accounts of the historical development of the Federal Republic (Lehbruch 1999). This neglect seems to indicate that such a coalition is now considered to be somewhat anomalous, or at best a transitory stage before the advent of the social liberal coalition. Analyses pointing to consociational elements in this coalition were rather exceptional (Lehbruch 1968).¹⁰

However, there was one interpretation of the 'old' Federal Republic that was highly influential for some time and which anticipated some patterns of the consociational model, although it did so in a rather derogatory manner. This was Dahrendorf's *Society and Democracy in Germany* (Dahrendorf 1967, first German edition in 1965), which described German society in terms of 'Versäulung', i.e., pillarization, and a 'cartel of elites'. Dahrendorf's terminology referred to the Dutch concept of pillarization, introduced by the sociologist J.P. Kruijt, which at that time was also taken up by the consociational literature and used more or less interchangeably with 'segmented pluralism' (Lorwin). Ironically, one can doubt whether pillarization was still a valid description of contemporary German society around 1965. It is true that German society was indeed quite pillarized in the late 19th and early 20th century, although there were significant differences from the Dutch model. But the socialist pillar re-emerged only partially after

the end of Nazism, and in the early 1960s the first signs of erosion of the Catholic pillar became visible.

At the same time, another influential sociological analysis of German party politics employed a conceptualization strikingly similar to the notion of segmented pluralism (Lepsius 1966). On the one hand, Lepsius's extremely insightful article anticipated the idea of 'freezing' cleavages (to be developed shortly afterwards by Lipset and Rokkan), when he argued that the German party system, at the end of the Weimar Republic, had "a fixation on conflict situations which existed at its formation, but had already lost much of their importance in the 1890s, and had become obsolete after the first World War" (Lepsius 1966: 355). On the other hand, Lepsius described the parties as being no more than the "political action committees" of relatively closed "social-moral milieus" with a complex internal structure which he defined as "social units shaped by a coincidence of several structural dimensions such as religion, regional tradition, economic situation, cultural orientation, and stratification of intermediary groups" (idem). The most salient case was, in his view, the role of the Centre Party as the political committee of a dense network of Catholic associations (political Catholicism, in the political language of the time). But the Social Democrats had a similar pillarized structure (first discussed by Robert Michels in his classic *Soziologie des Parteiwesens*). Lepsius's description of these organizational networks could have been applied just as well to the Austrian camps as portrayed in my first papers on 'Proporzdemokratie' (Lehmbruch 1967b). The essential difference was that in Germany there was a dominant (Protestant, liberal to conservative) culture, which tended to identify itself with the 'national' values, whereas the Catholic and the Socialist camps were organizing minorities into networks of cultural defence. In Austria, on the other hand, the national organizations (i.e., those who continued to adhere to the *grossdeutsche* tradition) constituted not a dominant culture but a third camp very similar in structure to the other two.¹¹ Thus the German situation can be likened to some degree to that of Switzerland, where the dominant culture was liberal and Protestant while Catholics and Socialists formed minorities (see the rich analysis of Gruner 1969). (The main difference being that in Switzerland the cross-cutting of linguistic and regional cleavages and the institution of the referendum could often lead to changing alliances across the ideological boundaries.)

The problems arising from the cultural segmentation of German society was one of the major preoccupations of German social scientists in the last stage of Imperial Germany. We can even speak, to some degree, of a quasi-consociational pact in Germany between the liberal wing of the dominant culture, on the one hand, and the Catholic and Socialist camps on the other, and which was the basis of the formation of the Weimar Republic. As Charles Maier once put it, Weimar was in a sense a 'social compact' of political and

social forces rather than a state per se (Maier 1982). However, unlike in the Netherlands or Austria post-World War II, the Weimar compact did not consolidate into a stable regime. It soon became subject to strong pressures and gradual erosion under the combined impact of a lost war and economic crisis. But while the Weimar institutions lasted – in particular in the largest state, Prussia – they comported a lot of consociational arrangements (such as proportional sharing of political patronage). I will return to the historical background against which the Weimar compact had developed later.

Quite a lot of this institutional legacy was then revived in the Federal Republic. But these consociational traits were integrated into a competitive party system, no longer based on coalition governments between parties of more or less similar strength and oscillating around the centre but now based on two large parties with hegemonic vocation. The concept of a possible grand coalition still survives as an element of strategic blueprints in the discussions of party leaders. But it runs contrary to the logic of bipolar competition and has become increasingly difficult to realize.

Moreover, the original consociational model has lost its importance for German politics for the same reason that the model is largely outdated in the once classical consociational countries such as the Netherlands and Austria: de-pillarization has largely emptied the original societal basis of quasi-consociational compacts. Not only have Catholics long lost their former minority status in German society and become fully equal; above all, religion has lost much of its political salience. The same is true of class-consciousness on the part of the traditional working class, once the main support of the former Social Democratic camp. The important role that Catholic organizations had continued to play as a recruiting field for CDU activists is declining, and the CDU is becoming more and more a quite normal secular party. And in the SPD public sector employees have now largely taken the dominant place traditionally held by qualified blue-collar workers.

All this, moreover, applied only to the old Federal Republic. After reunification, not even a slight trace of the former camp culture reappeared in East Germany as far as the CDU and the SPD are concerned. The CDU still has disproportional support here from the activists in the small Catholic minority, but many of its voters are not even baptized and hold no religious beliefs. The SPD, on the other hand, is a party of cadres recruited from the Protestant church and from the technical intelligentsia, and the traditional working-class subculture disappeared completely during the lifetime of the 'first German state of workers and peasants'. Only the post-socialist PDS is still somewhat rooted in a social-moral milieu, as defined by Lepsius, and thus supported by a network of organizations. But this is certainly not a milieu representing the working class in any sense. To the degree that East German politics is still biased toward large coalition building (in particular on the local

level), this is an institutional legacy of the 'round tables' of the transition period but by no means a vestige of former consociational elements.

6 Negotiated democracy in the Federal Republic: corporatism, the 'German model', and interlocking federalism

After the Second World War, the developments just outlined were important preconditions for the development of the 'German model', or the *capitalisme rhénan* (Albert 1991). Its core, one might say, is a corporatist system of industrial relations characterized by the dual principles of social partnership and co-determination. I have already mentioned that the roots of the corporatist system can be found in Imperial Germany, but the First World War and its outcome gave it a big push, notably with the formation of the ZAG, the peak association of employers and labour, in 1919. These first attempts to institutionalize an autonomous social partnership collapsed under the impact of the crisis of the early 1920s, and what survived was mandatory arbitration of industrial conflicts by the government. These experiences, however, left a legacy of mixed feelings in the ranks of both business and labour, which became particularly pronounced after the defeat of Nazi Germany. In the early post-war period, both sides of industry agreed to establish a system of collective bargaining without interference from the state (*Tarifautonomie*). This system has operated to date in a fairly coordinated fashion. It cannot be ruled out that this coordination (which gradually came into being in the first post-war decades) will yield to a more decentralized bargaining system. However, for the moment, it looks as if the principle of a representational monopoly of strong peak associations can be successfully defended against the (admittedly) mounting criticism.

The system of collective bargaining of strong peak associations without state interference is one of the cornerstones of the German model. The other element is co-determination (*Mitbestimmung*), which differs from collective bargaining by being a system based on law and thus established by the state. It is one of the important manifestations of the tradition of parity discussed above, and thus can be linked to the corporatist institutions which govern the system of social security and the public health care system (*gesetzliche Krankenversicherung*). All these institutions are thus closely related to the model of negotiated democracy.

Another institutional layer of negotiated democracy is the federal system. Again some important roots can be traced back to 1648, since the Westphalian Peace Treaty also created the conditions for the emergence of modern German federalism as a negotiation system. It strengthened the position of the territorial rulers in the federally organized Empire in such a way that in

Germany the rise of absolutism and of the modern state (as defined by Max Weber and Otto Hintze) took place not on the national but on the sub-national level of the larger principalities. The Holy German Empire itself – until its dissolution in 1806 – did not develop the structures of a modern state, and this distinguished Germany from France and England. But from the outset German federalism was also different from that of the United States and of Switzerland. For most of the modern times, neither the Swiss cantons nor the American states have developed bureaucratic structures of political organization similar to those of the larger German territories. Taking this peculiar institutional legacy into account in establishing the constitutional framework of modern German federalism, Bismarck engineered a historical compromise between the centralizing idea of the national state and the quest of *Länder* bureaucracies for the preservation of their organizational domain. This historical compromise was reaffirmed with force after the Second World War since both the temporary suspension of the central government as well as the dissolution of hegemonic Prussia by the Allied powers strengthened the organizational autonomy of the *Länder*, while on the other hand the political and administrative elites overwhelmingly confirmed their intention to maintain the strong degree of economic and administrative integration to which Germans had become accustomed. Therefore, the transformation of German federalism toward a sort of US-style dual federalism, promoted by the American occupation representatives, turned out to remain, by and large, an ephemeral experiment. What developed instead was *Verbundföderalismus* (compound federalism) or *Politikverflechtung* (interlocking federalism), a system of policy-making involving federal and *Länder* executive agencies (Lehbruch 2002).

We can distinguish three institutional layers, all of which contribute to the predominance of decision-making by negotiation. First, the *Länder* participate in federal legislation, with the Bundesrat (Federal Council) being the focal institution. Second, *Länder* bureaucracies implement most federal legislation and continually negotiate with the federal government (and eventually among themselves) concerning the details of policy. Finally, there is cooperation in those fields that belong to the domain of the *Länder* and involve agreements among them or including the federal government. This layer is characterized by dense interorganizational linkages (*Politikverflechtung*) and joint decision-making (with high thresholds for consensus) is often unavoidable.

Compound federalism is particularly visible in fiscal federalism, where Germany is worlds apart from the fiscal equivalence and subsidiarity so dear to theorists of public finance. Most taxes are joint taxes with returns divided between federal and *Länder* governments. This gives the *Länder* (who have few tax sources of their own) a right of veto on most important tax legislation. The history of revenue sharing (*Finanzausgleich*) is therefore a story of almost

continuous haggling about (often more or less short-lived) compromises in an elaborate negotiation system (for details, see Renzsch 1989; and, for a discussion of most recent developments, see the insightful paper of Ziblatt 2001).

7 Conclusion

The distinct 'social-moral milieus' that formed the basis of German quasi-consociationalism during the periods of the Bismarck Empire and the Weimar Republic have now been largely eroded. However, an important legacy of institutions and patterns of decision-making remains, whose roots go back to these periods. They were adapted to the former cleavage system in order to make conflict resolution feasible, but have tended to survive even after the cleavages have melted away. As we have learned in recent debates on path dependence, institutions often tend to reproduce a distinct path of development even when the conditions that originally gave rise to them no longer exist (Mahoney 2000; Pierson 2000). The negotiated democracy of contemporary Germany, now so strongly entrenched in the institutional arrangements, is thus the heir of a long and complex past.

Notes

1. This is true not only of Arend Lijphart's contributions but also of my own where I emphasized the differences from contemporary West German coalition politics. It was not by chance, however, that my first papers and published work on the subject (Lehmbruch 1966; 1967a; 1967b) were published in the beginnings of the West German grand coalition of Christian Democrats and Social Democrats (1966-1969), and the title of my publication *Proporzdemokratie* (1967) explicitly referred to the language of the West German political debate of that time.

2. I should mention that the term *Verhandlungsdemokratie* was used already some years before in Leonhard Neidhart's (1970) insightful book on the consequences of the Swiss referendum.

3. Some basic rules of the religious peace had already been elaborated in the peace treaty of Augsburg (1555), but at that time Calvinists were still excluded. Even after the Westphalian Peace, however, the corporate privileges granted to the three established denominations continued to be refused to other religious minorities, in particular to the Anabaptists.

4. In *amicabilis compositio*, matters are settled about which parties continue to disagree. 'Amicable settlement' is hence lexicologically a more precise translation than 'amicable agreement' (as Steiner put it in earlier writings).

5. "In causis religionis omnibusque aliis negotiis, ubi status tanquam unum corpus considerari nequeunt, ut etiam catholicis et Augustanae confessionis statibus in duas partes eunitibus, sola amicabile compositio lites dirimat non attenta vororum pluralitate" (Instrumentum Pacis Caesarei-Suecicum Osnabrugense V 19).

6. To be sure, this procedure (called *itio in partes*) was little used.

7. The peace treaty, however, explicitly froze the religious affiliation of territories as it had existed in 1642, which meant that the princely power to determine the religion of the subjects was limited to maintaining that affiliation but no longer involved the right to change it.

8. A significant exception is Brandenburg Prussia, which, as one of the largest states, had already earlier undergone significant transformations in a somewhat similar direction. First, since the adoption, in 1613, of Calvinism by the elector Johann Sigismund, the Hohenzollern monarchs no longer shared the Lutheran creed of their subjects. Because of the stipulations of the Westphalian peace (fn. 7) and of the stiff resistance of the established Lutheran church, they were unable to carry their subjects with them and instead pursued a strategy of attracting non-Lutheran immigrants (the French Huguenots being the most famous example). Second, by a series of peaceful acquisitions and of military conquests of Catholic territories, Prussia came to include a sizeable Catholic minority. After the conquest of Silesia, for his new Catholic subjects Frederick II (the Great) even built a Catholic cathedral in his capital city, Berlin, but he also expressed his readiness to eventually accommodate Muslims. The Prussian code of 1794 (*Allgemeines Landrecht*) made a distinction between four types of 'religious societies' (Religionsgesellschaften) as they were now called. Illicit were religions challenging the public morality, undermining the obedience to the law and to government, and lacking deference to the deity. A second category were the tolerated religions (Mennonites and Jews), a third one the 'licensed' (but not privileged) immigrant minority religions (like the Herrnhuter). The Lutherans, the Calvinists and the Catholics constituted a fourth category, the privileged religions, whose minister had the status of public servants.

9. The term 'alte Bundesrepublik' was introduced to distinguish the Federal Republic before German unification from the post-1990 period (Blanke & Wollmann 1991).

10. My own first version of the consociational model (Lehmbruch 1966; 1967b) was written at the time when this coalition came into being, and although it did not directly refer to the German case, it was implicitly developed against that background, including the choice of the title *Proporzdemokratie*, which was intended to give a neutral descriptive meaning to a term that had been used so far by the critics of the grand coalition with a clearly disparaging intention. For a re-assessment of the grand coalition of 1966-1969, and its importance for the development of negotiated democracy in West Germany, see Lehbruch (1999).

11. The classic description was given by Wandruszka (1954).

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Consociational Roots of German Corporatism: The Bismarckian Welfare State and the German Political Economy

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Abstract

In the literature Germany does not figure as a classical corporatist country. It lacks many features considered preconditions for stable central, tripartite agreements on wages, employment and inflation. Yet, in a variety of outcomes Germany performs truly 'corporatist'. This paper argues that the institutional set-up of the German welfare state offered the 'social partners' the opportunity for long-term economic coordination. Thus they could strike deals that resemble in many respects those central agreements that we know from the classical corporatist countries. This contribution shows that the institutional set-up of the German welfare state must be explained by the fact that the welfare state had been made into an instrument of consociationalism since it was designed to integrate the socialist and Catholic camps into the new Reich. Thus, the paper can demonstrate in detail the working of the nexus between corporatism and consociationalism to which the literature so frequently refers.

1 Introduction

Students of the German political economy frequently note that they are faced with an anomaly (Thelen 1991: 3). The puzzle, in the words of Kathleen Thelen, is that various comparative studies find that:

Germany tends to 'cluster' with the corporatist democracies in a variety of outcomes (labor peace, inflation, unemployment, general economic performance, social policy), but by virtually any theorist's definition or measures – it lacks the structural features that are considered preconditions for, or attributes of, corporatism (Thelen 1991: 3).

Neither centralized wage bargaining, nor long-term political exchange between state, capital and labour, nor the capacity and political will to embark upon an active Keynesian macro-management or Social Democratic hegemony figure prominently within 'Modell Deutschland'. Moreover, Germany also does not qualify as a classical consociational nation (Lehmbruch 1998), while consociational elements are certainly prominent within