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Monograph Series

FEDERALISM AND REGIONALISM
IN GERMANY
The Division of Prussia

ARNOLD BRECHT



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Preface

ARNOLD BRECHT's book is the first of a new Monograph Series published by the Oxford University Press for the Institute of World Affairs. While the 'Studies' of the Institute, of which three volumes have so far appeared, are to lay the general results of its research work before a wider public, the 'Monograph Series' will address itself, in the first instance, to the scientific and practical experts in the respective fields. At the same time, the present study should demonstrate that full command of the technical details of any subject is quite compatible with a form of presentation accessible to the layman.

Federalism and Regionalism in Germany issues from a Research Project on Germany's Position in European Postwar Reconstruction. This Project was originally started under the Graduate Faculty of Political and Social Science of the New School for Social Research, with the generous support of the Rockefeller Foundation. Like all research projects on international problems formerly conducted by the Graduate Faculty, it was later taken over by the new research unit of the New School, the Institute of World Affairs.

Some earlier results of the Project were published in Ernst Fraenkel's *Military Occupation and the Rule of Law*. The present study embodies findings of the Constitutional and Administrative Section of the Project, of which Dr. Brecht was the directing principal for two years. Two additional volumes, due to appear early in 1946, are to contain further results of the Project.

As is the case with all its publications, the Institute of World Affairs does not identify itself with the views that are expressed in this book. But the scientific level of his investigation and his background of practical experience should entitle Dr. Brecht to the attention of all who are interested in a solution of one of the most difficult and most controversial issues of the day.

ADOLPH LOWE
*Executive Director
of Research*

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Introduction

POLITICAL and scholarly literature, not only of Germany but also of the United States and other countries, has dealt extensively with federalism and regionalism in nineteenth-century Germany. But the development in the twentieth century has received no comprehensive treatment in Anglo-American publications, and administrative aspects of the subject have been neglected even in regard to the earlier periods. Nor does the widely scattered German literature meet demands for coherent information, for it is specialized or dated or both.

Two factors have made it advisable at this time to fill the gap, that is, to analyze the problems of German federalism and regionalism in their more recent aspects (roughly speaking, from 1900 to 1945) and to include administrative questions. First, a new solution for Germany's inner structure must be found. Federalism was to totalitarian ideas, by definition, not a problem but an obstacle to be removed by dictatorial will. In fact, state independence was completely eliminated by the National Socialist regime. Yet the problem of federalism is *not a dead issue in Germany. It has only been dormant, and it will certainly reappear.* Not Germany alone but the entire world is concerned in its solution.

There is, however, another reason for going into this subject now. Only to a certain extent was the wrestling with federal and regional problems in Germany after the First World War caused by conditions that were specifically German. Many forces that pressed toward a reform were of a more general nature, common to all federal countries, and not even to federal governments alone. German democracy soon came to grips with them because Germany's national administration, after the 1918 collapse, expanded earlier than did that of other countries. Problems of centralization and decentralization, of duplication of authority in the field, of regional co-ordination and of administrative delegation of powers developed apace, and required answers. American interest in all matters of federalism, and the increased emphasis that is now being placed on administrative aspects

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of federalism, caused Professor William Anderson, chairman of the Committee on Public Administration of the Social Science Research Council, to suggest that the author—who headed the Committee's special committee on comparative administration—take up the topic not alone for the benefit of historians, students of foreign governments, and Germany's postwar reformers, but also with a view to American administrators. The points of interest to them begin where the customary treatment leaves off.

The distribution of the ample material over the five parts of this study and its appendices is self-explanatory. Only two or three remarks may be appropriate here as a guide to the understanding of the whole.

Preparatory work for a democratic reform of the German federal system was undertaken at the end of the nineteen-twenties by an official governmental Reform Committee composed of members delegated by the federal cabinet and by the state cabinets. The plan as worked out by them, published here for the first time in English (Part III and Appendix G), rested on a profound analysis of all questions involved. It had all the advantages of great flexibility; although shaped to allow centralized administration to be continued where necessary, it could be used—and was most definitely meant to be used—to implement the opposite tendency, that is, to serve as an instrument of decentralization. In regard to many administrative problems of federalism the committee did remarkable pioneer work. The methods it applied and the results it reached are of general interest. They are here presented as first-hand material.

The German federal problem is inextricably interwoven with the question of the division of Prussia. Division was proposed by the Reform Committee, with a five-sixths majority. It was again proposed in a draft bill presented by the dying Prussian democratic government to Chancellor von Schleicher, in January 1933, as an amendment to the Weimar Constitution (Part V and Appendix H, also published for the first time in English). Division is once more recommended here (Chapter XVI). Elimination of Prussia as a single unit is indeed so compellingly required by the evidence that in its ultimate effect the book has become, as the subtitle indicates, in good part an essay on the division of Prussia. But the interest the reader may take in this question should not distract attention from the fact that it is only one of many problems discussed.

At the moment of writing, it is not yet clear whether Germany will finally remain one country, or be divided into several independent units, not federally united. It is beyond the purpose of this study—which is fundamentally a historical account, although one dealing with a very recent period and including programs and plans made

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during that period—to engage in the controversy on the partition of Germany. Indirectly, however, the book may contribute to a calm consideration of this issue too. A good many points emphasized here would retain their significance in the event of partition. Moreover, the recent history of one of the greatest German problems—and one that had so much to do with the collapse of German democracy—would certainly not lose its interest to historians and students of government if it should prove to be the history of *finis Germaniae*.

American officers and men in the Civil Affairs Training Schools at Yale and Harvard Universities, and in the Army Specialized Training Programs at City College, New York, and at Bard and Haverford Colleges, have made me feel the need for a book of this kind and have stimulated its growth by their questions and discussions.

Dr. Josef Berolzheimer, formerly of the Institute of World Affairs and now at the Census Bureau in Washington, assisted me in the compilation of statistical data that underlie Chapter V, on the regional distribution of political opinions.

Dr. Ernest Hamburger, of the Institute of World Affairs, collected part of the data used in Chapter XV, dealing with the Hitler period, and most of those incorporated in Appendix B (Germany's Political Subdivisions, 1815-1945). He also prepared Appendix E, on independence movements in Prussian provinces.

Miss Hedwig Wachenheim, associated with the Institute of World Affairs, was helpful in checking on the most recent German decrees (1943-44), mentioned in Chapter XV and Appendix B.

Professors William Anderson, Adolph Lowe, and Hans Simons read the manuscript in its earlier stages in whole or in part, and made valuable suggestions, for which I am most grateful to them.

Miss Maude Huttman, formerly Professor of Modern European History at Barnard College, and Miss Elizabeth Todd, of the Institute of World Affairs, have been indispensable in their conscientious criticism and review of my use of the English language.

I finally wish to express my thanks to the Committee on Public Administration of the Social Science Research Council for its interest in, and contribution to, my study of the comparative aspects of the topic.

ARNOLD BRECHT

New York,
May 7, 1945

Note on Terminology and Literature

THE German term *Land*, used in the Weimar Constitution to designate the former states, has been translated as 'state,' because 'territory' has American connotations that would be completely misleading in reference to Germany. It must be kept in mind, however, that one of the reasons why *Staat* was changed to *Land* in 1919 was to exclude theoretical inferences that might be drawn from the older term regarding the character of the constituent units. In view of the fact that Hitler stripped the *Länder* of all their autonomous rights, translation as 'state' has become even more objectionable than before. But there is no better English term available, and *Staat* remained in official use in Germany in many compounds, as in *Staatsministerium*, *Staatsrat*, *Staatsbank*, *Staatstheater*, *Staatsanzeiger*, *Staatshandbuch*.

'Region' and 'regional' have generally been used here to designate the larger type of units intermediate between local and central administration, especially units larger than a single Prussian governmental district—for example, the Prussian provinces, the areas covered by the federal 'Landesfinanzämter,' 'Landesarbeitsämter' and the like, the National Socialist party 'Gau,' and the economic and defense units of the Hitler regime—although the German term for some of these intermediate units is *Bezirk* (district). It should be noted that the regional units in Germany, having an average of about three million inhabitants, were not so large as some of the regions established by the federal administration in the United States.

'Decentralization' has been used in the wider sense of the term, to signify not only the performance of regional and local functions by *autonomous* units (states, municipalities, etc.), but also administrative decentralization, sometimes referred to as 'deconcentration,' that is, the authorization of *dependent* agencies to make decisions of a regional or local character. It is only in this wider sense that some of the sections in Part IV come under its title 'Decentralization.' It will be noted that the device of 'delegated administration' (dealt with

in Part IV) is a form of decentralization intermediate between the stricter and the wider sense.

The term 'federal,' too, is applied in its wider rather than its narrower sense. In this wider meaning the structure of a country is called 'federal' as long as the constituent units enjoy rights that cannot be abrogated by simple legislation, especially if these rights include some substantial share in the legislative power of the country. See the remarks at the end of Chapter I and in the second section of Chapter XVI.

As to the translation of German administrative texts—especially of the proposals made by the governmental Reform Committee of 1928-30 (Appendix G)—a literal translation would often have been incomprehensible to Americans. The only feasible procedure, therefore, was to present the content as it might have been expressed in English, on the basis of American administrative usage. Frequently this meant description rather than translation; but it is believed that a high degree of accuracy has been reached in this way.

Familiar names of German states and Prussian provinces have been given in the English manner (except in formal lists); others, not so commonly referred to in English, have been left in their German forms. As to cities, only a few, like Cologne, Frankfort, Munich, Hanover, and Brunswick, have been spelled according to English usage.¹ There is no definite rule in this matter that could satisfy every taste, and I am aware that my own usage is only tenuously logical.

For answers to questions about German government and administration that are not expressly dealt with in this study the reader may turn to the large Anglo-American literature on German institutions, such as the works on imperial Germany by F. J. Goodnow and A. L. Lowell, and the publications on the later periods by F. F. Blachly and M. E. Oatman, by H. Finer, E. Fraenkel, C. J. Friedrich, F. A. Hermens, H. Kraus, K. Loewenstein, F. M. Marx, F. Neumann, S. Neumann, J. K. Pollock, L. Rogers, F. L. Schuman, R. H. Wells, O. Weigert, and others—and, of course, the leading textbooks on comparative government.

For the pre-federal organization of Germany, James Bryce's *Holy Roman Empire*, which leads up to the Bismarckian Reich, may be consulted; for the general history of the republican period, G. N. Shuster's review in his and A. Bergstrasser's short history of Germany; for the end of the German Republic, my *Prelude to Silence*; and for the economic aspects of modern German history, the studies

¹ The Anglo American spelling of Coblenz is widely used also in Germany. The official German spelling—here used in maps only—is Koblenz.

by W. Brook and G. Stolper. C. B. Hoover's *Germany Enters the Third Reich* (1933) has remained historically interesting as the report of an American scholar who witnessed the 1932-3 crisis from inside Germany.

The theoretical German controversies, not a subject of this study, on the nature of state rights and sovereignty have been impeccably presented in English in R. E. Emerson's monograph on *State and Sovereignty in Modern Germany* (1928). The entire history of the theory of federalism in Germany, from mediaeval to recent times, is extensively recorded in Sobei Mogi's two-volume work on *The Problem of Federalism* (1933)—useful as a guide to rather than through the literature.

The immense literature that has arisen in the German language on the reform issue is listed in the comprehensive bibliographies contained in the Reichsreform book of the German Renovation Society (cited in Chapter IX) and in Walter Vogel's book (cited in Chapter XI), both available at all large libraries. In English, the reform issue has not been treated elaborately before, except in an unpublished doctoral dissertation (University of California, cited in Chapter VIII) by Gerhard Krebs, which I had the privilege of reading only when this book was being set in type. Publication of his valuable investigation, which gives less space than I could to practical developments and administrative problems, but more to theoretical discussions on state rights, to the recorded formal meetings of the Reform Committee, and to annotations from the German literature, would complement Part III of this book.

In quoting German laws and decrees I have dispensed with a citation in each instance of the volume and page of the official gazette where they can be found. Unless otherwise indicated all national laws and decrees quoted are published in the *Reichsgesetzblatt* for the year in question, where they are given in the order of their dates. Since the early nineteen-twenties the growing material in the *Reichsgesetzblatt* has been distributed over two volumes every year, the second volume being reserved for international treaties and other specific material. Matter of the character dealt with in this study is to be found in the first (general) volume. Prussian laws and decrees, unless otherwise indicated, are published in the *Preussische Gesetz-sammlung*, in the order of their dates.

A. B.

PART I

POLITICAL FACTORS

American and German Federalism: Political Differences

AMERICAN federalism, from its inception, was an integral part of the country's democratic institutions. It originated in the same ideas that underlay bills of rights, town meetings, and the Declaration of Independence.¹ Men who in all matters wanted to be independent of British power overseas wished in their local affairs to be free from interference by some far-away central government, just as in their personal matters they desired to be left alone by any kind of government. But they were ready to handle their common affairs in common. Thus, after a short transitional period, foreign affairs, defense, interstate commerce, currency, and similar matters of national concern were considered appropriate subjects to be handled by the federal government, while others were retained for the states, and some were withdrawn from the reach of any government."

✓ American federalism, therefore, was no mere makeshift designed as a substitute for something else that had been lost. It was a creed—part and parcel of the democratic creed. In giving federal power and state power each its due, 'Dual Federalism' was indeed regarded as a great democratic innovation, fitted to solve many troubles in the world. It entitled Americans to the honor of 'having solved for the destinies of man the problem of his capacity for self-government,' said Madison. Federalism was 'the best guardian . . . of the liberty, safety, and the happiness of man.' It was 'the last hope of true liberty on the face of the earth.'¹

German federalism had a different political origin. Little in it stemmed from democratic ideas. The German Confederation (*Der Deutsche Bund*) of 1815-66 was a makeshift, a stopgap, designed to replace the weak bonds constituted by the emperor and the few existing imperial institutions which until the end of the Holy Roman

¹ *The Writings of James Madison* (New York, 1910), vol. 9, pp. 68, 136, 430 (note), 521, 605; E. S. Corwin, *The Twilight of the Supreme Court* (New York, 1934), p. 8.

Empire had interlocked the multitude of Germanic states. With the emperor gone, no ties, either actual or symbolic, were left. The Confederation was considered the most suitable substitute. An alliance of the former tenants-in-chief was the logical consequence of the elimination of the overlord, against whose powers they had conducted a merciless war of attrition for hundreds of years.

(True American federalism too replaced ties that had been indirectly provided by Great Britain. But here the federal structure was given a popular basis, and the new bonds rapidly grew much stronger than the old ones had been.) In contrast the German Confederation was one of princes and not of peoples. And it was weak. Princes joined forces mainly for the mutual defense of their independence and sovereignty. Each was anxious to retain for his state its separate foreign policy, army, police, currency, and customs barriers. While America discarded a similarly imperfect union within six years after the War of Independence, Germany continued hers for more than fifty years. Only a few minor concessions to the popular trends toward liberty and unity were included in the German Covenant, and the weak central powers of the Confederation were often used to help trample down these movements. Feudalistic features prevailed in the states. German liberalism, therefore, as well as democratic anti-monarchism and national patriotism aligned themselves against this brand of federalism, with its emphasis on princely independence. While the term *federalist* in the United States came to be applied to advocates of a strong federal government, the German term *Föderalist* was used for one who opposed all but the weakest federal government in favor of state independence.

Bismarck's federal constitution of 1871 greatly strengthened federal power, bringing foreign affairs, interstate commerce, currency, and other matters under exclusively federal control. But it preserved the technical character of an alliance of princes. It began with the words:

His Majesty, the King of Prussia on behalf of the North-German Federation; His Majesty, the King of Bavaria; His Majesty, the King of Württemberg; His Royal Highness, the Grand-Duke of Baden; and His Royal Highness, the Grand-Duke of Hessen and of the Rhine—the latter for the section of the Grand-Duchy situated south of the river Main²—conclude an eternal federation to protect the federal territory and the law of the land as well as to promote the welfare of the German people. This federation shall be known by the name of German Reich and shall have the following Constitution.

² The section of Hessen north of the river Main was part of the North-German Federation of 1866, and was therefore represented by the Prussian king, as presiding officer of that federation.

This undemocratic preamble was not changed until the empire collapsed in 1918. Actually, however, it had long been outmoded. Universal interest in the national Reichstag, which was divided not by states but by national parties; national legislation, rapidly growing in all spheres of life; nationwide business not hampered by internal customs barriers; popular feeling and common experience—these and other factors made the national union a matter of the people and the pride of the common man long before the revolution finally did away with the princes whose alliance had created the empire.

There was a change in regime in 1918 not in the Reich alone, but separately in each of the twenty-five constituent states. Twenty-two princes were expelled, or withdrew, by separate action, and three aristocratic city senates had to submit to popular control. If we may use the word revolution for any enforced change in regime, there was not one revolution but twenty-six, although it has sometimes been doubted whether, in the sociological sense of the term, there was any revolution at all. William II himself made a desperate attempt to hold his position as king of Prussia by abdicating only the throne of German emperor, but he had to quit the Prussian throne as well.

✓ In the beginning, the problem of federalism did not bother the masses very much. Their gravest domestic problem in the first two months, apart from bread and demobilization, was the choice between communism on the model that had been established in Russia a year before—that is, dictatorship by the proletariat or its 'vanguard'—and democracy on western models, based on free elections. Friedrich Ebert never wavered in his choice. Whatever weakness he may have shown in other respects, he steered the boat with a firm and resolute hand through the revolutionary storms that threatened to push it toward some kind of socialistic dictatorship, and he brought it early into the democratic port of general elections for a constituent assembly.

This was a vital decision. Demands for a dictatorship of the proletariat constituted not only a powerful storm but also, to socialists, a luring siren; it was likely from the outset that the socialists would fail to obtain a majority and that thus fidelity to democratic principles might deprive the workers of the greatest opportunity they had ever had to introduce the socialist system to which they adhered. It was, therefore, a decisive factor in German history that Friedrich Ebert meant to be a Social *Democrat*, who refused to give the lie to his democratic convictions simply because the hour was favorable to establish a dictatorship.³

³ See Appendix A on the dual source of Ebert's authority. This is not the proper place to describe the historical consequence which Ebert's policy and the communists' opposition to it had with regard to the renaissance of the army.

The result of the elections held on 19 January 1919 was an assembly in which the socialists, although by far the strongest group, failed indeed to obtain the coveted majority, while three parties together, all bent on establishing a genuinely democratic constitution—the Social Democrats, the Liberals (called Democrats), and the Catholic Center—commanded more than two-thirds of the votes. They framed the Constitution of Weimar.

The preamble of the new Constitution dropped any reference not only to the princes but also to the states. It read:

The German People, in their united branches [*Stämmen*] animated by the will to renew and stabilize their commonwealth [*Reich*] with liberty and justice, to preserve peace at home and abroad, and to promote social progress, have given themselves this Constitution.

While in the imperial Reichstag the people had shared legislative powers only within the framework of a constitution not designed by them, they now drafted their own constitution through their freely elected representatives. They drew up similar constitutions in each separate state, bringing every government, federal and state, under their control.

The difference in origin of German and American federalism could then have seemed a matter of the past. But the historical differences continued to affect the present. There remained most conspicuously the disproportionate size of Prussia and the scattered remainders of small principalities, for neither of which there is any analogy in the United States. Furthermore, relics of other times exercised a remarkable influence on popular feelings and especially on the traditions of state bureaucracies, which often continued to think of their authority as issuing from the Past rather than from the People. In addition, German and American federalism remained distinct in their approaches to the problems of distribution of powers between the national government and the state governments.

There also prevailed a remarkable difference in the share the states had in the federal government. This share was in some respects more strictly secured in Germany, where the delegates to the Federal Council (*Bundesrat*, called *Reichsrat* after 1919) were appointed by the state governments and acted under the direction of the latter, than it is in the United States, where popularly elected senators express their personal views. The states themselves, or their governments, and not the delegates, were members of the German Federal Council.⁴ But this strong feature of state power was offset by another—a weakening

⁴ Articles 61 and 63 of the Weimar Constitution. Only the delegates of the Prussian provinces had a personal vote. See below, Chapter II and Appendix D.

—factor in the democratic period, for the Weimar Constitution authorized the Reichstag to pass, with a two-thirds majority, any act or even amendment to the Constitution, over the veto of the Federal Council. The one recourse left the Federal Council in such a case was a popular referendum. Yet only when an amendment to the Constitution was at issue could the Council itself ask for the plebiscite; in matters of ordinary legislation this was left to the Reich President, who could not be compelled to act by the Federal Council.⁵

Actually there was no case in which the Reichstag ever passed an amendment to the Constitution over the veto of the Federal Council. Ordinary legislation, however, was so passed in a number of cases, and in none of them was a popular referendum called on the matter.

In view of the fact that a two thirds majority of the Reichstag could bypass the declared will of the Federal Council, it is a matter of theoretical controversy whether Germany during the democratic period was still a 'federal' country. But whatever our academic vocabulary, the practical importance of the Federal Council and of state rights remained great enough to justify the traditional classification of democratic Germany as federal. The direct membership of the states in the Federal Council was one of the reasons for this practical weight of both the states and the Council.⁶ And only by a *breach* of the Weimar Constitution could Franz von Papen and Adolf Hitler, in July 1932 and February 1933, free themselves of Prussia's democratic cabinet and of its influence on the Federal Council.

II

Contrasting Magnitudes—The Galaxy of States

THE galaxy of large and petty principalities in old Germany has often been described. For the present purpose it suffices to recall a few facts.

⁵ Articles 74 and 76

⁶ See F. F. Blitchly and M. E. Oatman, *The Government and Administration of Germany* (Johns Hopkins Press, Baltimore, 1928), pp. 52 ff., for a good appraisal of the importance of the Reichsrat, and especially for a clear exposition of its functions in the administrative field. This book is still invaluable for Anglo American students of German administration.

In the later period of the Holy Roman Empire there were in Germany more than seventeen hundred territorial possessions that were legally independent of one another, not including imperial possessions. The owners recognized no intermediate lord between them and the emperor, the universal overlord. They stood in immediate relation to him and to the empire, that is, they were *reichsunmittelbar*. Most of them were simply 'imperial knights' (*Reichsritter*) who, although exercising some governmental authority in their territories, had no standing in the old German Reichstag. Some three hundred possessions, however, including kingdoms, archduchies, duchies, principalities, archbishoprics, bishoprics, and free cities, could be called 'states' in a more definite sense.

Their number shrank rapidly, especially after the French Revolution. At Napoleon's command more than one hundred—among them archbishoprics, bishoprics, abbeys, and other ecclesiastical units, and forty six free cities—were bereft of their independence by the Regensburg Reichstag Commission in 1803, when Austria, Prussia, Bavaria, Württemberg, Baden, and other states were to be compensated for territories taken by Napoleon. Only thirty-nine states were left when the Congress of Vienna in 1815 united the surviving units in the German Confederation. The number had dropped to twenty seven by 1871, when Bismarck united twenty-five—all except Austria and Liechtenstein—in the German Empire, and added Alsace Lorraine as a national territory (*Reichsland*).

The Republic in 1918 still consisted of the same twenty five states. Their number was reduced to seventeen during the republican period by the combination of the Thuringian states and the agreement on little Waldeck's incorporation into Prussia. Two more were eliminated under the Hitler regime, leaving fifteen, apart from the new additions of 'national territories' (*Reichsgaue*) after 1933. The genesis of the changes since 1815 is outlined in Appendix B, with some statistical material added.

Seventeen states, at the end of the republican period, were not necessarily too many for a federal country with some sixty million inhabitants. But they were too different in size to make a well balanced federal structure possible (Map 1). Prussia (almost forty million inhabitants) included three fifths of the national population, Bavaria and Saxony together another fifth, and all the other fourteen states made up the remaining fifth. The populations of Bavaria (7.8 million) and Saxony (5.2 million) were about the same size as those of Illinois and Michigan respectively. Württemberg and Baden had two to three million inhabitants each (like Kentucky or Louisiana) and Thuringia, Hessen, and Hamburg had between one and two million inhabitants.

each (like South Carolina or Maryland). The other nine, however, had far less. Mecklenburg-Schwerin, Oldenburg, Brunswick, Bremen, and Anhalt, in that order, ranged from 700,000 to 360,000 inhabitants; Lippe, Lubeck, Mecklenburg-Strelitz, and Schaumburg-Lippe, from 180,000 to 50,000. Consequently the four smallest states together had fewer than half a million inhabitants¹ (about the population of a medium-size city), and the nine smallest had fewer than three million, which was less than the population of the single governmental district of Dusseldorf (3.8 million)—one of thirty-four Prussian districts—or of the city of Berlin (4 million). Six Prussian provinces, and even two governmental districts, had, each of them, more inhabitants than any of the non-Prussian states, excepting only Bavaria and Saxony. The Prussian Rhine province had about as many inhabitants as Bavaria, and the province of Westphalia as many as Saxony.

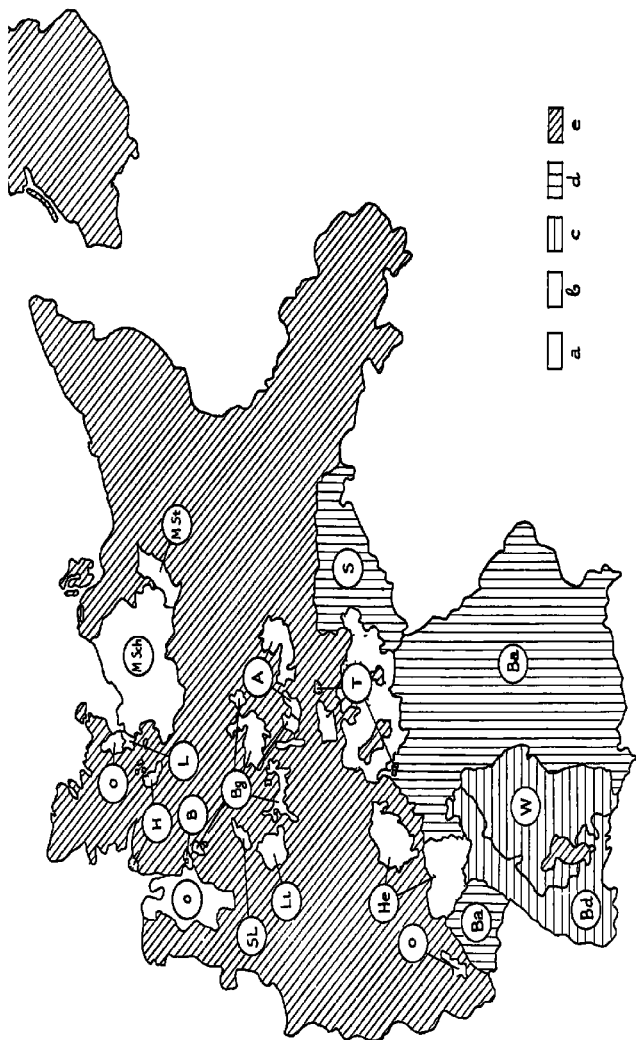
The United States also has a number of states with fewer than a million inhabitants; in fact there are fourteen such states. But they cover large areas, while the minor German states are small also in area. Thus the state with the smallest population in the United States—Nevada, with about 110,000 inhabitants—covers an area of 110,500 square miles, that is, about as much as Prussia, while the 50,000 inhabitants of the smallest German state, Schaumburg-Lippe, live on an area of only 131 square miles. Only one of the present German states (Mecklenburg) has fewer than 200 inhabitants per square mile, as have forty-two of the forty-eight units of the United States, and none has below 100 inhabitants per square mile, as have thirty-eight states in the United States.

Furthermore, the territory of most of the German states is not all contiguous. It is split into many sections, sometimes far distant from one another, as a result of the historical accident that private inheritance had brought them under one princely family. In a town like Woltdorf strips of a few hundred square feet were owned in turn by Prussia and Brunswick; in Kirchwarder, by Prussia and Hamburg. According to conservative estimates there were about two hundred so-called enclaves at the end of the republican period, about seventy-five of which were uninhabited, while another seventy-five had fewer than five hundred inhabitants each. In fact, no one knew exactly how many enclaves there were.

The Weimar Constitution did not interfere directly either with the number or with the boundaries of states and enclaves. After some

¹ Two of these have meanwhile been eliminated by the incorporation of Lubeck in Prussia and the union of the two Mecklenburgs. See Appendix B.

² Some enclaves have meanwhile been eliminated by exchange (see Appendix B), but many are still in existence.



MAP 1. THE 17 GERMAN STATES, 1933

a (white)—States (9) with fewer than 1 million inhabitants each:	H (Hamburg) 1.2 (1939: 1.7, because of territorial changes);
SL (Schaumburg-Lippe, in the northwest of the central group) 0.05;	He (Hessen) 1.4;
M-St (Mecklenburg-Strelitz, now united with M-Sch) 0.11;	T (Thüringen) 1.7.
L (Lübeck, now incorporated in Prussia) 0.14;	c (horizontal lines)—States (2) with 2 to 3 million inhabitants each:
Li (Lippe) 0.18;	Bd (Baden) 2.4;
A (Anhalt) 0.36;	W (Württemberg) 2.7.
B (Bremen) 0.37;	d (vertical lines)—States (2) with 5 to 8 million inhabitants each:
Bg (Braunschweig) 0.51;	S (Sachsen) 5.2;
O (Oldenburg) 0.51;	Ba (Bayern) 7.8.
M-Sch (Mecklenburg-Schwerin, now united with M-St) 0.69.	e (diagonal lines)—Prussia, with 39.8 million inhabitants (1939: 41.7).
b (dotted area)—States (3) with 1 to 2 million inhabitants each:	

Figures as of 1933, unless indicated otherwise.
See Appendix B for more recent figures and further details.

abortive discussion about a rearrangement the National Assembly limited itself, for lack of time, to inserting an article providing for such changes in the future. Bills to this end could be introduced freely. To become valid, however, they needed two-thirds majorities in the two federal houses, exactly like any constitutional amendment, if they were passed against the will of the states whose territories were affected. If the latter consented, or if their populations requested the change by plebiscite, a simple statute could ratify the change.³ Except for the fusion of the Thuringian states and the incorporation of Waldeck into Prussia, this provision did not lead to any substantial changes during the republican period. Thus the states remained essentially the same as they had been under the monarchy.

Nor was the relative strength of the states in the Federal Council (Reichsrat) seriously affected by the Weimar Constitution. The existing differences in size and population seemed to make it impossible to allot an equal number of votes to all states, as in the United States (Senate) or Switzerland (Ständerat). Instead, the number of votes was made proportionate to the population. This entailed no considerable change from monarchical times in the relative strength of most of the states. As to Prussia, which according to the new formula *would have obtained three-fifths of the votes, the Weimar Constitution* limited her to two-fifths. The boldest novelty was contained in the clause providing that half of the Prussian share of votes should be left to the Prussian provinces—a procedure that gave each province one vote, cast independently by a delegate who was appointed by the executive committee of the provincial legislature (Articles 61 and 63). This novelty exercised considerable influence on a number of decisions made in the Federal Council during the republican period, especially when the conservative delegates of the eastern provinces voted against the democratic state government. But as a whole, Prussia's influence in the Council remained far superior to that of any other state or group of states.⁴

³ See Appendix C for the text of Article 18 of the Weimar Constitution

⁴ See Appendix D for the distribution of votes in the Federal Council from 1815 to 1933. Note the various procedures used in the first period (until 1866) for votes to be cast by *group* of minor states—an interesting precedent for group votes of minor states in international organization

III

Prussia, Prussianism, and the Prussians

PRUSSIA, then, emerged *undivided* in the Weimar Republic, and undiminished in territory, except for cessions under the Treaty of Versailles. She covered the northern part of Germany, from the points farthest in the east (East Prussia and Silesia) to those farthest in the west (Rhine province) and north (Schleswig-Holstein). No other German state reached out both to the east and the west, nor had Prussia always done so.

PRUSSIA'S ORIGIN AND GROWTH¹

A thousand years ago, Franconia and Saxony, the two great original duchies in the west, covered the whole territory from the Rhine and Main rivers eastward to the Elbe.² Brandenburg, originally called the North Mark, was a small military outpost on the banks of the Elbe, against the Slavic heathen, not unlike Fort Duquesne on the Ohio River—the later Pittsburgh—in early American times. This outpost, founded by Charlemagne, gradually expanded toward the Oder River, about a hundred miles farther east, and was constantly engaged in borderline fights with the Slavic tribes.

The royal counts in charge of the outpost became margraves of Brandenburg in the twelfth century. They were first members of an Anhaltine, next of a Bavarian, then of a Luxembourg line, and finally—after 1415—of the Suabian House of Hohenzollern. By that time the relative significance of the Brandenburg territory had grown, because the larger western duchies had gone to pieces. Franconia had been transformed into a number of archbishoprics, bishoprics, abbeys,

¹ This short survey presents no more than the chief data, as an introduction to the subsequent remarks. S. B. Fay's *Rise of Brandenburg-Prussia to 1786* (New York, 1937) is an excellent American text on the history of Prussia until the death of Frederick the Great.

² The original duchy of Saxony, which covered the regions of present-day Westphalia, Hanover, Oldenburg, etc., must not be confused with present-day Saxony on the upper Elbe River.

imperial palatinates, free cities, and smaller possessions. Saxony had been dismembered, after Emperor Frederick I (Barbarossa) defeated Henry the Lion (1180). Out of Saxony had emerged Brunswick, Luneburg (later Hanover), Oldenburg, Holstein, and other units, including the imperial city of Lubeck. Pomerania, which the Saxon duke had conquered, regained its independence. Thus Mark Brandenburg had enough relative importance to be one of the seven electorates of the Holy Roman Empire.

From the early seventeenth century, a little more than three hundred years ago, the electors in Brandenburg began to acquire far outlying possessions, in part by inheritance, in part by treaties, and in good part by conquest. The first, in 1614, were three small districts far to the west, two of them (Cleve and Mark) around the lower Rhine and Ruhr, the third (Ravensberg) near the Weser River. Only four years later, in 1618, there followed a larger acquisition far to the east, called Prussia, a section roughly corresponding to the main part of the present province of East Prussia³

When the Brandenburg margraves inherited (East) Prussia, it was under Polish overlordship, but the feudal rights of the Polish king were abandoned in the peace of Oliva at the end of the Swedish-Polish War (1660), with the result that the margraves became sovereign dukes of (East) Prussia. Making use of the fact that this new possession was outside the pale of the Holy Roman Empire, the margrave saw fit, in 1701, with the emperor's consent, to assume the title of 'King in Prussia.' His kingdom, therefore, was not Brandenburg, but that outlying new acquisition, where the coronation was logically held, in Königsberg. Soon, however, all governmental agencies in Brandenburg and in the other scattered possessions of the Hohenzollerns were called 'royal' agencies, in honor of the highest title of their master. Some forty years later, Frederick the Great called himself 'King of Prussia,' and all the territories of the Hohenzollerns became known by

³ Back in the early thirteenth century, pope and emperor had authorized the Knights of the Teutonic, or German, Order (*Deutscher Orden*) to go from the Mediterranean to the Baltic Sea and fight the heathen Prussians. A Polish duke, harassed by the Prussians, had expressly invited the Order for this purpose. The German Order was a religious organization—Catholic, of course—founded during the Crusades about thirty years earlier. The seat of its grand master (*Hochmeister*), originally in Palestine and later in Venice, was transferred to Marienburg in 1309 and finally to Königsberg (1457). But conflicts between the Order and the Poles soon developed. After defeat at Tannenberg (1410) and the Polish conquest of Marienburg (1457), the Knights had to cede West Prussia and the Ermland section in East Prussia to Poland. The rest of East Prussia remained under their rule, although it was thenceforth held only as a fief under Polish overlordship. In 1525 the Order, having accepted the Reformation, was secularized, its territory became a duchy under Polish suzerainty. At that time Albert of Hohenzollern, a relative of the Brandenburg elector, was the Order's grand master. He thus became the first duke of Prussia. In 1618 his son died without a direct heir.

the name of Prussia. While at first each section had retained its own laws and traditional arrangements, a more systematic structure of the whole area's administration began to evolve. The genesis of the royal position explains the traditionally close connection of the Prussian monarchy with East Prussia.

The large stretch of land between Brandenburg and (East) Prussia was gradually bridged by the acquisition of East Pomerania in 1648, at the end of the Thirty Years' War, and of other parts of Pomerania in 1720; of West Prussia and the Ermland bishopric in East Prussia (1772); of Danzig, Thorn and Posen (1793); and finally, of the remaining part of Pomerania—which had in all that time been held by Sweden—after the War of Liberation in 1815.

In the southeast, Prussia conquered and kept Silesia (1742). In the south, the Congress of Vienna gave her the contiguous part of Saxony in 1815. Thus at the end of the Napoleonic period Prussia beyond the Elbe looked much as it has been known to the present generation.

How hazardous and precarious at times was this expansion toward the east and south is best illustrated by the Seven Years' War (1756-63). At its beginning a great realignment of European powers took place. France, which had formerly supported Frederick against Austria, now fought on Austria's side against Prussia; and England, which had formerly sided with Austria, became Frederick's ally in a war waged against France on both sides of the Atlantic simultaneously. The older Prussian tradition had it that Prussia fought a preventive war, to forestall an attack planned by her opponents. But even a conservative Prussian historian, a scholar of unusual independence, has reached the conclusion that Frederick started the fight in Europe as an aggressor.⁴ Others have maintained that both parties had aggressive intentions. Whatever the origin of the war, it seems sure that Frederick wanted to incorporate Saxony in Prussia in order to solidify the bridge that connected Brandenburg with Silesia—conquered fourteen years earlier—and that he further wished to obtain West Prussia in order to close the gap that still separated Brandenburg from East Prussia. On the other hand, his enemies (Austria, Russia, France, and, later, Sweden) wished not only to prevent Frederick from reaching his objectives but also to take from him East Prussia for Poland or Russia, a part of Pomerania for Sweden, and Magdeburg for Saxony, and to reconquer Silesia for Austria. Their victory, therefore, would have reduced Prussia essentially to Brandenburg.

Several times Frederick was confronted with disastrous defeats, particularly in 1757 in Bohemia (Kolin) and in 1759, at the hands of the

⁴ Hans Delbrück, *Weltgeschichte*, vol. 3 (Berlin, 1926), pp. 610 ff.

Russians, near Frankfort-on-Oder (Kunersdorf). Berlin was occupied twice, first by the Austrians and next by the Russians, and the French reached Brandenburg. Prussia's situation appeared hopeless to the world, and at times even to Frederick. But he held on, waiting for some turn for the better, which eventually occurred in 1762 with the death of the Russian empress, Elizabeth, and the succession to the throne of Peter III, admirer of Frederick, who immediately had his troops change sides. This dogged endurance and its final reward constitute the image, familiar to all Germans, that Hitler and the Army tried to conjure up in 1944-5—when the Allied troops reached German soil and the Russians stood at Kunersdorf again—contrasting such spirit with the surrender in 1918 and its consequences. The Hubertusburg Peace of 1763 preserved the *status quo*, and thereby, although not adding to Prussia's possessions, confirmed her dominion over East Prussia, Pomerania, and Silesia, which had almost been lost. It was not long before Prussia acquired West Prussia (1772) and the northern part, though not the whole, of Saxony (1815).

But around 1800 Prussia was still primarily an 'eastern' (east-Elbian) power. Her advance toward her far-western possessions had been much less grandiose. True, Magdeburg and Halberstadt between the Elbe River and the Harz Mountains were combined with Brandenburg as early as 1648, as was the bishopric of Minden on the Weser River, near the earlier acquisition of Ravensberg. The northwestern part of the German sea coast came next in 1744, that is, Ostfriesland (temporarily lost to Hanover in 1815). But the great acquisitions in the west were not made until the nineteenth century, beginning only in the Napoleonic epoch. First, the bishoprics of Hildesheim, near the Harz Mountains, and of Münster and Paderborn, in Westphalia, became Prussian in 1803, as compensation for territory annexed by Napoleon west of the Rhine. Like all other Prussian possessions west of the Elbe, they were lost to Napoleon in 1807, but—except for Hildesheim—were recovered in 1815. In that year Prussia obtained the entire territory of the present provinces of Rhineland and Westphalia, which Napoleon, only a few years before, had taken from their innumerable ecclesiastical and secular lords in order either to incorporate them into France (Rhineland) or to bring them under the rule of a Bonaparte prince (Westphalia).

Even after this aggrandizement there remained a considerable gap between Brandenburg and the western possessions. It was filled in 1866 by the annexation of Hanover, Kurhessen, Nassau, and Frankfort-on-Main, all of which had supported Austria in the Austro-Prussian War. In the north, Bismarck added Schleswig-Holstein.

In all the western territories that Prussia acquired during the nine-

teenth century, there had been a strong popular tendency toward a united German fatherland, but not toward incorporation in Prussia. When Bismarck succeeded in forming the German Reich, however, people in the western Prussian provinces gradually acquiesced, because of the roundabout fulfilment of their old dream. Their resentment toward Prussia either subsided, often turning into genuine admiration although rarely into genuine love; or it assumed the form of a movement for decentralization within Prussia, or, at the most, for separate statehood within the German union.⁵

PRUSSIA AS A REPUBLIC

Prussia's transition to a republican regime was bound to have considerable bearing on the Prussian question. On the one hand, elimination of the monarchy raised hopes of territorial reorganization. On the other, it further mitigated existing antipathies. People were no longer 'ruled by Prussia,' but—academically speaking at least—they themselves ruled Prussia, and all of them in all sections had the same share in that rule.

These, however, were not the only changes. Under the imperial constitution of 1871 the Prussian king had been vested with the dignity of German emperor. He had, therefore, been free to appoint the same person German chancellor and Prussian prime minister. In fact, except for three short-lived experiments,⁶ he had always done so. This union of Prussian and federal offices extended even to the office of the Prussian foreign minister. The latter fact was technically important, because out of old confederate habits each state regarded its relations to the other German states as 'foreign affairs,' to be cleared through its foreign office, and applied this practice also to its relations with the federal government. Thus Prussian votes in the Federal Council (*Bundesrat*) were cast not by Prussia's prime minister but by her foreign minister. For this reason Bismarck took care to remain Prussian foreign minister when he became chancellor, and this practice was followed by his successors. It was his office as Prussian foreign minister that secured the imperial chancellor his final control over the Prussian votes in the Federal Council.

There were, then, three links between the government of Prussia and that of the Reich during the imperial period: the identity of king and emperor, of Prussian prime minister and national chancellor, and

⁵ See Appendix E on movements for independence from Prussia in the Rhineland and in Upper Silesia.

⁶ December 1872 to November 1873; March 1892 to October 1894; and at the end of the First World War, during the chancellorship of Prince Maximilian von Baden.

of Prussian foreign minister and national chancellor. All three links were destroyed with the establishment of democratic regimes. The scope of the new office of the President of the Republic was restricted to the national scene. Even if it had extended to Prussia, the president would have had to depend in his choice of cabinets on the support of two separate parliaments. And parliamentary majorities in the two areas differed. Thus the cabinets too came to differ, in persons as well as in political affiliations. This significant fact leads us to pay some attention to the results of Prussian elections as compared with national elections.

Prussia, through the monarchical period, had no equivalent to the universal manhood franchise that ruled the elections to the federal Reichstag. Instead, her three-class system of franchise kept the Social Democrats down to only 10 out of the Prussian Diet's 443 members at a time (1912) when they obtained 110 out of the 397 seats in the Reichstag. Therefore the influence of the Junkers (landed aristocrats, especially those owning the large eastern estates), of the big industrialists (especially in the Ruhr territory and Silesia), of military-minded nationalists, and of the conservative bureaucracy could prevail in the Prussian Diet. There the Conservatives still held 201 seats when general elections reduced their number in the Reichstag—including Progressive Conservatives (*Freikonservative*) and a little group of anti-Semites—to less than 70. Furthermore, concurrence of an Upper House, whose membership depended mainly on royal appointments, was required for legislation in Prussia.

Prussianism, therefore, in the sense in which the term is used in the English language, could exert itself much more freely in the Prussian legislature than in the Reichstag. In various ways, however, it could spread its influence to national affairs. The emperor-king did not depend on the legislature either in Prussia or in the Reich when appointing his ministers and public servants. He could choose them as he thought fit, and could maintain them in office, no matter what the legislatures thought of them. Strict laws and regulations regarding civil-service examinations for all but a few offices, and review by the courts—either regular or administrative—of the legality of all governmental actions limited royal power in many other respects, but not in its political choice of public employees from among adherents to a more or less conservative course. Thus Social Democrats did not obtain even the lowest position in public office. Catholics rarely reached positions of influence. Left Liberals were practically barred from political office and were relegated, in cautious percentages, to positions as judges, mayors, or the like. There were indeed periods when even National Liberals were excluded from any career in the public service and only

Conservatives received major posts. At times single representatives of democratic ideas were called to high positions. The trend was definitely toward this more liberal practice, but it was far from common, even at the end of the imperial period.

In addition, there were other wedges of entrance for conservative Prussian influence on national affairs. No national law could be enacted without the consent of the Federal Council, in which Prussia's votes dominated the scene and where she even held an absolute veto power in military matters and in regard to constitutional amendments. The system was crowned by a royal and imperial court, at which military splendor set the style and from which Prussian influence could be exercised through the powerful channels of society.

Consequently, notwithstanding the fact that in the Reichstag Social Democrats, Left Liberals, and the Catholic Center held almost a two-thirds majority of seats as early as 1912, the world used to think of the German nation as dominated by Prussia, and of Prussia as given to the tradition of 'Prussianism.'⁷

THE PRUSSIANS

If conservative Prussianism continued to have many footholds in Prussian offices, it certainly did not express the ideas and wishes of the majority of the Prussian people—the Prussians. Even during the monarchical period this was evident, from the results produced in the Prussian part of Germany by the general franchise in national elections. Consequently, when universal franchise was finally introduced in Prussia, in 1919, this late reform was bound to cause the most spectacular changes in the composition of the Prussian Diet.

⁷ *Preussentum* the German equivalent of the term Prussianism, has a distinctly different connotation. It stresses the positive and idealistic aspects of the Prussian tradition, such as devotion to the country irrespective of its poorness, honesty in poverty, thrift and frugality connected with a decent appearance in public, cleanliness, sense of duty, discipline, and *Sachlichkeit* that is, impersonal devotion to one's tasks or to the problem at hand. Whenever the negative aspects and exaggerations were meant that are referred to by the English use of Prussianism other terms would be employed in Germany. One would speak of the Prussian Junkers, of East Elbins, of Prussian militarism, or of the Prussians with a particular intonation, but not of *Preussentum*. This contrast in the connotations of seemingly corresponding terms, as used at home and abroad, is characteristic of many other terms, such as communism is used in Russia and in the West, or democracy as used in democratic and totalitarian countries. Always the term intends to convey the idealistic aims in the one case, the seamy side of the sociological concept in the other. The Social Democratic Prime Minister Otto Braun, himself a native of East Prussia, where he led the fight of the agricultural workers against the landed aristocracy, and throughout his life one of the most ardent fighters against 'Prussianism', ends his memoirs—written in exile before the War—with the confession that he is 'proud to be a Prussian and a German' (*Von Weimar zu Hitler*, Europa Verlag, New York, 1940, p. 453).

It gradually appeared that even larger percentages of Prussians than of other German citizens backed a truly democratic form of government. While in monarchical times Prussia's Diet had stood far behind the Reichstag in the number of its democratic deputies, the elections after 1918 reversed this alignment. Parties genuinely committed to a democratic regime, that is, Social Democrats, Left Liberals (called Democrats after 1918), and the Catholic Center, commanded a majority in the Prussian Diet not only in 1919, as did the same three parties in the national Reichstag, but again during 1920-24 and 1928-32. In the interim, 1924-8, they were short by only four seats in Prussia, and were able to make up this slight deficiency by support from smaller middle groups. In the Reichstag the three parties' majority disappeared in 1920 and was never regained thereafter; there they fell short of a majority during 1920-24 by twenty-five seats, during 1924-8 by forty-four and fifteen seats (two elections held in 1924), and during 1928-30 by seven seats. The dissolution of the Reichstag in 1930 only aggravated the evil, for the deficiency of the three parties grew to sixty-four seats. At that time a considerable change would have appeared in the Prussian Diet, too, if elections had been held in Prussia; but even then the figures in the Diet would have remained more favorable than in the Reichstag.

This discrepancy between the election results in Prussia and in the Reich stemmed mainly from the fact that the Bavarian Catholics withdrew from the Center Party in 1920 to form a separate group, the Bavarian People's Party, which clung to monarchical traditions and was strongly opposed to co-operation with the Social Democrats except in coalitions that included rightist parties too. Other states that had a higher percentage of rightist voters than Prussia were Saxony, Thuringia, Mecklenburg, and, after 1930, Brunswick and Oldenburg; in all of them relatively more people than in Prussia cast their ballots for nationalistic, national-liberal, or other democratically unreliable parties of the right. Some states, for example Hamburg, had a higher percentage of communist voters, or of both rightist and communist voters, as was the case in Saxony and Thuringia.

Of course, the percentage of rightist voters in some *sections* of Prussia, such as Pomerania, East Prussia, and Schleswig-Holstein, was very high, as was the percentage of communists in others, such as Berlin and the Ruhr territory. Prussia as an entity, however, included relatively more democratic voters than did the nation as a whole.

In November 1932 the only German districts that still showed a majority for the Weimar coalition parties over all others taken together were Prussian—the districts of Cologne-Aachen and Coblenz-Trier in the Rhineland. And even under the terroristic pressure of the elections

held on 5 March 1933 the nationalistic parties, combined, failed to reach majorities in six western districts of Prussia and in Berlin.⁸

CONTRASTING CABINETS IN THE REICH AND IN PRUSSIA AFTER 1918

In consequence of these facts the Prussian democratic cabinets consisted without interruption of members of the Weimar coalition parties,⁹ to which two National Liberals were only temporarily added (1921 to January 1925). Social Democrat Otto Braun was prime minister from 1920 to 1933, except for a few months in 1921 and 1925. In the Reich cabinets, however, the Weimar coalition came to a sudden end as early as 1920. No Social Democrats were in the federal cabinets from June 1920 to May 1921, from November 1922 to June 1928 (with the exception of three months in 1923), or after March 1930. Instead, the Reich cabinets included not only National Liberals (Stresemann's party, of which the majority were much more conservative than their leader) without interruption from 1922 to the end, but also strictly anti democratic German Nationals during considerable stretches of time (from January 1925 to January 1926, from January 1927 to June 1928, and again from May 1932 to the end).

This political difference between the two cabinets in Berlin led to a tragic dilemma. The hopes of the workers and of all democratically minded sections of the people had been traditionally with the national government rather than with that of the once reactionary Prussia. Many republicans now shifted their sympathy in domestic affairs from the national government to the Prussian, which showed greater fervor in defending democracy against growing reaction and fascism. It was the democratic Prussian cabinet which, as early as November 1922, outlawed the National Socialist party in Prussia, and again in 1927 outlawed the Berlin party section, and which forbade Hitler to make public speeches in Prussia from 1925 to 1928, until the failure of the other states to follow this practice and the defeat of the Nazis in the 1928 elections led to discontinuance of the ban. It was the Prussian cabinet which in 1928 led the vote in the Federal Council against the building of the first pocket battleship (the later *Deutschland*); which, in contrast to the Reich cabinet, forbade members of the Prussian civil service to be members of the National Socialist party; which conducted police action against the Nazis with comparative vigor. It was against this democratic Prussian cabinet that Reich Chancellor von Papen launched his unconstitutional attack when, on 20 July

⁸ See Chapter v, and the maps presented there.

⁹ That is, Social Democrats, Democrats, and Center, only from April to November 1921 were no Social Democrats in the Prussian cabinet.

1932, he attempted to oust its members by presidential decree. And it was this same Prussian cabinet—re-established by the Supreme Court—with which Hitler found himself confronted when he assumed office, and which he removed on 6 February 1933, repeating Papen's unconstitutional act.

It is a moot question, not to be discussed here, whether the Prussian measures were always wise and whether at the end the Prussian cabinet should have fought with other than constitutional weapons, but its political fight against fascism was sincere, and continued even after the Reich cabinet and the cabinets of most other states had capitulated.¹⁰

While the political composition of the people as a whole made Prussia an important factor in the defense of democracy, the very existence of such a large state within the national structure was in conflict with democratic ideas of decentralization. The Prussian government was not a regional government; it was another central government in charge of important legislative and administrative functions within two-thirds of the national territory. Much as democratic thought has always been interested in regional decentralization, whether of a federal or a merely administrative character, there was nothing in the democratic way of thinking, except for momentary party interests, that could be offered in support of a second *central* government. State police measures and improvements in the administration of justice and education, or in the supervision of local government, were certainly important ingredients of a program of domestic reconstruction. But alone they were only patchwork. The reconstruction of the army, the economic, financial, and social policy, and the entire area of foreign policy were not Prussian but federal matters. The duplication of central governments necessarily led to friction between the two cabinets, each of which could to some extent frustrate or at least hamper the other's policy. It led to the establishment of two central bureaucracies—in addition to the duplication of agencies in the field, the latter evil being one with which other countries, too, are familiar. Even when political harmony existed between the two cabinets, there were bound to be administrative conflicts.¹¹

Thus the Prussian question assumed completely new aspects in the democratic period. On the one hand there was now a more liberal composition of the Prussian than of the national government. On the

¹⁰ See Arnold Bracht, *Prelude to Silence—The End of the German Republic* (New York, 1944), pp. 39, 51, 133 ff., the memoirs of Otto Braun (cited above) and of Albert C. Grzesinski, formerly Prussian minister of the interior and police president of Berlin, *Inside Germany* (New York, 1939), and Friedrich Stampfer, *Die vierzehn Jahre der ersten deutschen Republik* (Karlsbad, 1936).

¹¹ See Chapter VII.

other hand the three traditional links between the governments were gone. The political implications of the ensuing dualism were no less disturbing now that Prussianism had lost its grip on the Prussian government and had shifted its influence directly to the Reich government. In addition, administrative difficulties grew with the extension of federal powers. All in all, the Prussian question demanded solution.

IV

Bavaria

ORIGIN AND GROWTH

BAVARIA was one of the original, or 'stem,' duchies. The ancient duchy did not, however, include the western and northwestern sections of what is now Bavaria. Augsburg, Nurnberg, Wurzburg, and the Palatinate, sections inhabited by the Suabian and Franconian tribes. On the other hand, it did include sections in the south and southeast that have long ceased to constitute parts of Bavaria: Tirol, Salzburg, Carinthia, and what was then called the Bavarian East Mark. Like the North Mark, later Mark Brandenburg, the Bavarian East Mark, later Austria, was a military border territory, organized for protection against the attacks of non Germanic tribes. Like other parts of Bavaria it was at one time overrun by the Magyars (Hungarians), but it was restored after the decisive victory of Otto the Great in 951, and it gradually expanded farther down the Danube River to the present Hungarian boundaries.

Austria and other southern territories were soon separated from Bavaria. Although reunited for some time in the eleventh century, after 1156, that is, for nearly eight hundred years, Austria and Bavaria were ruled by different dynasties. Their relations were not always friendly. In the great European War of the Spanish Succession (1701-13) Bavaria sided with France against Austria and England. When the male line of the ruling Habsburg dynasty became extinct in 1740, the Bavarian prince joined France and Prussia against Austria and, after the conquest of Bohemia, had himself elected emperor (1742). The crown of Austria, however, remained with the last Habsburg

emperor's daughter, Maria Theresa, and only three years later the imperial crown passed to her husband. Territorial disputes led to another conflict in 1778, in which Bavaria once more joined Prussia against Austria. In 1805, again, she supported France against Austria. On that occasion she obtained Tirol, Vorarlberg and Trient as rewards from Napoleon, but had to give up these territories ten years later. Thereafter the relations between the two countries were more friendly.

At the time of the final separation of Austria and Bavaria, in the twelfth century, not only Bavaria, but in addition the mighty duchy of Saxony in the north, was ruled by the Bavarian prince, a duke from the House of Guelph. The Guelphs were an old Suabian family which had branched out in many directions—one of its daughters had been the mother of Charles, Carolingian king of France; and Guelph princes of Hanover were later to become kings of England. In uniting both Saxony and Bavaria, the Guelphs had risen to the most powerful position within the entire Germanic empire. It was a Guelph duke, Henry the Lion, who founded the city of Munich in the south, near the Alps, and promoted Lübeck in the north, near the Baltic. His power collapsed, however, when Emperor Frederick Barbarossa first outlawed and then defeated him in a domestic war, which arose from Henry's refusal to follow the Emperor to Italy (1180). In consequence of Henry's defeat, Bavaria's connection with Saxony came to an end. Bavaria was given to the House of Wittelsbach, which in its various lines remained the ruling dynasty down to 1918.

As was said above, the original duchy of Bavaria did not include her present western and northern sections. The first of these that she acquired was the Rhenish Palatinate, an imperial possession—situated both west and east of the Rhine and including Heidelberg—which Emperor Frederick II gave to the Wittelsbach family in 1214. Inheritance in different family lines split the Palatinate from Bavaria in 1329, and the separation lasted for almost 450 years, that is, until 1777, when the two were reunited under the Palatinate line of the House of Wittelsbach.

Twenty years later the Palatinate was taken by Napoleon, who in 1803 gave its eastern part, including Heidelberg and Mannheim, to Baden, to which it still belongs, keeping for France the part west of the Rhine, as well as all other territories west of that river. This western part alone was returned to Bavaria in 1815 after the War of Liberation, in which Bavaria had joined Prussia, Austria, and Russia prior to the decisive Battle of Leipzig. The eastern part, with Heidelberg and Mannheim, remained Badenese. The Bavarian Palatinate, therefore, is an outlying exclave of Bavaria, and has a distinct historical origin.

Inheritance in different family lines, which separated the Palatinate from Bavaria for such a long time, split the original duchy of Bavaria into three parts, but for a shorter period.¹ After their reunion in 1503, further splits were excluded by the establishment of the principle of primogeniture.

Not until Napoleonic times did Bavaria acquire her other western sections. The secularized bishoprics of Wurzburg, Bamberg, Augsburg, and Freising, and many abbeys and free cities, among them Nurnberg, were given to Bavaria in 1803, 1805, and 1806, to compensate her for the loss of the Palatinate, and she was able to keep the five cities mentioned and most of her other acquisitions when she recovered the western Palatinate in 1815. Ansbach, Bayreuth, and Aschaffenburg, in the northwest, were also added in this period.

These acquisitions ended the major changes in the map of Bavaria,² in contrast to Prussia, where important additions were effected even later. The historical fact that present day Bavaria has far outgrown the original tribal duchy is revealed by the names of six of her eight pre-Hitler districts.³ Suabia in the west; Upper, Middle, and Lower Franconia and Upper Palatinate in the northwest and north; and the Palatinate beyond the Rhine. The two others were Upper and Lower Bavaria.

Bavaria's status within the Holy Roman Empire was elevated in 1623, when her duke became one of the seven electors of the emperor. Twice, for short periods, Bavarian princes were themselves elected to the imperial throne—Ludwig the Bavarian, 1314-47, and Karl Albert, 1742-5. Bavaria did not become a kingdom, however, until the time of Napoleon, who on the demise of the Holy Roman Empire made the Bavarian prince a king, in 1806.

In that year Bavaria joined Napoleon's short-lived Confederacy of the Rhine, which came to encompass all the German states except Austria, Prussia, Brunswick, and Kurhessen, but collapsed in 1813. After the War of Liberation Bavaria became a member of the newly created German Confederation (1815-66). She fought on Austria's side in 1866, but participated with Prussia and the other German states, except Austria, in the Franco-Prussian War of 1870-71, and entered the German Empire of 1871 with a few special privileges. These referred in particular to her postal service, her excise taxes on beer and

¹ One of the three Bavarian lines obtained the rule over Brandenburg in the fourteenth century, and held it for fifty years (1324-73).

² There were some minor changes, however. Bavaria acquired the Coburg section of Sachsen-Coburg-Gotha on the union of the Thuringian petty states into the one state of Thuringia in 1920, and small sections of the Sudeten territory in 1939. See Appendix B.

³ The Hitler regime reduced the number of districts.

hard liquor, her exemption from any imperial state of siege in peace time, and certain peculiarities of her military organization the king of Bavaria, and not the German emperor, was the supreme commander of the Bavarian troops in peacetime, only with the declaration of war did the supreme command pass to the emperor, and Bavaria was more independent than other states in organizing and supervising her troops and in spending the amounts appropriated for them in the federal budget

Within the empire, Bavaria was second in power only to Prussia, with six votes in the Federal Council (*Bundesrat*) as against Prussia's seventeen, out of a total of fifty eight The absence of federal field agencies in Bavaria⁴ did much to keep relations smooth Bismarck took great care to consider Bavarian feelings in other respects as well Popular sentiment in Bavaria was definitely in favor of the union, but it was certainly not in love with Prussia or in favor of Prussia's leading part in the Reich Prussianism at that time appeared to Bavarians not unlike the way it was viewed abroad

RELATIONS TO PRUSSIA AND THE REICH AFTER 1918

The revolution of 1918 led to a remarkable shift in the relations between Bavaria and Prussia This shift has rarely been understood outside Germany, because the traditional picture was too deeply engrained to be easily corrected The facts are as follows

The Prussian government had formerly been disliked in Bavaria mainly because of its militaristic and conservative character During the democratic period, when Prussia was governed almost uninterruptedly by a combination of Social Democrats, Liberals, and democratic Catholics, her government was still disliked in Bavaria, but for reasons quite opposite to the earlier ones In Bavaria, after a short communist dictatorship, reactionary governments had assumed power Prussian militarists, such as General Ludendorff, went to Bavaria to live, and were well received The young Hitler movement, like other military organizations before it, settled down in Munich, and at a time when it was outlawed in Prussia was in close contact with the Bavarian government, until Hitler's abortive Beer Hall Putsch of 1923 The Bavarian part of the Catholic Center, as mentioned before, split off and formed a separate Bavarian People's Party with distinctly anti liberal tendencies Monarchical tradition and personal loyalty to the Wittelsbach family determined the attitude of the Bavarian cabinets, while Prussian cabinets took the lead in the fight against monar

⁴ See Chapter vi

chical traditions in Prussia and against continued loyalty to the Hohenzollerns.

Thus it came to pass that Prussia's influence in federal matters, too, was resented in Bavaria, not because of the Prussian government's militarism, but now because of its anti-militaristic and its democratic and liberal tendencies. Interference by the federal government with the reactionary movements in Bavaria was passionately opposed, as was the spread of federal field agencies in Bavaria.

This new antagonism between Bavaria and the Reich and Prussian cabinets in Berlin found its most violent expression in two conflicts that erupted in 1922 and 1923. In July 1922 the Bavarian cabinet refused to recognize the Act for the Protection of the Republic; after the assassination of the foreign minister, Walther Rathenau, this act had been passed by the Federal Council, with Prussia's active support, and by the Reichstag, with two-thirds majorities in both bodies—sufficient to make the act a valid amendment to the Constitution. The Bavarian cabinet, in defiance of the Constitution, superseded the statute with a decree of its own, the execution of which was left exclusively to Bavarian officials. When Reich President Ebert threatened to use his emergency powers, under Article 48, against the Bavarian cabinet, negotiations led to a settlement under which Bavaria recognized the federal statute, while the federal cabinet made several concessions to the Bavarian views. A special 'South-German Senate' was created in the 'Supreme Court for the Protection of the Republic' to make the final decisions on violations of the act committed in the south. A Bavarian aide was appointed to the Attorney General, and Bavarian district attorneys participated in the procedure if the case originated in Bavaria. The federal cabinet also issued regulations to assure the states that in police and judicial matters the federal government would abstain from sending federal officials and would, in general, rely on the state and local authorities. In addition, a general agreement was reached (August 1922) that no further use would be made of the national power to create new federal administrations at regional and local levels, except in cases of necessity. Although this agreement had no constitutional force, it determined the subsequent national policy.

The second conflict was even more severe. In September 1923, on the very day when the Reich president and the federal government proclaimed the end of the passive resistance in the occupied Ruhr territory, and when inflation was near its peak, the Bavarian govern-

³ All crises of minor importance were to be referred to the state courts. For further details see Johannes Mattern, *Bavaria and the Reich, The Conflict over the Law for the Protection of the Republic* (Baltimore, 1923).

ment gave dictatorial powers to Gustav von Kahr, one of the Bavarian district presidents, by a decree based on a clause in Article 48 of the Weimar Constitution which authorized the state governments to take emergency measures if the case was too urgent to wait for measures to be taken by the Reich president. President Ebert countered by conferring dictatorial executive powers for the entire nation upon the federal minister of defense, Otto Gessler—classified as a democrat and thoroughly disliked by the Bavarian monarchists—who in turn delegated the execution of his orders to the regional commandants of the federal army. The commandant in Bavaria was General von Lossow. On 19 October 1923 Gessler forbade the further publication of the National Socialist newspaper, *Völkischer Beobachter*, in Munich, but met with the insubordination of General von Lossow, who refused to carry out the measure, on the ground that the Bavarian cabinet disapproved of it. When Minister Gessler dismissed Lossow and appointed another general, the Bavarian cabinet and its commissar, Kahr, went so far as to reappoint Lossow. General von Seeckt, military chief of the army in the ministry of defense, sent a proclamation to the Bavarian troops, in which he exhorted them to remain faithful to their oath sworn to the Reich and its Constitution. The Bavarian government answered by swearing in the Bavarian troops for the Bavarian government, allegedly acting as 'the trustee of the German people until agreement with the federal government is restored.'⁶ General von Lossow, in a broadcast to other German troops, assured them that 'no one could surpass Bavarians in their loyalty to the Reich' and that the purpose of the Bavarian action was only that of protecting Bavaria, 'shield [*Hort*] of German national feeling,' from measures which the federal government, 'under Marxist influences,' was about to force upon the Bavarian government.

This situation constituted the background of Hitler's Beer Hall Putsch of 8 November 1923. Hitler tried to utilize the conflict and to exploit the position, dangerous to them, to which both Kahr and Lossow had already proceeded. He terrorized them, at the point of a pistol, into accepting a national dictatorship of Hitler and Ludendorff. Kahr declared himself to be the '*Statthalter* of the monarchy' in Bavaria. Having regained their freedom, however, both Kahr and Lossow broke with Hitler the following morning. They disbanded the

⁶ The following formula was read to the soldiers at their various Bavarian stations, and was accepted by them in chorus: 'On the basis of the proclamation of the Bavarian state government that has just been read to me I affirm that I have been taken into duty [*in Pflicht genommen bin*] by the Bavarian state government acting as the trustee of the German people until agreement between Bavaria and the Reich is restored. I reiterate my pledge of obedience [*Verpflichtung zum Gehorsam*] to my superiors.'

Nazi party in Bavaria and arrested Ludendorff and Hitler. In his proclamation of 9 November Kahr said.

The treason [of Hitler and his associates] has foundered upon the loyalty of the Reichswehr and of the state police and upon their consciousness of their duties . . . The guilty persons will be brought to their due punishment without consideration [*ücksichtslos*] . . . Not affected either by lack of understanding or by cunning [*Tücke*] I shall pursue my German aim: to obtain [*einingen*] for our fatherland inner unity

In view of the military character of the events, the federal government transferred executive power to General von Seeckt, who disbanded the Nazi party in the entire Reich (23 November).⁷ After much negotiation Kahr and Lossow finally resigned (18 February 1924). The federal government again made concessions. It promised to consult the Bavarian government before commandants of the troops in Bavaria were dismissed (consultation before appointments had been the practice before) or Bavarian troops were used outside Bavaria, and it modified the formula of the oath sworn by the Bavarian troops.⁸

In the early period of the crisis—a few days before the Hitler Putsch—the Social Democrats left the federal cabinet in protest against the clemency shown the rebellious Bavarian government. They could refer to the fact that the Stresemann cabinet had applied greater energy in dealing with the government of Saxony, where at the same period two Communists had joined a Social Democratic cabinet and had been accused of violations of the federal Constitution. There the federal cabinet had responded by sending a commissar to restore order, and this emissary had deposed the Saxon cabinet with the help of the army. But this differentiation served only to underline the obvious reality that the position of Bavaria within the Reich had remained stronger than that of any other state except Prussia, and that a part of the army was involved in the rebellion in Bavaria, but not in Saxony.

In January 1924, before the Bavarian crisis was settled, the Bavarian government sent a long memorandum to the federal government, in

⁷ The Prussian cabinet had disbanded the Nazi party as early as November 1922, under the Act for the Protection of the Republic.

⁸ The new oath was formulated as follows: 'I swear loyalty to the Constitution of the German Reich and of my home state, and I promise as a gallant soldier at any time to protect my fatherland and its lawful institutions and to pay obedience to the Reich President and to my superiors.' Thus the ultimate obligation toward the Reich Constitution as the supreme law of the land was not modified. On the contrary it was expressly stated that the provisions of the Reich Constitution and of the Defense Act regarding the unity [*Einheit*] of the national army and the unity [*Einheitlichkeit*] of the supreme command shall not be affected by the solution of the case in hand.

which it submitted its demands for a constitutional modification of the federal structure. This memorandum stressed the federal character of the German Reich. It did not, however, urge changes that would have retransformed Germany into some kind of loose confederation. What Bavaria wanted was no more than a shift toward pre-1914 practices. The whole memorandum was, indeed, built upon the slogan, 'Back to Bismarck.' This fact may surprise non-German readers who have not realized that Bavaria as a whole was appreciative of the way in which Bismarck, after 1871, had treated the affairs of the states. The memorandum proposed to restore, as far as feasible, the distribution of powers that had prevailed in the imperial period; to return to the Federal Council its old powers, especially its status of equality with the Reichstag, in order to prevent the latter from overriding the Council's vetoes; to leave the individual states free to resume the monarchical form of government if they so desired; and to exempt Bavaria, as had been the case in the imperial period, from the right of the national government to proclaim a state of siege or emergency. There was, naturally, one conspicuous breach in the argument 'referring to Bismarckian times: the memorandum did not propose to restore the threefold link between the Prussian and Reich governments that had been a principal feature of the Bismarckian Reich. The federal government, in 1924, answered, point for point, in a long memorandum of its own.⁹

Gradually the Bavarian cabinets came to be composed of less reactionary elements, but Social Democrats and Left Liberals (Democrats) continued to be excluded, while German Nationals were included without interruption from 1920 to the end. The lead was constantly with the Bavarian People's Party, which obtained the plurality of votes in the old Bavarian districts.

⁹ Both memoranda were published. See the collection of material prepared for the governmental Reform Committee, cited below, Chapter VIII, note 3.

Regional Differences in Political Opinions

MULTIPLICITY of views about government was the prevailing infirmity of the German democratic period. Not only was no single party ever strong enough to poll a majority of votes, but even the three strictly democratic parties combined—Social Democrats, Liberals (Democrats), and Catholic Center—could never obtain a majority in national elections from 1920 to 1933. They had done so in 1919, and even before the First World War, but they lost their combined majority in 1920 and could never regain it.

Political opinion, disunited on many important points, was seriously divided also in regard to the form of government. From the beginning three main groups held incompatible views. The communists wanted a dictatorship of the proletariat; the republican democrats (the three parties mentioned above) were agreed on continuing under a democratic system; and the monarchists desired a more authoritarian form of government, similar to that of the imperial period. It is important to realize that none of these three main groups ever held a majority from 1920 through 1932. The National Socialists succeeded in adding a fourth group—numerically insignificant in the 'twenties but from 1930 of considerable strength—which stood in favor of totalitarian government. Again, none of the four groups won a majority. Not even fascists and monarchists combined, or democrats and monarchists combined, had a majority in the fatal year of 1932. Only fascists and communists together, or fascists and democrats together—diametrically opposed views—mustered a majority in the two elections of that year.¹

This holds true, however, only for Germany as a whole, and therefore especially for the German Reichstag. Locally, matters were very different. The two labor parties combined, or sometimes even one of them alone, controlled majorities in many cities; reactionary parties did so in rural communities, as did the Catholic parties in several places where they outnumbered all others. While it is of little interest

¹ On the foregoing see *Prelude to Silence* (cited in Chapter III), pp. 60 and 128 ff.

here to investigate such differences in individual municipalities, a review of *regional* differences in opinions on government may be relevant for the problems of regionalism and federalism.²

REGIONS WITH DEMOCRATIC AND NON-DEMOCRATIC MAJORITIES

In contrast with the situation in the Reich as a whole, where the three democratic parties (Social Democrats, Democrats, and Catholic Center) lost their majority as early as 1920 and never regained it, there were five districts in which they kept their majority until 1932. These districts with stable democratic majorities were all in the west: the three Prussian districts of Cologne-Aachen, Coblenz-Trier, and Westphalia-North (Munster), and the districts of Baden and of Wurttemberg. But only in Cologne-Aachen and Coblenz-Trier, in the heart of the Rhineland, did the democratic majority prevail up to and including the last free election of November 1932 (Map 2: white). Westphalia-North lost its democratic majority in November 1932 (Map 2: horizontal lines), and Baden and Wurttemberg lost theirs in July 1932 (Map 2: vertical lines). Wurttemberg had failed to secure a majority for the democratic parties once before, for a very short period, in the first of the two elections held in 1924.³

The opposite extreme is presented by those numerous regions in which—in line with the trend for the Reich as a whole—the three democratic parties combined failed to obtain a majority in any election from 1920 to the end of the Republic. This was the case in most districts in the center and in the east of Germany—east of the Weser River (midway between the Rhine and the Elbe)—and also in Dusseldorf-East, one of the western districts (Map 2: darkest shading). If one considers this large and compact German territory in which opinions in favor of a democratic form of government did not win a majority of the people, the collapse of the democratic regime under the strain of the crisis in the early 'thirties appears more comprehensible, and to a certain degree even logical, in view of the democratic need for majorities. But the majorities that outnumbered the three democratic parties were not homogeneous. As a rule they combined nationalists and communists, as will be demonstrated below.

² The following analysis is based on a manuscript study by Arnold Brecht and Josef Berolzheimer, *Regional Distribution of Political Opinions in Germany, Statistical Data* (Institute of World Affairs, 1943). A detailed description of the political development, district by district, has been prepared by Josef Berolzheimer for the Institute (manuscript).

³ It was one of the many tragic coincidences of the war that the district with the best anti-totalitarian record in Germany, that of Cologne-Aachen, became the first victim of the ravages of total war on German soil.

Not even in the eastern parts of Bavaria had the three democratic parties a majority at any time during the 'twenties or thereafter. This was due to the fact that the Bavarian Catholics formed a special Bavarian People's Party, which pursued its policy independently of the Catholic Center Party, with a leaning toward monarchical and authoritarian traditions and in opposition to co-operation with the Social Democrats, except in coalitions that included also parties of the Right.

In most of the districts with non-democratic majorities the democratic parties in combination had obtained a majority in 1919, but had lost it in 1920. There were, however, two districts in which they did not have a majority even in 1919, because of the great number of extremists of the Left and Right or the high percentage of votes polled by the 'in-between' parties. These were the districts of Merseburg and Leipzig.

Between the western regions, with their stable democratic majorities, and the central and eastern districts, with their constant non-democratic majorities, there was a belt in which the three democratic parties obtained a majority at least once again after they had lost it in 1920, namely in 1928, although never thereafter (Map 2: squares). This group included also three sections outside of the belt: Düsseldorf-West, Hamburg, and the three Silesian districts.

There was, then, no sharp line of demarcation between the regions with democratic majorities and those with non-democratic majorities, but an area of transition from one to the other. The transition was in fact a gradual one. Except for Silesia it generally followed the direction from west to east. Thus in the western districts of Düsseldorf-West and Hessen-Darmstadt, democratic majorities prevailed in all four elections from 1920 to 1928, and in Hessen-Nassau (Kassel) and in Weser-Ems (Bremen, Emden) in three of them. On the other hand, in the districts of Magdeburg and South Hanover-Brunswick, which bordered on the non-democratic block farther to the east, democratic majorities were reached only in 1928, and then only by a very slim margin, 50.8 per cent in Magdeburg and 54.2 per cent in South Hanover. In Hamburg the majority in 1928 was only 50.1 per cent, and although there had still been a democratic majority in 1920 there was none in the two elections of 1924.

REGIONS WITH NATIONALISTIC MAJORITIES

The fact that large sections of Germany never had a democratic majority after 1919 does not imply that they had nationalistic ma-

majorities. As a rule, the non-democratic majority was composed of nationalistic voters on the right and communist voters on the left. In some districts, in-between parties like the National Liberals (German People's Party), the Bavarian People's Party, or the Economic Party were also strong.

The German Nationals, the National Socialists, and smaller anti-Semitic parties—hereafter called together the nationalistic parties—actually reached a regional majority nowhere prior to 1932, either individually or in combination, with the exception only of Pomerania, where they held together a majority as early as 1924 (Map 3: darkest shading). This majority they lost in 1928, but they regained it in 1930 and kept it thereafter. In no other district did the nationalistic parties muster a majority prior to 1932.

In 12 out of the 35 election districts the nationalistic parties failed to reach a majority even in March 1933, despite the pressure under which the elections were held. These 12 districts, which were able to defeat the nationalistic parties even in March 1933, were: the Prussian districts of Cologne-Aachen, Coblenz-Trier, Dusseldorf-West and East, Westphalia-North and South, and Berlin; the Bavarian districts of Upper and Lower Bavaria, and of the Palatinate; and the districts of Hamburg and Leipzig (Map 3: white).

In 10 other districts the nationalistic parties, although obtaining a majority in March 1933 under terroristic pressure, had never done so before, not even in 1932 (Map 3: vertical lines). These districts include the other regions west of the Weser line and in the south, and also the Brandenburg districts Potsdam I and II, and those of Dresden and Upper Silesia.

In the remaining 12 districts the nationalistic parties did obtain a combined majority in the elections of July 1932, but never before that date (Map 3: squares). In 4 of these districts—Merseburg, Breslau, South Hanover-Brunswick, and Thuringia—they lost their majority again in November 1932, but regained it in March 1933. In the other 8 districts, in addition to that of Pomerania, they were able to keep their majority also in November 1932.

Summing up, *in 22 of the 35 election districts the nationalistic parties never had a majority either separately or together as long as free elections were held*. In the remaining 13 districts they obtained together a majority in July 1932 after Papen's *coup d'état*, but only in 9 districts could they keep that majority in November 1932, and only in one of these districts, Pomerania, did they poll a majority prior to 1932. The western and southern districts and Silesia were among

those that showed the strongest resistance, as were also the districts of Berlin, Hamburg, and Leipzig.

REGIONAL STRENGTH OF THE COMMUNISTS

At the last free elections, in November 1932, the Communists polled 16.9 per cent of all votes, slightly more than they had ever reached before within the Reich as a whole. The Communist votes were in no district below 5 per cent, but otherwise they varied sharply according to districts, as follows:

The Communists had their most solid support in the center of Germany. Here they obtained more than 20 per cent in the contiguous territory that is formed by the districts of Berlin, Brandenburg (Potsdam I and II), and Merseburg, and by the Saxon districts of Leipzig and Chemnitz-Zwickau. But the Rhenish-Westphalian industrial districts of Düsseldorf-West, Düsseldorf-East, and Westphalia-South, and the district of Hamburg also yielded more than 20 per cent of their votes to the Communists (Map 4: darkest shading). The maximum of Communist votes was cast in the districts of Berlin (37.7 per cent), Düsseldorf-East (28 per cent), and Merseburg (27 per cent).

The Communists came near to having 20 per cent (more than 15 per cent) in the adjacent districts of Thuringia and Dresden-Bautzen in the center, and Cologne-Aachen and Westphalia-North in the west; and also in Upper Silesia (Map 4: squares).

The only 4 districts with less than 10 per cent of Communists were Coblenz-Trier, Franconia, Lower Bavaria, and Liegnitz (Map 4: white). In the remaining districts—mainly agricultural in character—the Communists had from 10 to less than 15 per cent of the votes (Map 4: vertical lines).

In comparing the first three maps on the regional distribution of votes it becomes evident that in the bulk of Germany the non-democratic majorities contained a large number of Communists, especially in the heart of the country.

REGIONAL STRENGTH OF THE NATIONAL SOCIALISTS

Prior to 1930 the National Socialists were numerically a negligible part of the voters. In spite of proportional representation they obtained only 12 out of 491 seats in the Reichstag elections of 1928. In 1930 they increased the number of their seats to 107 out of the total 576. But even then they won no paramount importance in any region, for in none of the districts did they poll as much as 30 per cent of the

votes, and only in one, Schleswig-Holstein, more than 25 per cent (27 per cent).⁴

In this one district of Schleswig-Holstein the National Socialists obtained a slight majority of all the votes cast in July 1932 (51 per cent). With this exception, they never gained a majority of votes in any of the 35 districts prior to March 1933. They lost their majority in Schleswig-Holstein in November 1932.⁵

Thus at the last free elections, in November 1932, the National Socialists obtained in no district the majority of votes cast. But at these elections they did poll 40 or more per cent in a considerable number of districts in the two belts of agrarian regions reaching from Schleswig-Holstein through Hanover and Hessen down to the Palatinate, and from Pomerania down to Silesia (Map 5 darkest shading). In addition they had more than 40 per cent of the votes in the industrial district of Chemnitz-Zwickau. The maximum was 47 per cent, in Schleswig-Holstein. They obtained 35 to 40 per cent in the adjacent districts of Mecklenburg, Magdeburg, Thuringia, and Franconia, and also in East Prussia (Map 5 squares).

The opposite extreme is represented by 2 districts in which the National Socialists still polled less than 20 per cent in November 1932 (Map 5 white). These were Cologne-Aachen (17.4 per cent) and Lower Bavaria (18.1 per cent). In three other districts, Berlin and Westphalia North and South, less than one-fourth of the vote was cast for National Socialists (Map 5 dotted area).

In the other southern and western districts, except Baden, the National Socialists had from 25 to less than 30 per cent, as they had also in Potsdam II and in Upper Silesia (Map 5 horizontal lines). In Baden, in the rest of Brandenburg, in Weser-Ems, and in the rest of Saxony they had from 30 to 35 per cent (Map 5 vertical lines).

Summing up, in November 1932 the National Socialists received less than 35 per cent of the votes in 19 out of 35 districts, that is, in the majority of the districts. But they obtained between 40 and 47 per

⁴ Even if Germany had been divided into 400 one member constituencies, the National Socialists in 1930 would have polled less than 40 per cent of the votes in all of these districts and more than 30 per cent in only 23 of them. In the great majority they would have had less than 20 per cent. This has been computed by F. A. Hermens, *Democracy or Anarchy?* (Notre Dame, 1941) p. 259.

⁵ The elections in Schleswig-Holstein have been examined in a special study by Rudolf Heberle in *Journal of Politics*, vol. 5 (1943), pp. 3 and 115. This paper contains valuable material on the economic and ideological reasons why so many farmers shifted their votes from other parties to the National Socialists. It also discusses certain anti-Prussian or anti-unitarian (pro-federalistic) sentiments in Schleswig-Holstein, kindled by the antagonism of the anti-Marxist, Protestant farmers to the Left Center government in Prussia. See also C. J. Friedrich, 'The Agricultural Basis of Emotional Nationalism,' *Public Opinion Quarterly*, vol. 1 (April 1937), p. 50, and 'The Peasant as Evil Genius of Dictatorship,' *Yale Review*, vol. 26 (1937), p. 724.

cent in the large agricultural belts in the west and east. Two years earlier their percentage had been below 30 per cent in every district.⁶

REGIONAL STRENGTH OF THE CATHOLIC PARTIES

It may be of interest to give special consideration to the Catholic parties—the Center and the Bavarian People's Party.⁷ Their strongest support was, of course, in the west (Rhineland, Westphalia, and to a lesser degree Weser-Ems), in the south (Bavaria, Baden, Württemberg), and in Silesia. Before the First World War they polled large majorities in a number of districts in these sections. During the earlier part of the democratic period they still obtained majorities for themselves alone in Coblenz-Trier (from 1919 until 1928) and in Cologne-Aachen (in 1919, and again in the second elections of 1924). They almost reached a majority in 1919 in three more districts: Düsseldorf-West (50.0 per cent), Lower Bavaria (49.7 per cent) and Oppeln (47.9 per cent). In 1930, however, the Catholic parties lost their majority even in Coblenz-Trier.

In the last free elections there was thus no district in which the majority of the votes was cast for the Catholic parties alone. They still obtained, however, more than 45 per cent of the votes in Lower Bavaria (47 per cent) and in Coblenz-Trier (45.5 per cent), and more than 35 per cent in Cologne-Aachen (39.3), Oppeln (35.9) and Upper Bavaria (35.5). This gave them 5 districts in which they obtained more than one-third of the votes cast.

In addition, more than one-fourth of the votes were cast for the Catholic parties in Düsseldorf-West (32.9), Westphalia-North (31.9), and Baden (27.8); more than one-fifth in Franconia (24.4), the Palatinate (22.5), Westphalia-South (23.1), Düsseldorf-East (20.5), and Württemberg (20.5). This adds up to 13 districts in which the Catholic parties polled more than one-fifth of the votes in November 1932. There followed Weser-Ems with 17.9 per cent, Breslau with 15.8 per cent, and the two Hessen districts with 14 per cent each.

Not all Catholic voters cast their votes for the Catholic parties. The number of those who did not differed widely in the various regions. Lower Bavaria, 94.3 per cent Catholic, gave the Bavarian People's Party only 47 per cent of the votes in November 1932, and Upper

⁶ James K. Pollock, in 'An Areal Study of the German Electorate, 1930-1933,' *American Political Science Review*, vol. 38 (1944), p. 89, presents average figures of the votes cast in the 35 election districts for the Nazis in the four elections held from September 1930 to March 1933 (with map).

⁷ Neither party was strictly limited to Catholics. They obtained, in fact, up to 7 or 10 per cent of their votes from non-Catholics. The term Catholic did not appear in their official designations.

POLITICAL FACTORS

Bavaria (including Munich), 90.2 per cent Catholic, gave it only 35.5 per cent. The attraction of Catholic voters by the National Socialists was obvious in Upper Bavaria, which, though 90 per cent Catholic, gave the Nazis 24.6 per cent of the votes cast, and even more conspicuous in the Bavarian Palatinate, where 70 per cent of the population was Catholic but only 22.5 per cent of the votes were for the Catholic parties while 42.6 per cent were for the National Socialists (November 1932). The ratio in favor of the Catholic parties was much better in Coblenz-Trier, where 73.7 per cent of the population were Catholics and 45.8 per cent of the votes went to the Catholic Center in November 1932. The ratio was even more favorable in Württemberg, the only South-German district where the Protestants outnumber the Catholics. Although only 30.9 per cent of the population were Catholics, the Center Party obtained 20.5 per cent of the votes.

In industrial districts many Catholics voted the Communist or Social Democratic ticket; in Düsseldorf-East, for example, a 53 per cent Catholic population supplied the Catholic Center with only 20.5 per cent of the votes in November 1932.

Table 1 shows the relation between the numbers of Catholics and of votes for the Catholic parties in the major Catholic districts.

Table 1. CATHOLICS AND VOTES CAST FOR CATHOLIC PARTIES, November 1932

Election District	Catholics in % of Total Population	Votes Cast for Catholic Parties	
		In % of all votes cast	In % of Catholic voters ^a
Lower Bavaria	94.3	47.1	49.9
Upper Bavaria	90.2	35.5	39.4
Oppeln	88.5	35.9	40.6
Cologne-Aachen	81.9	39.3	48.0
Coblenz-Trier	73.7	45.8	62.1
The Palatinate	70.0	22.5	32.1
Baden	58.4	27.8	47.6
Westphalia-North	56.5	31.9	56.5
Düsseldorf-West	53.0 (ca.)	32.9	62.1
Düsseldorf-East	53.0 (ca.)	20.5	38.6
Franconia	46.2	24.4	52.8
Westphalia-South	43.1	23.1	53.6
Württemberg	30.9	20.5	65.8

^a On the assumption that the percentage of Catholic voters in the total number of voters equaled the percentage of Catholics in the total number of people.

CONCLUSIONS

The four maps show clearly that the distribution of political opinions about government in Germany was distinctly different in the various regions. Before 1932 the Weser River and its prolongation to

the south approximately formed the line between democratic majorities to the west and non democratic majorities to the east. But even the territory east of the Weser, although in general non democratic in its majorities, had no nationalistic majorities before 1932, except in Pomerania. In Silesia democratic majorities still prevailed in 1928. In other sections the Communists were an essential element in the non-democratic majority of the people, especially in the center of the country, as were Bavarian Catholics in the south.

The Weser line to a certain degree marked also the western frontier of the victories of nationalistic majorities in 1932. But there were large sections also in the center and east of the country where nationalistic parties mustered no majorities even then. These were the sections where either Communists (as in Berlin and the west of Brandenburg, in Hamburg, and in Saxony) or Catholics (as in Bavaria and Upper Silesia) were very strong.

On the other hand it is remarkable that in 1932 the rapid progress of the National Socialists in the agrarian districts cut across the Weser line and proceeded to the west in Hessen and the Palatinate.

The result may also be summed up in the following way. Just as in the Reich as a whole, where none of the incompatible political blocs—democrats, Communists and rightist authoritarians—ever had a majority from 1920 to the end of the republican period, so too in most of the regions none of them mustered a majority over all others. Remarkable exceptions to this rule existed, however, in the western districts and in Silesia, where the democratic parties did hold a majority up to 1932, 1930, or 1925, and in Pomerania, where the nationalistic parties held a majority as early as 1924. Not until 1932—high mark of the unemployment crisis—did this picture change definitely to the advantage of the nationalistic parties. They obtained a majority in 13 districts in July of that critical year and in 9 in November, while the democratic parties were able to maintain their majority only in 3 western districts in July and in 2 in November. Even then, neither the democratic voters nor the nationalistic voters received the majority of all votes in two thirds or more of the districts (that is, in 20 districts in July and in 24 in November).

The mere fact that some regions had a greater percentage of democratically minded people than others is not necessarily a conclusive argument for the thesis that it would have been better if they had set up their government independently of those other regions. This would have destroyed the possibility of forming democratic governments for the whole country. In Prussia it had been possible to do so from 1919 to 1932, just because of the inclusion of the western parts. In the Reich, for the same reason, the democratic parties had been able to

maintain at least a considerable influence, until Papen's *coup d'état* in 1932 deprived them of that influence, both in the Reich and in Prussia.⁸

The marked regional stratification of political opinions in Germany does, however, offer a plausible argument for re establishing some kind of federal system, and perfecting it by the elimination of oversize Prussia as a single state, in order to leave homogeneous regions the possibility of shaping their pattern of life differently in matters that can be locally differentiated.⁹

Whether the Weser line will play in post-Hitler Germany a role similar to the one it had in pre Hitler times, with regard to the stratification of political opinions, it is not possible to foretell with certainty. A great amount of migration within Germany took place during the Hitler regime, especially in connection with the relocation of industries. This shift strongly affected the density and composition of the population, particularly in the central and eastern regions, long before the systematic bombing of industrial centers led to further radical changes.¹⁰ The lessons of the Hitler period and the experiences of the war will go far to affect political opinions, and the conditions imposed by the victors will influence both the distribution of the population and the people's political views. Notwithstanding such changes, the prevalence of Catholics in the west and south, of farmers in the western and eastern German farm belts, and of industrial workers in the center and in the Ruhr territory, will probably continue to affect local political opinions, even after the overthrow of National Socialism.¹¹

⁸ See Chapters III and XIV

⁹ See Chapter XVI

¹⁰ See *Population Shifts in Germany under the Hitler Regime*, prepared by Ernst Hamburger for the research project on Germany's Position in European Postwar Reconstruction (Institute of World Affairs, Manuscript)

¹¹ A mimeographed preprint of this chapter was circulated in March 1944. Sigmund Neumann, in his valuable study on the rebirth of political parties in Germany, 'Transition to Democracy in Germany,' *Political Science Quarterly*, vol. 59 (1944), pp. 341-62, has expressed (p. 354) his agreement with the concluding passage

PART II

POWERS AND PRACTICE

American and German Federalism: Distribution of Powers

DIFFERENCES between American and German federalism were not restricted to the number and size of the states and to political traditions. They included wide divergencies in the distribution of powers among the various levels of government. The origin of the latter differences and their gradual modification is illuminating not only for recent American and German history but also for the modern problems of federalism in general, and of decentralized administration even in non-federal countries.

The line of demarcation that in the United States separates governmental powers of the nation from those of the states has always been *vertical*. When power to deal with some subject-matter was given to the federal government, it was as a rule *full* governmental power, including administration and adjudication as well as legislation. This was not so in Germany. The imperial constitution of 1871, while liberally granting the federal government the power to legislate in most fields of general significance, left administrative and judicial functions in almost all matters to the states. While the nation's legislative power was much broader in Germany from the very beginning than it has ever become here, its administrative power was much narrower, at least in the beginning. In other words, the original line of demarcation between powers in Germany was *horizontal* rather than vertical.

To illustrate, the national government in Berlin from the inception of the empire in 1871 obtained almost unlimited power to *legislate* in the fields of commerce and industry, criminal law, judicial organization and procedure, the press, assemblies, and associations; and as early as 1873 it obtained that power also for civil law. And all these powers were used. The law of bills of exchange (1848) and the codes of commerce (1861), of industry (1869) and of penal law (1869) were

taken over readymade from the German Confederation and the North-German Federation. National codes of the law of the press (1874), of judicial organization and procedure (1879), of civil law (1896), and of the law of assembly and association (1908) came into being during the imperial period, as well as acts providing for public insurance against sickness (1883), accidents-at-work (1884-7), and disability and old age (1889). No doubt was possible of the constitutionality of these federal statutes. No problematic commerce clause of the American kind forced the legislature to distinguish between interstate and intrastate commerce, or between commerce and manufacture, or to engage in roundabout methods of reaching its goals.¹

Broad as had been the federal power to legislate before 1919, it was expanded still further by the Weimar Constitution. Several new items were added. Moreover, the federal government obtained the power to establish uniform 'principles' in matters in which it had no full legislative power, namely, regarding religious corporations, schools, libraries, state and municipal civil services, agricultural law, land distribution, housing, and burials (*Grundsatzgesetzgebung*, Articles 10 and 11). With regard to two other categories—matters of public welfare and those of public peace and order—the federal government was authorized to legislate 'whenever the circumstances required it' (*Bedürfnisgesetzgebung*, Article 9).

In regard to *administration* matters were strikingly different during the imperial period. Federal laws were as a rule administered in the field not by federal agencies but by the states. The federal postal service and the federal navy alone had field agencies of their own at that time, if we except here the federal bank (*Reichsbank*), which had a number of branches throughout the nation. Since naval field administration was practically restricted to the coastal regions, the only federal field agencies one encountered in urban and rural places outside Berlin prior to the First World War were the local post offices with their inscription 'Kaiserliches Postamt,' most of their buildings constructed during the poorest architectural period in a pseudo-gothic style. Even these were not to be found in Bavaria and Württemberg, whose sovereign privilege to conduct their own postal administration had been reserved to them.

All other field administrations were run by the separate states or under their supervision by their subdivisions. This was so even in regard to customs duties. Although tariffs were federal, the customs officers who inspected the luggage of the traveler or any other goods imported were state employees—of Prussia, Bavaria, Hamburg,

¹ See the following chapter

Bremen, etc. The states retained a small percentage of the proceeds as a compensation for their administrative costs, and passed the rest on to the federal treasury.

Law enforcement too was a matter for the separate states. While the federal government in the United States may enforce its own laws by its own courts and through its own district attorneys and investigation bureaus, German federal power—at least during the imperial period—had to leave enforcement to the states. True, the final appeal in important cases lay to the federal Supreme Court, and judicial prosecution for high treason fell under its original jurisdiction. But the states established all other regular courts, and the police; they appointed the judges, district attorneys, and police officers; and they exercised whatever administrative discretion was left in regard to enforcement of the laws.

Not even the military administration was federal. The army was paid for by the federal government, but was subdivided into state contingents. Prussia, Bavaria, Württemberg, and Saxony administered their separate contingents, while the smaller states had military agreements with Prussia. Legislation, budgeting, and certain general regulations in military matters were federal, but not the current administration of these matters in peacetime.²

Summing up, in imperial times federal administration as distinct from legislation was restricted to foreign affairs, the navy, the postal services, and a few central institutions, such as the federal Supreme Court in Leipzig, which had no federal district courts below it. In other matters, federal departments in Berlin exercised some central administrative functions, such as research, preparation of legislation, the issuance of 'directives' in execution of the federal legislation after discussion in the Federal Council, and a weak sort of surveillance over state administration to assure its conformity with the federal laws. But they had no field agencies. They were, as the slang expression had it, like heads without bodies.³

This horizontal division of powers, which permitted the federal government to pass general legislation and to watch over the execution of federal laws but left the execution itself to the states, had obvious advantages. It helped German administration to avoid duplication and triplication in the field. Clarity of jurisdiction, and efficient collaboration under one government only—the state government—distinguished field administration under this scheme.

The basic idea of this arrangement could not be maintained, how-

² See Chapter IV on Bavaria's special privileges.

³ The German saying was 'Dame ohne Unterleib,' referring to the popular feature in country fairs—a woman with no body below her waist.

ever, under the force of postwar requirements. Large branches of administration were taken over by the federal government in the democratic period. Bavaria's and Wurttemberg's separate postal services disappeared. The army, too small to be divided into four contingents, became federal. The care of veterans was put in the charge of a large federal administration with regional and local offices. Furthermore, the financial disaster made it necessary to establish federal financial agencies in the field. To avoid duplication, these agencies took over also the administration of state income taxes and other state revenues, the federal government passing part of the proceeds on to the states, in reversal of the former practice. The railroads, formerly owned by the separate states, were transferred to a federal railroad administration. The navigable streams were likewise placed under federal administration. Finally, when the problem of unemployment was tackled, federal agencies in charge of employment offices and unemployment compensation were established on three levels.⁴

Thus by the middle of the nineteen-twenties a vertical distribution of powers had been added to the horizontal one. The former unity of command over all the public services operating within a state had disappeared. The traveler now could see federal post offices even in Bavaria and Wurttemberg. He could find federal railroads, federal finance agencies, federal employment agencies everywhere, and at many places also federal agencies dealing with war veterans, federal army barracks or federal agencies in charge of waterways.

The federal budget clearly reflected these changes. In 1871 it contained only four big items: for the army—and actually these allotments were spent by the four contingent armies rather than by federal agencies; for the navy; for war veterans; and for foreign affairs. By 1913 four more major appropriations had been added for the colonies; for the Kiel Canal, which was mainly a military affair; for the national debt service; and for old-age and disability insurance. At the end of the republican period the colonial item had disappeared, and the appropriations for the army and navy were considerably smaller. The other items, however, had much larger amounts allocated to them. In addition, there were big items now for many commercial canals; for financial administration; and especially for the various branches of social administration.

But state administration had not vanished. Most important, justice, police, education, and the supervision of municipalities continued to be affairs of the states, and theirs alone, except for some central insti-

⁴ See the following chapter.

tutions, such as the federal Supreme Court, and except for temporary interference through federal emergency decrees.

Thus the problems of 'administrative federalism' came more and more to the fore in Germany, much as they did ten years later in the United States. Some differences, however, should be noted. The United States is still far from having income taxes assessed and collected by one set of agencies for both federal and state purposes, as has been the case in Germany ever since 1871. Nor is justice here administered by the same set of state attorneys and state courts, irrespective of whether cases arise from federal or state laws. In Germany all judicial administration became federal under Hitler. But even when it was in state hands, there was no duplication of courts—or even triplication, with county and municipal courts added to federal and state courts—such as prevails here. Nor was there duplication or triplication of police authority. Other administrative differences between Germany and the United States existed in the field of social security.⁶ But important as these variations are, they should not distract attention from the basic similarities between the United States after 1933 and democratic Germany before 1933 in their administrative problems of federalism.

Much more marked differences between the two countries persisted in the sphere of legislation. When Germany adopted the American principle of a vertical division of power between the nation and the states, she nevertheless continued the old horizontal division. Federal power to legislate remained, therefore, much stronger in Germany than in the United States. In this country federal legislation in matters of business, trade, and commerce has recently increased by leaps and bounds, but there are still constitutional limits to be observed that have never troubled Germany.⁷ Furthermore, the United States is far from possessing national codes of civil and penal law; or federal laws for the press, for assemblies and associations, or for judicial organization and procedure in the states.

Not only was the legislative power of the federal government further enlarged in Germany during the democratic period, as has been mentioned above, but Article 48 of the Weimar Constitution provided the federal government also with a temporary power to legislate by presidential decree, or otherwise to become active in any field, by virtue of such a decree, 'in order to restore peace and order whenever they were seriously disturbed' (*Ausnahmegesetzgebung*). Only the basic structure of the Constitution was to be indefeasible. This provision enabled the federal government temporarily to take over

⁶ See the following chapter

⁷ See the following chapter

even state police or other branches of state administration, although this was not done between 1924 and 1932 because of the opposition of the state governments to such encroachment.

VII

Federalism in Practice

SEVERAL defects in the German federal system are self evident, and have always been so. Others are less patent, and have revealed themselves only gradually, and sometimes only to persons who worked within one of the governments, federal, state, or local.

Not all the difficulties that have appeared in American federalism, especially in the fields of economics and public finance, have existed in Germany, as will be seen presently. On the other hand, some specifically German difficulties are of no interest for the solution of American problems. Notwithstanding such obvious peculiarities on both sides it can be said that a good many of the shortcomings that arose in republican Germany have found their counterparts meanwhile in the United States. An immediate American interest is likely to attach also to the good effects and to some adverse implications of certain German peculiarities that may be considered workable alternatives in the United States, for example, the nationalization of unemployment insurance, the union of federal and state agencies for the collection of income taxes, and the union of federal, state, and local courts and police. Some remarks will be added here on the relations of federalism to special subjects.

ECONOMICS

In regard to the relations between a federally organized nation and its constituent states American observers are likely to look for trouble first of all in the sphere of economics, where serious difficulties have developed in the United States. These difficulties, let it be recalled, originated mainly in the fact that the federal government had obtained no direct constitutional authority to deal with the production of

industrial raw materials, with agriculture, with manufacture, with industrial or agricultural labor, with insurance business, and the like. The normal power of the federal government in regard to the domestic economy was limited to 'commerce . . . among the several states and with the Indian tribes,' to currency and bankruptcy, and to the spending of money for the general welfare. Up to the middle of the nineteen-thirties the United States Supreme Court often insisted that the production of industrial raw materials, agriculture, manufacture, and industrial or agricultural labor do not come under the head of commerce but 'precede' or follow commerce, that they are not of an interstate but of a local character, or that not every interference with them directly affects interstate commerce, and that insurance, too, is not commerce.¹ Most of these judicial views have been either modified or abandoned during the last few years, but they have left vestiges that must not be overlooked and that still hover over sweeping projects, especially those involving purely local business.²

All this was very different in Germany. There federal regulation or control regarding industry and commerce offered no constitutional problems. Even the constitution of 1871 granted the federal government unlimited authority to legislate concerning industry and manufacture (*Gewerbebetrieb*), trade and commerce (*Handelsgesetzgebung*), the law of commerce and that of bills of exchange (*Handels- und Wechselrecht*), insurance (*Versicherungswesen*), and communication by telegraph.³ The Weimar Constitution gave the federal government additional power to legislate 'on labor law, on the insurance and protection of workers and employees and on employment service'; on the law of eminent domain or expropriation (*Enteignungsrecht*); 'on the socialization of natural resources and of economic enterprises,

¹ For conspicuous expressions of these views even in the thirties see *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936), and in part also *Schlichter Poultry Corp. v. United States*, 195 U.S. 495 (1935).

² Among recent decisions see *Willing v. Jacksonville Paper Co.*, 317 U.S. 564 (1942), which held that employees handling imported goods, ordered merely in anticipation of general trade, were not acting in interstate commerce and were therefore not covered by the Fair Labor Standards Act. *Willing v. Goldblatt*, 318 U.S. 757 (1943), contending that employees who merely handled goods within a warehouse were not in interstate commerce, even though the goods were received in interstate commerce. and *McLeod v. Threlkeld*, 63 Sup. Ct. 1248 (1943), holding, that a cook who served railroad maintenance workers was not in interstate commerce, because he was not engaged in actual work upon the transportation facilities (this was a 5 to 4 decision). These decisions leave it an open question, however, whether the functions of the respective employees substantially affected interstate commerce and might therefore have been brought under the Fair Labor Standards Act if Congress had chosen a broader formulation in that act. See Notes, 'Commerce Clause Decisions 1936-1942,' *Columbia Law Review* vol. 42 (1942), p. 1333, and 'The Supreme Court of the United States during the October Term, 1942,' *ibid.* vol. 43 (1943), pp. 837-851.

³ Article 4, clauses 1, 2, 10, and 13.

on the production, manufacture or distribution of economic goods for the general economy [*Gemeinwirtschaft*] and on the determination of their prices'; on mining, in addition to manufacture; 'on railroads, inland waterways, motor traffic on land, on water and in the air, and on the construction of highways for the general traffic or for the defense of the country'; and on theaters and movies.⁴

The federal government even obtained the power to legislate on public welfare, 'if there should be need for uniform regulation'.⁵ Furthermore, it could establish 'principles' regarding the law of the soil (*Bodenrecht*), the distribution of the soil, rural settlement (*Ansiedlungs- und Heimstättenwesen*), restriction of the disposal of landed property (*Bindung des Grundbesitzes*), housing (*Wohnungswesen*), and the distribution of the population (*Bevölkerungsverteilung*).⁶ Although these were generally matters for the states to deal with, the federal government could establish uniform 'principles' for state measures, and the courts decided that these principles could be pronounced in such a definite way as to be applicable to the individual case without any intermediary state legislation. Whenever the Reich legitimately exercised its right to legislate, its laws prevailed over contradictory state laws.⁷

Federal power to legislate in the field of economics could hardly be more sweeping. The federal measures could extend to the smallest and to purely local enterprises. They could pertain to any such questions as the regulation of fair standards, of output, prices, wages, and even nationalization, if desired. In addition to national codes of industry, commerce, and social insurance, mentioned in the preceding chapter, there were national railroads, national telegraph and telephone systems, national supervision of private insurance, national control of cartels and of potash and coal industries, and national labor laws. The federal government owned a wide system of industrial enterprises, including hydroelectric plants in various parts of the country, industrial works, banks, and even a commercial establishment for auditing. Most of these enterprises were organized as joint-stock companies, the shares being held by a nationally owned holding company, VIAG (Vereinigte Industrie-Unternehmungen Aktien Gesellschaft).⁸ During the Hitler regime such industrial Reich property was greatly increased, espe-

⁴ Article 7, clauses 7, 12, 13, 16, 17, 19, and 20.

⁵ Article 9, clause 1.

⁶ Article 10, clause 4.

⁷ Article 13 'Reichsrecht bricht Landesrecht'.

⁸ See A. Brecht, 'Three Topics in Comparative Administration,' *Public Policy*, vol. 2 (1941), p. 289, second topic. On railroads see A. W. Macmahon and W. R. Dittmar, 'Autonomous Public Enterprise—The German Railways,' *Political Science Quarterly*, vol. 54 (1939), p. 481, and vol. 55 (1940), p. 25.

cially in the immense property acquired by the nationally owned Hermann Goring Werke.⁹

Another reason why public economic control was not hampered much by the federal structure in Germany was the size of Prussia. Over its large area the Prussian government could organize, uniformly and according to a consistent policy, its system of factory inspections and of subventions or restrictions of industrial activities. It could establish government-owned industries with little regard for geographic limitations. During the democratic period most of Prussia's state-owned enterprises became combined in one big holding corporation of the Prussian government, Vereinigte Elektrizitäts- und Bergwerks-A.G., with its subsidiaries in the fields of hydroelectric plants, foundries, mines, quarries, salt works, potash plants, and amber works, distributed over various sections of the country.¹⁰

Regional combinations, too, could be formed freely not only by the Reich but also by Prussia, according to economic needs. Thus three great limited-purpose unions (*Zweckverbände*) in the Ruhr territory, established under Prussian legislation, cut across the boundaries of two large provinces, Rhineland and Westphalia, and included many cities and rural communities among their members, the two older unions dealing with sanitation, water control, and dam building, the other with zoning and housing problems.¹¹

In these circumstances the adverse effects which the federal system exerted on economics were more spotty than in the United States, that is, they appeared chiefly in some of the small states and in the domestic border regions of the larger ones. The erratic boundaries and the numerous enclaves often hindered, or at least complicated, the rational handling of economic matters. This was conspicuously the case with respect to the seaport state of Hamburg and the Prussian cities in its immediate vicinity. Yet there were similar if less conspicuous difficulties elsewhere, as in Frankfort-on-Main. This large Prussian trade city, situated close to the boundaries of Bavaria, Hessen, and Baden, found much to complain about in the bureaucratic difficulties that arose from the numerous state boundary lines in its vicinity. Some such difficulties could be removed or mitigated by agreements among the states concerned; thus there were large scale agreements between

⁹ See K. Lachmann, 'The Hermann Goring Works and 'More on the Hermann Goring Works,' *Social Research*, vol. 8 (1941), p. 24, and vol. 9 (1942), p. 396.

¹⁰ See Hans Staudinger, *Der Staat als Unternehmer* (Berlin, 1932). Dr. Staudinger was at the time permanent under secretary (*Staatssekretär*) of the Prussian Ministry of Commerce and Industry.

¹¹ Ruhrverband (1913), Ruhrtalperren Verein (1913), and Siedlungsverband Ruhrkohlenbezirk (1920).

Hamburg and Prussia on port facilities and expansion. But many unsatisfactory points of a geographic character remained unsettled.

In addition, the economic inadequacy of the state boundaries had secondary effects that were of a more general nature. The Reich government could not leave economic regulations to the states so easily as it might have done if the states had covered economically adequate areas. Nor could it adjust the boundaries of its own regional agencies to the state boundaries. Thus it had to create areas of its own for federal administrative purposes. These administrative difficulties and their implications will be discussed below.

FINANCE

The United States government has exclusive jurisdiction over the major sources of revenue only with respect to customs duties. The German Reich from the beginning had the exclusive right also to tax salt, sugar and syrup, tobacco, hard liquor and beer, except that the Reich could not tax liquor or beer in Bavaria, Württemberg, and Baden.¹² As has been mentioned before, the administration of all federal taxes and of customs duties was originally left to the states, which turned over the proceeds to the federal government after the deduction of administrative costs, as regulated in the constitution of 1871. Furthermore, the states paid proportional amounts for meeting expenditures of the Reich that were not covered by the Reich's own revenues.

The Weimar Constitution, while preserving the exclusive jurisdiction of the national government regarding customs duties, abstained from enumerating other exclusive sources of the federal income. Instead, Article 8 gave the Reich the more sweeping power to legislate any taxes and excises 'in so far as they are claimed [*in Anspruch genommen*] in whole or in part for the purposes of the Reich.' A general clause stipulated that, if the Reich took over revenues previously raised by the states, it had 'to take into consideration the preservation of the states' ability to exist' (*Lebensfähigkeit*).

In addition to levying any kind of taxes itself, the Reich could establish principles covering what taxes might or might not be levied by the states, and the procedure to be used, whenever such statement of principles was considered necessary either to avoid certain disadvantages, such as double taxation, or to take care of important community interests (*wichtige Gesellschaftsinteressen zu wahren*).¹³ The federal government, it is true, could normally do all this only by way of legis-

¹² Constitution of 1871, Article 35.

¹³ Article 11.

lation, and the states had their say in the Federal Council during the legislative procedure. But the Reichstag could override any veto of the Federal Council by a two thirds majority, and emergency decrees based on Article 48 of the Constitution could bypass the Federal Council completely.

In the financial field, therefore, federal power was at least as strong as in general economics. Constitutional difficulties that have arisen or may arise in the United States with respect to the avoidance of double taxation, or to a rational combination of federal and state agencies for the collection of income taxes, did not exist in the German republic.

After the Erzberger finance reform of 1919-20, the rates of income taxes, including corporation income taxes, were determined exclusively by federal legislation, and were assessed and collected by national agencies. The Reich government transferred 75 per cent of the proceeds to the state governments, which were bound to hand on a definite minimum of their share to the municipalities and other local units. The federal government kept only 25 per cent for its own purposes. Likewise, the turnover tax was levied and collected by the federal government, which in this case handed only 30 per cent to the states, keeping 70 per cent for its own purposes. The proceeds of three other taxes—those on the acquisition of real estate, on motor cars, and on race betting—were entirely handed on to the states, leaving the federal treasury only 4 per cent as compensation for the administrative work.¹¹

Assessment and collection of these taxes, of customs duties, and of the various excises of the Reich were carried through by federal regional and local agencies (*Landesfinanzämter* and *Finanzämter*) under the federal minister of finance. Consequently there was little duplication of federal, state, and local agencies in financial matters. Double taxation was in the main eliminated.

But two other difficulties emerged. The first was a problem in distribution. The amount that each individual state received from the 75 per cent share of all the states in income tax returns was determined in proportion not to the number of people or taxpayers but to the income taxes due within its territory. Naturally, the average income varied widely from state to state (see Table 2) and the income tax

¹¹ These were the final proportions; originally the distribution was different. For details—not relevant to the present purpose—of the distribution of revenues and expenditures among the three levels of government see Mabel Newcomer's useful book on *Central and Local Finance in Germany and England* (New York, 1937); also, A. Brecht, *Ausgaben und Einnahmen von Reich, Ländern und Gemeinden* (Berlin, 1932), and Three Topics in Comparative Administration (cited above), third topic, concerning expenditures in relation to density of population.

returns varied accordingly, and therefore, although each state received the same percentage of the yields from its territory, some states received lower amounts per capita than others.

Table 2. AVERAGE PER CAPITA INCOME IN THE MAJOR SECTIONS OF GERMANY, 1928, 1932, 1934 ^a

Section	1928	1932	1934
STATES			
Bavaria	R.M. 1,041	R.M. 624	R.M. 733
Thuringia	1,095	623	753
Baden	1,135	683	778
Hessen	1,158	634	726
Prussia	1,174	688	794
Württemberg	1,183	807	918
Saxony	1,423	766	878
Hamburg	1,754	1,037	1,110
Other states	1,155	715	839
PRUSSIAN PROVINCES			
East Prussia	814	535	612
Border Province	837	516	607
Upper Silesia	850	476	554
Pomerania	921	573	697
Lower Silesia	1,057	639	708
Hanover	1,069	683	792
Westphalia	1,080	600	699
Brandenburg	1,140	719	799
Saxony	1,155	671	787
Schleswig-Holstein	1,164	736	835
Rhine Province	1,218	681	790
Hessen Nassau	1,226	686	793
Berlin	1,822	1,042	1,216
ALL GERMANY	1,185	696	804

^a From *Statistisches Jahrbuch* (1937), p. 333. The figures, which are here arranged in order of ascending magnitudes as of 1928, mirror the poorer conditions of the agricultural as compared with the industrial, and of the eastern as compared with the western sections. They also reflect the slump in incomes during the depression period. The entry 'Other states' lumps together low-income states, such as the two Mecklenburgs and the two Lippes, and high-income states, such as Bremen and Lubeck. For these states see Tables 3 and 4. The high averages of Schleswig-Holstein are explained by the inclusion of the suburbs of Hamburg, and the high averages of Hessen Nassau by the inclusion of Frankfurt-on-Main.

A federal statute tried to provide for a moderate equalization.¹⁵ While on principle each state had to receive 75 per cent of the proceeds from its territory, it was determined that the poorer states should be given a larger percentage. A poorer state was defined as one in which the federal income taxes, in per capita average of the population, were less than 80 per cent of the corresponding national average. Such a state was to receive more than its normal share until it had either reached the minimum standard (80 per cent of the national

¹⁵ See Section 35 of the Finance Equalization Act (*Finanzausgleichsgesetz*) of 23 June 1923, as amended.

average) or received the entire proceeds from its territory including the share that would normally go to the Reich

This formula was not quite so equitable as it seemed. Under it seven 'poor' states received subventions out of national funds (see Table 3),

Table 3 SUBVENTIONS PAID POOR STATES FROM THE FEDERAL SHARE IN GERMAN INCOME TAXES, 1928, 1931

State	1928	1931	
	Million RM	Million RM	RM per capita
Bavaria	26 0	15 6	2 11
Mecklenburg Schwerin	5 8	3 4	4 97
Oldenburg	3 9	2 7	4 99
Thuringia	2 1	2 2	1 35
Lippe	1 4	0 79	4 83
Mecklenburg Strelitz	0 75	0 45	4 07
Schaumburg Lippe	0 42	0 17	3 60
Waldeck "	0 38		
TOTAL	40 7	25 3	

^a United with Prussia in 1929. Consequently Prussia had to do the subventioning thereafter

while poor districts of similar size within large states were given no such help. The states that profited from the subvention formula were Bavaria, Thuringia, and five of the small states with fewer than a million inhabitants (the two Mecklenburgs, the two Lippes, and Oldenburg). The total amount in question was only about RM 25,000,000 in 1931 (40,000,000 in 1928), but it meant much to the recipients. More than half of it fell to Bavaria. The amount per capita was RM 2 11 in Bavaria (1931), but between RM 3 60 and 4 99 in the five small states.

If the same formula had been applied to those Prussian provinces in which the income tax yielded less than 80 per cent of the national average per capita—especially East Prussia, Pomerania, Upper Silesia, and the Border Province—they would have received a larger total than all other states together (1928, RM 72,000,000). Prussia as a whole, however, although not quite up to the national income tax average per capita, came close to it, and therefore received no subvention from the national tax share. Thus she had to subvention her poorer provinces herself, while states with a much higher per capita income had no such liability to face. The Prussian government, therefore, denounced this method of equalization, contending especially that it preserved the existence of the poorer undersize states in an artificial way, these states, it held, should be obliged to reorganize themselves into more reasonable units by withdrawing from them any special subventions

No such difficulties have arisen in the United States, for the simple reason that the federal government pays no direct contributions to the poorer states out of the proceeds of the federal income tax. The problem would have disappeared in Germany, too, if the national subventions had been abandoned. That was ardently opposed, naturally, by the recipients. From the point of view of federalism, this matter was entirely a question of policy, not involving any technical problems.¹⁸

It should be noted, incidentally, that the average taxes paid in the various sections differed much more than the average incomes. The reason for this is that the lowest income groups were either completely free from income tax or paid low rates, while high incomes had much higher rates applied to them. The relative 'taxpaying strength' (*Steuerkraft*) of the various sections is strikingly evident in Table 4.

Table 4 AVERAGE PER CAPITA TAXES DUE IN VARIOUS SECTIONS OF GERMANY, 1925 ^a

<i>States</i>		<i>Sections of Prussia ^b</i>	
Mecklenburg Strelitz	RM 31 8	East Prussia	RM 20 2
Lippe	32 5	Upper Silesia	25 9
Mecklenburg Schwerin	35 2	Pomerania	32 2
Schaumburg Lippe	37 5	Lower Silesia	39 8
Oldenburg	40 4	Brandenburg	41 7
Bavaria	43 8	Hanover	46 3
Hessen	46 6	Westphalia (Munster district)	48 3
Thuringia	47 0		
		Saxony (Magdeburg district)	50 3
Braunschweig	53 0	Schleswig-Holstein	51 2
Baden	53 2	Rhine Province	
Prussia, total average	56 9	Cologne district	51 8
Anhalt	57 3	Dusseldorf district	71 7
Württemberg	57 4	Hessen Nassau (Kassel district) ^c	70 9
Lubeck	68 1	Berlin	131 9
Saxony	75 9		
Hamburg	117 9		
Bremen	119 8		

ALL GERMANY RM 57 2

^a Adapted from *Einkünfte und Steuern* edited by the German Statistical Office (Berlin 1930) p 517 and F Raab *Die Steuerkraft der Deutschen Länder Reich und Länder* vol 3 (1930) p 179. The figures refer only to federal taxes on individual income, corporation income, and property in per capita average of the population.

^b Regions of the federal finance offices which in several cases are not exactly coextensive with the provinces.

^c Including Frankfurt-on-Main.

The second problem that evolved from the overwhelming financial supremacy of the federal government was more fundamental. The

¹⁶ After 1929 lump sums were appropriated in the federal budgets, to be distributed in the eastern sections as a federal aid in the economic emergency (*Osthilfe*), but Bavaria's eastern sections participated in these benefits, too. On the political implications see Bracht, *Prelude to Silence* (cited above, Chapter III), p 56.

fact that states and municipalities received a great part of their income from the federal government led to an increasing separation of responsibilities for revenues and for expenditures, especially in municipalities; that is to say, the temptation felt in any legislature to make appropriations for expenditures was not entirely counteracted by the full responsibility of the same body to find the corresponding revenues. During the imperial period the states had been free to determine their income taxes according to their individual needs, high or low, and municipalities could raise additional income taxes, in percentages of the state income tax, for their own purposes. Municipalities enjoyed an almost unlimited freedom to engage in all kinds of cultural and economic activities. But the responsibility was theirs on both sides of the account. After the income taxes had been nationalized, this balance between municipal freedom and municipal financial responsibility was lost to a considerable extent. States and municipalities received their share automatically, and in order to maintain an equality of income-tax burdens everywhere in the nation, they were forbidden to levy additional income taxes themselves.¹⁷ Real estate taxes left the municipalities some leeway in the beginning, but finally the federal government felt it necessary to fix a ceiling even for them. The flexibility of local administration was almost gone.

This dwindling budgetary independence of states and municipalities increasingly affected the practical reality of the German federal system. The monetary supremacy of the federal government made itself felt also in other respects, dwarfing the financial importance of the states. Although there existed no direct constitutional relationship between the federal government and the city governments, the actual center of gravity in the relations of the larger cities shifted from the states to the Reich. In the last analysis these changes were not caused by constitutional questions but rather by financial developments. The growing dependence of municipalities upon the national government has in fact become a general feature in both federal and unitary countries.

UNEMPLOYMENT

Before the First World War the public care of destitute persons was a responsibility of the local governments in Germany, as in the United

¹⁷ In 1930 the municipalities obtained the right to raise a low head tax (*Bürgersteuer*) from all independent residents. But in order to prevent the imposition of erratic local burdens on high incomes, the federal law fixed minimum rates (RM 6 for annual incomes up to RM 4,500) and also determined the scale of gradation, which was very moderate (for example, RM 75 for annual incomes of RM 25,000-50,000). Only the states and not the municipalities could raise these rates, and if they did so they had to maintain the same proportions in the scale of gradation.

States. In both countries the local agencies derived their powers from the state governments, and worked under state supervision. National institutions of public insurance against sickness, disability, and old age, which in Germany were in full operation before the end of the nineteenth century, relieved the municipalities early of a considerable part of the burden they would otherwise have had to face. Destitution arising from unemployment, however, remained a local concern, much as in the United States.

After the War the federal government was forced to assist the states and municipalities in their public welfare activities, because large new classes of poor had emerged from the War and the inflation. On the other hand, Germany's financial catastrophe delayed any permanent solution, and made it impossible to engage in anything like a comprehensive 'Beveridge Plan'—as favored by the Social Democrats—which would have provided help for all destitute persons according to need.

After the stabilization of the currency, unemployment insurance was established.¹⁸ It was organized as a federal institution, that is, the federal government alone determined the contributions of the employers and employees, the amount and duration of benefit payments, the waiting period, and other features. It entrusted the administration of the insurance exclusively to federal agencies. In contrast to the American situation, there was no constitutional question involved in this arrangement, because of the broad legislative powers of the Reich.

A grave problem, however, and one familiar to Americans, arose from the duplication of agencies that thenceforth dealt with destitute workers. In the German case, federal agencies were in charge of employment services and of insurance benefit payments, while local government agencies were responsible for relief if the jobless person had exhausted his rights to benefits or if he was not eligible for them or needed additional support. The fact that different governments—federal and local—had to deal with the same person in the various stages of his unemployment duplicated the files regarding many million people, and made it difficult to carry through a consistent social policy and clear budgeting methods.

At the peak of unemployment a system of rotation developed which became known as the 'merry-go-round.' The jobless worker would first be on the pay rolls of the federal agency for unemployment (*Arbeitsamt*). Thereafter he would receive public relief from his municipality or rural county. The local government, in the interest of its treasury, would then try to get him a job for as long as was neces-

¹⁸ *Gesetz über Arbeitsvermittlung und Arbeitslosenversicherung*, 16 July, 1927

sary to make him again eligible for federal insurance benefits. Then he would be fired to make room for another relief recipient, and would get insurance benefits. When these were exhausted he would receive local relief again, and so forth.

Unemployment in Germany, much as in the United States a few years later, became an important factor in bringing the cities into greater dependency on the federal government. Every change in federal legislation on social security affected municipal finances. Moreover, the cities looked to the federal government for assistance in the creation of public works. There was—unfortunately I think—no federal Work Projects Administration in Germany. The German government at that time was too much afraid of a second runaway inflation to embark on non self-liquidating projects financed through loans. Such plans met also with sharp rebukes from the reparation creditors,¹⁹ and in any case, loans were hard to place, because of the tight money market. Yet there was an organized way of granting federal loans to municipalities at least for self liquidating projects. Such loans were given by the Public Works Corporation (*Gesellschaft für öffentliche Arbeiten*), created and owned by the federal government. Municipal finances depended greatly on the positive or negative decision of the federal corporation on applications for loans.

The influence of the federal government on municipal finances increased apace with unemployment. Having no constitutional right to supervise local authorities—this being the exclusive right of the states—the national ministries could not directly rebuke the cities for objectionable financial methods or relief practices. Yet federal emergency decrees finally went so far as to limit the municipal real estate taxes, and to place a ceiling on the annual expenditures of states and municipalities, which could be raised above the standard of 1931 only with the consent of the federal ministry of finance.²⁰

The states watched with alarm this growing influence of the federal government in state and municipal affairs. There was little question, however, of transferring the unemployment insurance to the states, because that would have involved grave problems regarding equality of labor rights everywhere in the country, and regarding transfer of claims from state to state in case of changes in jobs and residence—problems that beset American administration but did not exist under the federal insurance in Germany.

When unemployment increased, neither the insurance funds nor

¹⁹ In a letter to the writer, Dr. Brüning rightly emphasizes that this reason should be added to those mentioned in *Prelude to Silence* (cited above), pp. 25, 35, in the discussion of Brüning's unemployment policy.

²⁰ Decree of 1 December 1930, Part II Chapter 1 Sections 2 and 3.

the municipalities were able to carry their part of the burden. The federal government was therefore compelled, first, to raise the contributions of both employers and employees to the insurance fund and to cut the benefit rates; secondly, to lengthen the waiting period, and shorten the time during which the benefits were to be paid; thirdly, to insert, between the payment of federal insurance benefits and of local relief, transitional payments out of special funds to be provided in the greater part by the federal government and in a smaller part by the local authorities (*Krisenfursoorge*); fourthly, to pay federal contributions to both the insurance fund and the local governments

These steps were so many illustrations of increasing federal-municipal relationships. In the fiscal year 1931 the insurance fund, the local governments, and the federal government each carried about one-third of the total amount paid to unemployed workers, exclusive of public works and work projects. The total had reached the towering sum of RM. 3,200,000,000—an amount higher by one-half than what the individual and corporation income taxes plus the federal property tax yielded for the entire nation; or more than the aggregate of the federal expenditures for army and navy, plus those for war veterans, financial administration, canals and other economic purposes, and all federal departments.

To illustrate from American experience: the sum of RM. 3,200,000,000 spent in assistance to jobless persons in Germany in 1931 can be roughly compared to the peak expenditure of \$3,200,000,000 (equal to RM. 8,000,000,000) made for the same purpose in the United States in 1938, for a population double the German size. Although in per capita terms the American amount was slightly higher than the German, it represented only 4.7 per cent of all income payments in the respective year, while the German amount equaled 5.6 per cent of all *incomes*, and an even greater proportion of all income *payments*, in the American sense of that term.²¹ More important, the American total includes both public-assistance benefits and work-program earnings, and by far the greater part of it (\$2,200,000,000) was spent for the latter; while the German figure includes practically no work-program payments, but was spent without any returns for the national economy.²² For those three billion Reichsmarks no highway was built or repaired, no public park constructed or even leaves raked.

²¹ See Donald S. Howard, *The WPA and Federal Relief Policy* (Russell Sage Foundation, 1943), p. 35, for the American figures. The German figures grew even further in 1932, when they reached their peak.

²² Except for a small amount, less than RM. 150,000,000. The financing of larger work projects would have raised expenditures considerably.

FEDERALISM IN PRACTICE

The distribution of the total burden among the insurance fund, the federal government, and the local governments involved a complicated accounting, as shown in Table 5. This table indicates how completely the old division of responsibilities had broken down.

Table 5. ASSISTANCE TO UNEMPLOYED PERSONS IN GERMANY, 1930, 1931
(in Million Reichsmarks)

Source	1930	1931
<i>Insurance Fund</i>		
Benefit payments	1,638.3	1,120.7
Cost of administration, including employment service and contributions to work programs	182.8	181.3
Minus subvention paid by the federal government	-619.1	-36.2
	1,202.0	1,265.8
<i>Federal Government</i>		
Subvention paid to the insurance fund	619.1	36.2
Subvention paid to local governments	.	230.0
Transitional benefit payments (<i>Krisenfürsorge</i>)	365.6	724.2
Other payments	..	15.5
	984.7	1,005.9
<i>Local Governments</i>		
Contribution paid to the transitional benefit payments (<i>Krisenfürsorge</i>)	91.4	181.0
Public relief	431.0	1,064.2
Minus contributions paid by the federal government	.	-230.0
	522.4	1,015.2
TOTAL	2,709.1	3,286.9

Much as the unemployment question affected the German federal structure, its solution was a problem of economic and financial policy rather than a constitutional one. The federal clauses of the Weimar Constitution did not stand in the way of a sensible solution, except for the fact that the greatest grantor of money and credit, that is, the federal government, was not at the same time the supervisor of the municipalities.²⁸ Other difficulties were hardly different from what they would have been in any other country, even a non-federal one, in

²⁸ To illustrate, the present writer and several of his friends ardently advocated a proposal which the Prussian democratic cabinet made its own in a letter to the federal cabinet, Easter 1932, according to which, first, weekly hours should be temporarily reduced to as few as 32, in order to gain jobs for a great number of unemployed; and second, the amount thus saved on insurance benefits and relief should be spent for public works, along with additional sums obtained by loans, in order to create numerous new jobs. See my report as *rapporteur général* of the federal budget in the Federal Council, June 1932 (*Reichsrats Drucksachen*, No. 58, containing the text of the Prussian cabinet's letter) and my last speech in favor of this project in the Budget Committee of the Reichstag, 11 January 1933. The federal structure would not have hampered the pursuance of this plan, which could have been carried through under the emergency powers granted in Article 48 of the Constitution.

which responsibilities were divided between state institutions and local government.

Summing up the problems that remained to be solved in economics, public finance, and unemployment in Germany were not born of any weakness in the federal legislative powers regarding these special fields. All the rights to legislate that any United States government might ever wish to have were federal in Germany. The question was how to use them best. Germany did use them in favor of national rather than state control. The advantages and disadvantages that arose from this fact have been outlined above. In the event that broader federal powers are sought here, it should be considered how the disadvantages might be avoided from the beginning. On the other hand, it should be recognized that the difficulties which have complicated national policies in the United States, in consequence of limited federal powers, did not exist in Germany—though these difficulties will have to be studied in the German case, too, when consideration is given to proposals to reduce the federal power there. The relatively small and densely populated German area will have to be taken into account in that examination.

ADMINISTRATION

The primary shortcomings in the German federal structure did not lie, then, in the legislative spheres of economics, public finance, labor, or related subjects. They must be looked for in the administrative spheres of organization and executive procedure. This holds true in spite of the fact that under the democratic regime the constitutional authority of the federal government to shape even the administration of any federal measure according to its own best judgment had grown very broad indeed. Whereas the constitution of 1871 had still reserved to the states all field administration in regard to federal measures, except where the federal constitution itself made an exception, the constitution of 1919 decreed that 'federal statutes will be carried through by the state authorities unless federal *statutes* provide otherwise'.²⁴

Federal legislation was therefore constitutionally free to create special federal field agencies for the execution of any federal act. Not only could such agencies be established for entirely new functions, such as official arbitration of labor conflicts or unemployment insurance, but the federal government could even take over the administration of functions that had hitherto been carried through by the states. The Constitution had directly provided for this with respect to the army and the inland waterways. Simple legislation followed this example

²⁴ Article 14

by nationalization of the state railroads and by establishment of the federal financial administration, as was mentioned above. The tendency toward further 'hollowing out' (*Aushöhlung*) of state sovereignty met with sharp protests from the states—from Prussia as well as Bavaria and the smaller states. Such protests led finally to the promise of the federal government that the administrative functions of the police and of education, and certain measures of public assistance (especially those involving case work), would be left to the states and municipalities. This pledge was given in a financial emergency decree of the currency-stabilization period.²⁵ Although of no constitutional force the promise was generally considered a binding principle of policy by the subsequent democratic cabinets, pending the general reform of the federal system.

Yet despite this standstill agreement, federal administration swelled to such proportions that grave inconveniences prevailed. Even if each individual administration was conducted as well as it could be, the total administration was in a disorganized state. It was this question of improving the total administrative organization that constituted the core of the German federal problem.

In addition, two particular defects hampered administrative planning and procedure at every step: first, the existence in Berlin of two great central administrations for the greatest part of Germany; and second, the disproportionate size and incongruent territories of the smaller states. The following brief enumeration of the disadvantages resulting from these defects follows roughly the one submitted in two memoranda of the Prussian *rapporteur* to the official Reform Committee of 1928-30.²⁶

Two Central Governments

Administrative conflicts and frictions between the two central governments—the Reich and the Prussian—impaired the efficiency, consistency, and economy of administration and undermined the authority of democratic government. All general and many special questions had to be investigated by both governments. Much work was duplicated, even where the federal government limited itself to merely distributing funds for purposes which otherwise fell under state jurisdiction, such as scientific research or agriculture.

²⁵ *Dritte Steuernotverordnung*, 14 February 1924, Section 42. See also Chapter IV, above, on the earlier promise made Bavaria.

²⁶ A. Brecht, 'Verhältnis des Reichs zu den Ländern,' Memoranda of May and June 1928, published in *Verfassungsausschuss der Länderkonferenz, Beratungsunterlagen*, 1928, p. 305, with a section on overlapping jurisdictions of federal and state governments by Hans Simons, p. 333. See the following chapter for details on the Reform Committee.

Civil servants, private interests, and municipalities could play off one administration against the other. The drawbacks rather than the merits of ministerial bureaucracy were multiplied. The existence of two sets of ministries increased departmentalization (*Ressortpartikularismus*) and conflicts over prestige, for entrenched civil servants are tough fighters.

Neither government was fully familiar with the other's institutions and personnel. Each would at times conceal relevant facts, figures, and projects from the other, sometimes unintentionally, sometimes deliberately.²⁷ Divided jurisdiction delayed decision, especially in questions of administrative reorganization, and obstructed the clarity of the country's administration. It provoked constant criticism at home and abroad.

Several of these defects existed also in the relations between the Reich and states other than Prussia, but they were of greater consequence in the case of the largest state.

The Smaller States

The smaller states did not constitute suitable regions for the exercise of either state or national functions. Therefore the federal government could not use their territories as units of federal administration, or delegate the administration of federal functions to them. Even certain state functions could be fulfilled by the smaller states only with the help of larger ones. Prussia had hundreds of agreements on joint administration with smaller states, and could have bankrupted some of them by denouncing such treaties. As a result of the splitting up of the territories of many of the smaller states, civilians had sometimes to travel long distances to reach their own state institutions, while those of other states were close at hand. Differences in administrative organization and different principles of supervision of industry and commerce were confusing to the public.

The maintenance of parliamentary machinery in very small states involved relatively high costs. Parliamentarism applied to such small units led to discrediting caricatures of democracy, producing unstable governments unsuited to purely local administrative tasks. It was unnecessarily costly for the several small units to pass legislation on identical subjects, such as civil service and salaries. Attorneys, state civil servants, and the like were bound to their states for their lifetime,

²⁷ Under the German penal code persons who betrayed state secrets from government to government, even within Germany, were guilty of crime. This was a relic from pre-federal periods.

and this, in tiny states, affected their efficiency, freedom, and happiness. The multiplicity of state institutions made it difficult to understand and watch the workings of the total administration, and thus rendered the country's administration *undurchsichtig* (obscure).

Duplication of Field Agencies

The fact that the states did not constitute adequately shaped regions for the field administration of nationwide services led to the independent establishment of national regions, or at least gave a good excuse for their creation. Some of the federal and state agencies dealt with closely related subject matter. Yet offices could not be combined so long as they belonged to different governments and their jurisdictional areas were not co-extensive. Regional headquarters of national and state services were often located in different towns.²⁸

Co-operation in the field suffered not only from the separation of supervision but also from the lust for prestige and from the split of the civil service into federal and state bureaucracies with separated careers. The knowledge and experience that public employees acquired in the service of one government could not readily be utilized by the other. Nor could employees be trained systematically for functions that were exercised partly by federal and partly by state administrations. Transfers from government to government were cumbersome and rare. Departmentalism and jurisdictional conflicts flourished. The best civil servants were annoyed and fatigued by these conditions, which they could not alter.

The duplication of field agencies was another factor that made it hard to see clearly the working of the total administration and helped to obscure the country's administration.

Lack of Administrative Clarity

Lack of clarity, let it be noted, resulted from each of three defects: duplication of central administration in Berlin; duplication of regional and local administration everywhere; and the inadequate size of smaller states. The first and second defect hardly existed during the imperial period, because at that time the two central administrations in Berlin were linked together, and there were no national field agencies.²⁹ The threefold cause of lack of clarity led to a situation in which there was 'no longer any man or agency in Germany that has or possibly

²⁸ See Chapters vi and vii.

²⁹ See Chapter vi.

can have a really synoptic view [*Übersicht*] of the entire administration.³⁰

Lack of clarity, in turn, had deplorable consequences of its own. Public opinion, business, and the individual agencies were replete with criticism, which could not be brushed aside. Democratic leaders showed a lack of self-assertion. For no one, even in the highest position, could improve the existing conditions until a constitutional amendment had prepared the way. Lack of clarity was often wrongly interpreted abroad as a German desire to prepare for profitable bankruptcy. German administration appeared worse than it actually was.

THE COURTS AND THE POLICE

The German regular courts, with the exception of the federal Supreme Court at Leipzig, were state courts in both the imperial and the democratic periods. As was mentioned above, this was true in spite of the fact that the organization and procedure of the courts were exactly prescribed by federal statutes and even the substantive law to be applied was almost exclusively federal. The majority of judges and attorneys ardently criticized this dual nature of their offices. Their professional organizations recommended nationalization.

The police, too, was left to the states in pre-Hitler times, and although Prussia and other states delegated the execution of the police power in part to the mayors of municipalities,³¹ they generally reserved the highest power of command to their state ministries. This exclusive control of the police by the state governments, with no federal police duplicating state institutions, made for economy, efficiency, unity of purpose, and administrative clarity—at least within a particular state.

There were, however, certain drawbacks. Enforcement of the federal laws regarding political diatribes differed considerably among the various states in periods of high tension. While some tried to apply the laws impartially, others seemed to enforce them more severely against the Left than against the Right, and a third group followed the opposite practice. Thus the federal government sometimes found itself in a bad position regarding the enforcement of its own laws in political matters. Such different state practices flourished particularly during the first years of the Republic and during its final period.³²

³⁰ Memoranda (cited above), p. 308.

³¹ See Chapter XIII.

³² See Brucht, *Prelude to Silence* (cited above, Chapter III), pp. 99, 133.

PART III

REFORM

The Governmental Reform Committee, 1928-30

POPULAR desire for reform of the federal structure was general throughout the democratic period. Proposals, however, ran in opposite directions. Some suggested 'going onward' along the road to a unitary democratic state (*demokratischer Einheitsstaat*), in which all power would rest with the national government; others desired to 'go back' to former stages of federalism, especially by reconcentrating as much administration as feasible in state hands, and by chopping off some of the additional legislative powers which the federal government had obtained through the Weimar Constitution. Neither side, however, went to extremes. The unitarists were prepared to decentralize whatever powers were not needed by the national government, such powers to be left to autonomous units. The adherents of state rights (*Federalisten*), on the other hand, were willing to leave to the federal government whatever powers it needed for the political and economic interests of the entire nation. The debate, therefore, although starting out from opposite positions, led gradually to two concrete questions: what the various autonomous units would look like, geographically; and how power should be distributed between them and the national government. Laymen were more interested in the first, experts in the second question.

To prepare for the federal reform, which all agreed was necessary, the national cabinet invited the cabinets of all states to a so-called States' Conference (*Länderkonferenz*) to be held early in 1928.¹ There

¹ See F. A. Medicus, *Reichsreform und Länderkonferenz* (Berlin, 1930). Also current reports and comments by Arnold Bracht in the periodical *Reich und Länder*, vol. 2 (1928), p. 349, vol. 3 (1929), pp. 70 and 265, and vol. 4 (1930), p. 67, these reports include data on how the delegates of the several states voted on the various questions. There is an American doctoral dissertation on the subject by Gerhard Krebs, *The Länderkonferenz (1928-30) and the Problem of Federal Reform in Germany* (University of California, 1937), on this work see the Note on Terminology and Literature, at the beginning of the present study. See also Roger H. Wells, 'Reichsreform and Prussian Verwaltungsreform,' *American Political Science Review*, vol. 27 (1933), p. 237.

had been similar conferences from time to time to discuss questions of common concern. They were simply joint meetings of the appropriate ministers, federal and state. Although they were devoid of any formal power they served to prepare important decisions of the cabinets and of the Federal Council (Reichsrat). Academically speaking, they were composed exactly as was the Federal Council—for the Council too was presided over by a national minister, and all states were members. In practice, however, the states exercised their functions in the Council through permanent delegates rather than cabinet members, and the procedure there was too formal to serve the purposes of an exploratory discussion of vital problems.

The Conference in January 1928 unanimously agreed on a resolution which declared the relationship between the nation and the states to be 'unsatisfactory' and 'in need of fundamental reform' (*grundlegende Reform*). It also stated that any partial solution was objectionable, and that therefore some 'total solution' (*Gesamtlösung*) was to be prepared.

The Conference then established a 'Constitutional Committee' (*Verfassungsausschuss*), composed originally of eighteen, later twenty members. Half of them were appointed by the national cabinet, the other half by those states that were members of the Federal Council's standing committee on constitutional questions. These were the eight states with more than one million inhabitants each—Prussia, Bavaria, Saxony, Württemberg, Baden, Hessen, Thuringia, and Hamburg—and two of the smaller states, Anhalt and Mecklenburg-Schwerin. Each of them appointed one member to the Committee.²

Actually, the States' Conference did not convene again in this matter. Its Constitutional Committee—hereafter referred to as the Reform Committee or briefly as the Committee—did the real job. In May it asked its members to prepare memoranda on the 'gravamina,' the points of complaint.³ After general discussion, in the fall, it appointed two subcommittees, which assigned several *rapporteurs* to each of the two main questions—governmental organization, and distribution of powers. The Prussian delegate was to deal with both questions.⁴ In addition, those of Saxony, Württemberg, and Hamburg were assigned to the problem of organization.⁵ The problem of dis-

² See Appendix F on the composition of the Committee, and its authority. Mecklenburg-Schwerin held only a substituting membership in the constitutional committee of the Federal Council, but received full membership in the Reform Committee.

³ The material collected by the Committee has been published under the title *Verfassungsausschuss der Länderkonferenz, Beratungsunterlagen*, 1928 (Berlin, Reichs- und Staatsverlag, 1929). Written before the economic crisis of 1930, it did not refer to the points made in the preceding chapter with reference to the last years of the Republic.

⁴ Ministerial Director Arnold Brocht. See Appendix F.

⁵ Ministerial Director Fritz Poetzsch-Heffter, for Saxony, Prime Minister Dr. Bolz, for Württemberg, and President of the Senate Carl Petersen, for Hamburg.

tribution of powers was dealt with by one of the appointees of the Reich cabinet, by the delegates from Bavaria and Baden, and, in addition to the delegate of the Prussian state government, by the representative of the Prussian Rhine province, who had been co-opted by the subcommittees.⁶

The *rapporteurs*, with the exception of the Bavarian representative, succeeded in joining forces and placing joint reports and proposals on their respective problems before the subcommittees. This was decisive for the success of the Committee's work. The joint proposals were adopted with slight changes, first in the two subcommittees and later, on 21 June 1930, in the full Committee. In the final vote they were carried by 15 to 3, 2 members abstaining. This was a five-sixths majority of the members voting and a three-fourths majority of all. It included Reich Chancellor Heinrich Brüning, the representatives of the Prussian state government and of the Rhine province, and the representatives of Saxony, Württemberg, Baden, Hamburg, and Anhalt.

The fifth *rapporteur* on the question of powers, the Bavarian prime minister, Dr Heinrich Held, offered separate reports; and although he voted in the affirmative on many items and influenced the formulation of several of them, he cast his final vote against the plan. Among the representatives of the states, only the prime minister of Mecklenburg, a member of the German National Party, followed suit. He had but recently replaced his predecessor, a Social Democrat, who would have voted with the majority. In addition, one of the ten members appointed by the national cabinet, who like Held was a member of the Bavarian People's Party, cast his vote with the dissenting prime minister, the others voting with the majority.

The proposals of the Bavarian representative will be discussed in their proper place. The important point to stress here is that the delegates of the two other southern states—Württemberg and Baden, which for a long time in German history had formed a kind of political bloc with Bavaria in questions of state rights—did not go along with Dr. Held in his deviating proposals, but, for reasons to be discussed later, joined the majority. Another point of great significance is that in his report the Bavarian member stated his agreement with the maintenance of strong federal power:

⁶ The Reich cabinet's delegate was Erich Koch Weser, minister of justice and former minister of the interior, leader of the Democratic party in the Reichstag. This great Liberal, who died in exile in Brazil in 1944, had been one of the early leaders in the movement for federal reform. Prime Minister Heinrich Held served for Bavaria, Minister of the Interior A. Remmele for Baden, and home rule executive (*Landeshauptmann*) Dr. Horion for the Rhine province.

Just as the political union of the various German branches [*Stämme*] within the Reich was once the ardent desire [*Sehnsucht*] of all Germans, so we are all at one now in the desire to preserve a powerful [*machtvolles*] Reich. All the states' representatives have confessed to this need for a strong federal power. Strong federal power is inconceivable without some sacrifices of sovereignty by the individual states [*Länder*]. Central power thrives at the cost of the constituent states that are united under a federal regime. Division of governmental powers, however, between the central authority and state authority, and the concurrent activities of the two authorities, do not signify any defect in the governmental structure. The federal form of government is distinct from, but not inferior to, the unitary form. Proof of this can be seen in the prosperity of the political and national life in those commonwealths, both large and small, that live under a federal constitution.

The distribution of powers in federal countries will greatly differ according to their different conditions. It can, however, be stated as the guiding principle, in line with the Bavarian Memorandum of 1924,⁷ that federal power [*Zentralgewalt*] should include whatever is necessary for the preservation of the entire nation [*Gesamtstaat*] and for its efficiency abroad, and for all those matters that need uniform order and administration at home; but that the separate states are entitled to everything that does not require such uniformity [*Einheitlichkeit*] . . .⁸

It is worth adding a word on the methods of the two groups of four *rapporteurs* each that drafted the joint reports. Together representing seven different governmental units,⁹ they followed a principle that is very familiar to Anglo-American committees, but unfortunately was rarely practiced in Germany. They concentrated on the numerous points on which they agreed, and on which they felt a vast majority of the people would agree, and left the solution of other questions, whenever feasible, to the future. They respected differences of views in regard to fundamentals, whenever it was not necessary to decide on them. They discarded all academic disputes about federal and unitary countries, and all blueprints of uniform simplification and 'equalization,' since they were mainly intent on opening a breach in the constitutional walls that blocked practical progress. More technically speaking, they owed their success especially to their procedure of taking up one branch of administration after another and considering each separately, in order to decide whether federal or state agencies ought to be in charge of it. Most items offered no difficulty, and the large number of agreements that were easily reached served to har-

⁷ See Chapter IV.

⁸ See *Verfassungsausschuss der Länderkonferenz* (cited above), p. 432.

⁹ The Reich, Prussia, Saxony, Württemberg, Baden, Hamburg, and the Rhine province. The fact that the Prussian representative served with both groups gave him a kind of key position as a liaison officer between the two.

monize the deliberations on more difficult subjects. The same procedure was followed by the subcommittees in their discussions of the two reports.

IX

The Democratic Reform Plan—Elimination of Prussia as a State

THE discussion of the German federal problem during the democratic period passed through seven stages, which may be called 'dialectic' as they followed the order of thesis, antithesis, and synthesis; the negative arguments of each stage were partly taken up in the positive ones of the following stage. Wherever clubs or committees started debating, or newcomers joined in the discussion, it was almost inevitable that all seven stages were run through, time and again. With some modifications there may be a repetition of this kind of argument when Germany's federal problem comes up once more for discussion.

In the first stage criticism of the federal wilderness caused bold reformers to demand the abolition of federalism and the establishment of a 'unitary' German state. This demand was sure to lead to the second stage, in which any kind of 'one hundred percent dependency' of all sections of the country on the national capital was decried. Sometimes discussion immediately started at this point, over the charge that centralization in Berlin had already reached an unbearable degree.

At the third stage division of Germany into states of a medium size and with equal rights was proposed. At the fourth stage this proposal was rejected on the ground that it involved division not only of those Prussian administrations that deserved to be divided, but also of those whose united direction under the Prussian jurisdiction had given no cause for complaint ('Dismemberment of Prussia').

At the fifth stage the fusion of the Prussian and the national governments was proposed, in order to transform Prussia into a 'national territory' (*Reichsland*) to be governed by the national government, while provisionally leaving the status of the other states as it was ('partial solution'). This proposal was made by the Renovation Society (*Erneuerungsbund*), a great non-partisan organization, founded in

1928.¹ At the sixth stage the question, 'What about the other states?' was raised with diffidence, by both medium and small states.

Thus the debate would lead to the seventh stage, the 'total but differentiating solution' of Germany's federal problem (*Differenzierende Gesamtlösung*). This plan, arrived at in the official Reform Committee, was intended to settle the constitutional relation between the governments of the states and the national government not only for Prussia but for all sections of the country—to settle it, however, without insisting on a uniformity that had not existed before and that was not necessary for the future. It was the idea of differentiation which distinguished the plan from proposals that aimed at creating a single type of state (third stage). Its total character, that is, its extension to all sections of the Reich, distinguished it from proposals made at the fifth stage, especially those presented by the Renovation Society. The Renovation Society, and also many adherents of the uniformity solution, later accepted the 'total-but-differentiating' formula of the official Committee.

THE BASIC SCHEME

With this background in mind it is easier to understand the plan of the Committee. Its main points were as follows:²

1. The central administration of the Prussian state government to be fused with that of the federal government.
2. The regional and local services of the Prussian state government to be fused with those of the federal government.
3. Therefore, *Prussia to be completely eliminated* as a German state or autonomous unit (*Land*).
4. Instead, the thirteen Prussian provinces, including Berlin, to become 'new' territorial units (*neue Länder*) directly under the federal government. Their constitutions to be fixed by simple national statute.
5. All those functions that need not be administered in a centralized way, to be transferred—by simple national legislation—to both the old and the new units (see Nos. 12 and 13).
6. The boundaries of the new units to be geographically redrawn in due course of time, by simple national statutes, in order to meet practical requirements, both economic and administrative.

¹ The Renovation Society was first presided over by Hans Luther, ex chancellor, later president of the Reichsbank and ambassador to the United States. After Luther's return to public service the Society's presidency passed to Count Roedern, imperial ex-secretary of the treasury, and finally to Otto Gessler, democratic ex minister of defense. The official name of the society was 'Bund zur Erneuerung des Reichs'. Its chief publications are *Reich und Länder* (Berlin, 1928), *Die Rechte des deutschen Reichspräsidenten nach der Reichsverfassung* (2nd ed., 1930), *Das Problem des Reichsrats* (1930), and *Die Reichsreform* (1933), containing an excellent bibliography.

² The official text is given in Appendix G.

7. Undersize states and enclaves to be fused with the new units by simple statutes, following individual negotiations
8. The status of states of 'more proper size'—Bavaria, Saxony, Württemberg, and Baden—to remain essentially the same as under the Weimar Constitution. Therefore these 'old' states (*alte Länder*) to be slightly more independent than the new ones, for example, in framing their own constitutions within the standards set by the Weimar Constitution, in maintaining their existing boundaries, and in exercising legislative and administrative powers in all fields in which they had such powers under the Weimar Constitution. This status to remain constitutionally guaranteed, and thus changes to be effected not by simple statute but only by constitutional amendment, except as provided below under No. 16.
9. Prussia's bloc of votes in the Federal Council to disappear. Votes in the Council to be divided among all states, new and old, according to population.³
10. National legislation which affected only the new units (as under Nos. 4 to 6) to be passed by the Reichstag and Federal Council either in the same way as any other national legislation or only by those delegates who represented the new units.

There was some doubt whether national legislation, in so far as it concerned matters of the new units only, was to be entrusted to the Reichstag and Federal Council in their entirety or only to those delegates in the two bodies who represented the new units (No. 10). The latter procedure would have implied so-called *itio in partes*, that is, separate meetings of the delegates from the new units for the matters in question. Such *itio in partes* did indeed take place after 1871 in regard to federal matters (especially postal matters and beer taxes) in which Bavaria and other southern states had no legitimate interests because they had reserved their state rights. The procedure was abandoned, however, as early as 1873, because it proved cumbersome and of little practical significance. A similar experience was anticipated in the present problem. Accordingly, undivided legislation by the entire legislative bodies was contemplated as the final solution, at least in the popular chamber, but *itio in partes* was suggested for the transitional period.⁴

The most striking feature of this whole plan was the elimination of Prussia as a separate unit between the provinces and the national gov-

³ See Appendix D on the distribution of votes in the Federal Council.

⁴ In order to make it easier for Prussia's Diet to consent to Prussia's elimination as a separate state it was even provided that, if necessary, the Prussian Diet might be kept for the transitional period to prepare the joint legislative measures for the former provinces, now *Länder*, with the proviso that the consent of the national cabinet was required for such measures, in case it should not be given, final decision should lie with the Reichstag. This tactical proposal has no more than historical interest today. See Appendix C, Part 1, IV B.

ernment, and the elevation of the provinces to direct subdivisions and constituent parts of the nation. The status of the new units would differ slightly from that of the four major old ones. But they were to have many features in common.⁵

THE HANDLING OF PUBLIC ADMINISTRATION

Public administration, whose disorganization had been the main source of all complaints, was to be handled according to the following scheme:

11. *Federal Administration.* The following branches of administration to be conducted by federal agencies, as had been the case before. (a) foreign affairs; (b) army and navy, (c) postal service, (d) railroads, (e) national finance, including the assessment and collection of income taxes for federal and state and municipal purposes; (f) currency, (g) promotion of German commerce and industry in general (*Förderung der deutschen Gesamtwirtschaft*), this power to include the public control of business (*gemeinwirtschaftliche Aufsicht*), especially of cartels, of the production and distribution of coal and potash, of insurance business, and the like, (h) central direction in administrative matters concerning labor and social security, and both top and field activities in matters of arbitration between employers and employees.
12. *State Administration* In all states, both new and old, the following matters to be left to autonomous state administration (a) public relief; (b) public health; (c) youth, (d) housing; (e) state finances; (f) agricultural matters, with reservations for special problems of nationwide importance and for the transfer of some matters to occupational corporations (*berufsständische Verbände*); (g) zoning, (h) traffic and roads, with reservations in regard to railroads, air traffic, and automobile traffic; (i) protection of monuments and of characteristic local features in landscape, architecture, and the like (*Heimatschutz*). These powers to be constitutionally guaranteed to the old states, while some flexibility was left open in regard to the new ones, permitting them to obtain some of these powers in the beginning only as delegated rather than as autonomous powers
13. *Field Administration by States in Federal Matters* In all states, both new and old, certain administrative activities, previously conducted by national agencies both at headquarters and in the field, to be executed in the field through state and municipal agencies which performed similar functions. These matters to include field activities concerning labor, social insurance, and war veterans; especially those measures for the improvement of public health or of social case work in which the various branches of the social security administration

⁵ See Chapter V

and the national war administration were engaged. If such matters could not be left to the states or municipalities for autonomous administration they should at least be entrusted to the states or municipalities to administer under the system of delegated administration.⁶

- 14 *Differentiation* (certain branches of administration federal in some units, state in others) In the new units some of the previous state functions, until specifically transferred to the governments of these units or of their subdivisions, to remain under central (now national) direction, namely (a) justice,⁷ (b) police, (c) education, (d) supervision of municipalities, (e) supervision of industry. In the old states, however, these functions to be left to autonomous state administration, and this privilege to be constitutionally guaranteed to them.
- 15 *Stabilization of State Administrations* In all states, both new and old, the administration to be stabilized politically, in order to avoid continual changes in the cabinets as a result of shifting majorities. For this purpose, the state cabinets to be elected by the state legislatures for a fixed term—generally four years—with the proviso that only a two thirds majority could dismiss a cabinet during that term. This constitutional feature to be incorporated by national legislation in the constitutions of the new states, and to be recommended to the old ones. Appointment of cabinets for even more than four years to be permitted, if the members were made subject to disciplinary procedures before disciplinary courts in case of violation of duties.⁸
- 16 *Assimilation of the Administrative Structure in All States* In all states, new and old, the principles underlying the following administrative matters to be subjected to national legislation (*Grundsatzgesetzgebung*) (a) the structure and hierarchy of the administration (*Verwaltungsaufbau*), (b) the constitutions or charters of the subdivisions of the states, especially of municipalities and counties (*Gemeindeverfassungen*), (c) the administrative law in the states, and (d) examinations and certificates of training and skill (*Prüfungs-wesen*) and their reciprocal recognition in the states.

This administrative scheme removed the gravest defect of the German federal system—the dualism of two central administrations in Berlin. It provided for autonomous administrative units of fairly equal size everywhere,⁹ and removed certain duplications of field services by placing federal field activities in the hands of the state authorities (No 13). In the numerous and important matters mentioned under 11, 12, 13, 15, and 16, the provisions were identical for all states, new and old.

⁶ See Appendix G Part II 1 D, and Chapter XIII.

⁷ For the administration of justice no transfer to the state governments but only 'deconcentration' within the judicial organization was provided.

⁸ This clause would have made it possible in the new units, to continue the Prussian provinces' practice of appointing their chief executives (*Landeshauptleute*) for more than four, usually twelve, years.

⁹ See Chapter XI.

The arrangements differed, however, in regard to five fields of action mentioned in 14—justice, police, education, supervision of municipalities, and of industry. These five fields, unless specifically transferred to the state authorities, were to be under federal direction in the new states, while they were to remain constitutionally under state direction in the four major old states. The reasons for this differentiation will be discussed below.¹⁰

X

Unanimity and Divergency of Views

As has already been said, there was no urge toward a dissolution of the German union nor toward a return to the pre-Bismarckian forms of loose confederation, either from Bavaria or from any other source. On the contrary, there was unanimous agreement that foreign affairs, army and navy, the postal service, the railroads, the currency, general matters of commerce and industry, and all the other items enumerated in the preceding chapter under No. 11, should be conducted by federal agencies. The Bavarian prime minister was in sympathy with this view as fully as any other member of the Conference. He made only one exception. Although agreeing that all income taxes should be assessed and collected by only one set of agencies, uniformly for national and state purposes, he wanted these to be state agencies as they had been during the imperial period, rather than federal agencies. All other members of the subcommittee in charge held that the internal revenue agencies had to remain national, because of the overwhelming importance of the national budget. And even the Bavarian delegate preferred federal agencies to a duplication.

There was, furthermore, unanimity in the decision that the matters enumerated in the preceding chapter under Nos. 12 and 13 were to be left or transferred to the states, old and new. Nor was there dissent between the majority and the Bavarian delegate regarding the rights of the old states in respect to the administration of justice, the police, and education, and the supervision of municipalities and industry (No. 14).

¹⁰ Chapter x. See also Appendix G, Part III, concerning special arrangements for certain medium-size states (Hessen, Thuringia, Mecklenburg) and the three free cities.

It is true that in regard to the police the other *rappoteurs* made an abortive attempt in the interest of democratic law enforcement to give the federal government additional powers concerning the air police and the prosecution of criminals, and also concerning the treatment of aliens—the latter because of the different attitudes taken by the several states in the treatment of Hitler on the one side and of immigrant Jews on the other. But these proposals were rejected by a slight majority because of the protest of the Bavarian delegate, and thus no final dissent was left in these matters between the majority and Bavaria.

As to justice, most members were outspokenly in favor of nationalizing its administration, not only in the new but also in the old states, in line with the demands of the professional associations of judges and lawyers. Out of regard for sensibilities in the old states, however, a one man majority in the full Committee rejected a formal decision to this effect, such as the subcommittee had proposed. This gesture had only slight practical importance because the Committee was agreed—the Bavarian prime minister not objecting—that at least in the new states judicial administration should remain or become unified.

BAVARIA'S DISSENT

The two major points in which the Bavarian delegate deviated from the majority in matters of the old states concerned the position of the Federal Council and the extension of federal legislative powers. He wished to have full equality restored between Federal Council and Reichstag in legislation, and to see the additional powers abolished which the federal government had received in the Weimar Constitution to legislate on certain matters regarding 'principles' and on others 'in case of necessity'.¹ He also objected, of course, to the further enlargement of these powers as proposed by the majority (No. 16).

It was, however, not in the treatment of the old states but in the creation and treatment of the new units, that the main divergency of views appeared. To start with, the Bavarian representative saw no adequate reason for dismembering Prussia. This fact is so surprising to anyone who has not penetrated deeply into the German federal problem that it is advisable to go into particulars. The Bavarian member proposed the following resolution:

The so-called dualism between Prussia and the Reich is being exaggerated both as to its cause and its effects. The difficulties are not so deep-reaching as to make a fundamental change in the constitutional structure

¹ See Chapters vi and vii.

necessary. They can be eliminated by such changes in the Weimar Constitution as have been advocated by Bavaria in order to create clear jurisdictions permanently guaranteed by the Constitution.

The so called total but differentiating solution is constitutionally dangerous because, in abandoning the federal principle of legal equality of all parts of the nation, it would split the nation into two legally and politically unequal parts. Dualism would not be removed but only shifted. A new dualism would emerge between the north and the south, involving considerably greater difficulties and dangers.

There was danger, the proposed resolution continued, that in the long run the differentiations between the old and the new states would be abandoned at the cost of the southern German states, by assimilating them to the new type of states to be created out of Prussia's provinces. Prussia, therefore, ought not to be dismembered. If this should be done in spite of Bavaria's warning, then the new units, as a matter of principle, ought to obtain all the rights of the old states under the Weimar Constitution. Dr. Held expressed his willingness, however, to grant the Reichstag the right to 'withhold or take back' these rights from the new units 'according to national needs' (*nach Massgabe der Staatsnotwendigkeiten*). Thus he agreed that the rights of the new units should not be constitutionally guaranteed, as were to be those of the old ones.

The draft resolution was ingeniously formulated. It sought to mobilize Prussian resentment against the dismemberment plan and against the constant attacks on the dualism between Prussia and the Reich. At the same time it blandished public opinion, which liked the idea of a single type of states. Nevertheless it was widely felt to be absurd that Bavaria of all the states should be the one to come out for the preservation of Prussia. As to uniformity, public opinion—at least in the northern part of Germany—was overwhelmingly in favor of a type of state with far fewer rights than were advocated by the Bavarian delegate. It was just these sectional differences in public opinion that caused the other *rapporteurs* to allow for differentiation.²

The subcommittee, in which the resolution was proposed, rejected it. Eight votes were cast against it by the following members: the leader of the Catholic party, Heinrich Brüning; the Social Democrat, Rudolf Hilferding; the Liberal, Erich Koch-Weser; the Prussian representative; the prime ministers of Saxony, Dr. Bunge, a National Liberal, and of Baden, Dr. Schmitt, a Catholic; the Thuringian representative, Dr. Paulsen, a Liberal; and Professor Anschutz. The prime minister of Württemberg, Dr. Bolz, another Catholic, who participated

² See the following section.

in the debate without a vote, was vociferous against the Bavarian proposal, as was Dr Petersen, Hamburg's liberal mayor. Only the two members of the Bavarian People's Party, Dr Held and Dr Schatzel—the latter one of the ten members appointed by the Reich cabinet—and Dr Eschenburg, a German National from Mecklenburg, voted for it. They were the same three members of the Committee who later opposed the majority in the final vote.³

To alleviate the fears of Bavaria lest further changes tend to assimilate the old states to the new type, the Committee resolved that the combined votes of the four major old states, or a corresponding number of other votes, would be considered sufficient in the Federal Council to block the adoption of any encroachments on the rights of the old states. This was done in order to maintain the veto power in the Federal Council which the four states held at the time against constitutional amendments. The new distribution of votes among all states, new and old, according to population (No. 9), would have made it possible for more than two thirds of the votes to come exclusively from the other states in opposition to those of the four major old states. The guarantee proposed by the majority, and unanimously adopted by the Committee, was to protect the old states from such a situation.

THE DREAM OF A SINGLE TYPE OF STATE

In view of the popular inclination toward uniformity of state rights, why should differentiation have been decided upon? In other federal countries the constituent states are of a single type, each endowed with the same rights and duties. Why should it not be possible to use the same pattern in Germany? Such questions were asked at the time of the Conference. They may be raised again in the future. There was suspicion that the idea of differentiation was prompted by some ulterior motive, either too much love of the old centralizing Prussian spirit, or too much regard for Bavarian obstinacy.

It is true that other federal countries, like the United States and Switzerland, have developed a uniformity of state rights. Germany never did. Differentiation in voting strength prevailed from the beginning of federated life in 1815 to the end of the Republic. Other differences developed from disproportions in size. A small state like Lippe, comparable to a Swiss canton, was, in spite of nominal equality of rights, utterly different in type from a state like Prussia, with about as many inhabitants as England, France, or Italy. On the other hand, by constitutional amendment to divide Prussia into separate

³ See Chapter VIII.

federal states meant performing an operation similar to that of dividing England or France into federal states with equal powers. Not that such an operation would be in itself necessarily bad. But it might run counter to the habits and wishes of the inhabitants, and it might involve breaking up large administrative services into sectional parts, where there had been no complaint about the prevailing administrative conditions. Democratic as federalism is in countries in which the individual parts wish to have it, it may be undemocratic where it is contrary to the popular wish.

Nor would differentiation be a German specialty. Within the United Kingdom, for example, England, Scotland, Wales, and Northern Ireland constitute as many different types of units. Each enjoys special privileges. There are statutes that apply only to England and not to Scotland, there are Scottish matters with which Parliament is not supposed to interfere. There is a special Secretary for Scotland in Whitehall, and a special government in Northern Ireland, and there are particular features concerning representation in the House of Lords. This system operates fairly well. It has always been considered a proof of England's wisdom that she did not insist on uniformity. The British Commonwealth is an even more striking illustration of the point. The proposal of the German Reform Committee that the various sections of Germany after the division of Prussia should not be organized quite uniformly, and that the degree of centralization and decentralization of their administrations might differ, was therefore not unique. Nor was there anything undemocratic in it, provided the various sections preferred the type assigned to them.

One of the southern *rappoteurs* in the Committee, the Social Democratic prime minister of Baden, Dr Remmele, had at first proposed uniformity. He laid a comprehensive memorandum to this effect before the Committee.⁴ But his catalogue of exclusive state powers used vague and broad expressions, such as 'state institutions of public welfare,' 'state culture,' 'state institutions for agriculture,' 'state care of art and science.' In thus speaking of 'state' functions as distinct from federal functions in the same fields the author was simply begging the question, because the problem was exactly that of determining which were, in these fields, the appropriate functions of the state governments and of the federal government. Remmele's formulae could be interpreted in many different ways, and if one tried to clarify their meaning, either the south or the north was antagonized. Their author soon recognized that this proposal could not lead to practical results.

Similarly, Erich Koch-Weser, ardent advocate of decentralized gov-

⁴ A Remmele, *Vorschläge für die Reichs- und Landesreform* (Karlsruhe, 1929)

ernment, withdrew his uniformity proposals in favor of differentiation. Even the Catholic delegate from Wurtemberg, Dr. Bolz, otherwise a proponent of state rights, regionalism, and decentralization, agreed to making the various units different types, in accordance with tradition and sectional wishes—as did Remmele's Catholic successor in Baden, Dr. Schmitt, and the Catholic representative of the Rhine province, Dr. Horion.

One reason for this agreement was economy, regarding both the number of changes to be proposed and the costs of executing them. Moreover, legislation, administrative direction in matters of justice and police, and supervision of municipalities and industry had been centralized in Prussia for a long time. Her older sections had been accustomed to it for two hundred years or more, the Rhineland for over one hundred years, and even the younger provinces, like Hanover and Hessen, for more than sixty years. There was little or no objection to this arrangement anywhere in Prussia, and what little resentment there was would be eliminated by making the central legislation and administration a matter of the national rather than of the Prussian government. Mayors of big cities and leaders of industry were not at all inclined to become subordinate to provincial governments. Labor too was definitely opposed to experiments in decentralization.

The Committee's majority believed that for these reasons it could not recommend, for the mere sake of producing a single type of state, that uniform legislation and administration for the Prussian provinces be abolished in the matters mentioned and in such others as civil-service status and salaries, and that this uniformity be replaced by separate legislation and administrative direction for thirteen new units. Such separate rights could well be maintained where they already existed, but to introduce them artificially where they neither existed nor were desired could not be recommended in the name of democracy.

Even Bavaria recognized that it was hardly justifiable to divide the administration of justice in Prussia into thirteen parts, and that in other questions too it might be advisable to withhold from the new states rights that the old states had¹

Other and stronger reasons, however, than those of economy and regard for sectional wishes served as warnings against subdividing legislation and administration in fields in which political views play a part. Reactionary parties held a leading position in the eastern and northern sections of Prussia. That justice, police, education, and municipal policy had been kept out of their hands during the republican period had been possible only because the top direction lay with the

¹ See the preceding section

Prussian central government in Berlin, which was influenced by the democratic sections of the west.

Most observers of the federal set-up in Germany have concentrated upon divergencies of views between the north and the south. They have overlooked the fact that the most serious conflicts during the last hundred years have been those between the west and the east. They were less visible, because they were settled not by public controversies between different states but by decisions made within the one state government of Prussia, the only state in Germany that included both eastern and western sections. During the monarchical period such decisions often went in favor of eastern views. After 1918, however, the democratic cabinets in Prussia decided most questions of political philosophy in favor of the west against the east. This trend was not reversed until democracy was overthrown unconstitutionally and replaced by an authoritarian regime in 1932. To re-establish the rule of the east it was necessary for Papen and Hitler to *abolish* democracy and majority rule.

The fact that under democratic conditions of government centralized political direction rendered it possible to bring the influence of the west to bear upon the east made many democratically minded men adherents of centralization. To illustrate: the Catholics, who had predominantly democratic leanings in Prussia, had little political power in administrative matters during the monarchy. At that time, therefore, they would have liked the Rhineland to form an autonomous unit within the Reich, especially with respect to administrations of political significance. This stand weakened under the democratic regime. Democratic principles secured to the Catholic Center a dominant influence in both cabinets, national and Prussian, from 1919 up to Papen's *coup d'état* in 1932. Their influence then extended to *all* Prussian provinces—not only to those in which they had an overwhelming majority, as in the Rhineland, but also to the eastern provinces. Therefore they became less interested in establishing provincial independence in all matters. The situation was similar among the Liberals and Social Democrats. Provincial independence would have served the interests of the reactionaries of the east, who would have escaped from democratic control. On the other hand, even the East Elbians did not want provincial independence, because of their adherence to Prussian tradition.

Thus a great number of significant arguments caused the Committee to discard the dream of a single type of state. To increase the autonomy of the new units in all matters to such an extent as to make their constitutional independence equal to that of the southern states was neither economical nor in line with the will of the people, and

it was politically dangerous for the maintenance of democratic administrations. On the other hand, there was no valid reason why the northern type of autonomy should be forced upon the great southern states. The situation seemed to require a more flexible procedure. The result was differentiation. Yet this differentiation affected only a few out of many branches of administration. The great majority of administrative functions were treated alike all over the country. They were placed either under national direction everywhere, as was the collection of income taxes, or under state direction everywhere, as was social case work.

PART IV

DECENTRALIZATION

Territorial Reorganization

ELIMINATION of oversize Prussia, elevation of the Prussian provinces to states (*Länder*), and combination of undersize states and provinces and of all enclaves with surrounding units would have established fairly equal subdivisions of Germany (see Map 6). The average popu-



MAP 6. THE PRUSSIAN PROVINCES AND THE MAJOR NON-PRUSSIAN STATES, 1933

(The shaded areas belonged to the twelve states with fewer than 2,000,000 inhabitants each; see Map 1)

lation of the states would have been about four million, with Bavaria and the Rhineland reaching seven or eight and none remaining much below two. This was as fair an equalization as could be expected in any federal country. It meant a tremendous step from the prevailing range of 50,000 to 40,000,000 inhabitants, and would have led to conditions better even than those in the United States, where the figures range from about 100,000 to 13,000,000.

There were a number of proposals in circulation in Germany—most of them drafted prior to the Conference of 1928—which were intended to improve Germany's political map in a more radical fashion, according to economic criteria. Advocating larger units than those represented by the average Prussian provinces, or at least units that were differently shaped, they disregarded almost all historical boundaries. And even before these projects emerged, Hugo Preuss, in preparing the Weimar Constitution, had submitted a plan for territorial reorganization, based on political and administrative rather than economic considerations.

THE PREUSS PLAN (1918)

This plan eliminated all the minor states, except the Hanseatic cities, and combined several Prussian provinces, and also Prussian and non-Prussian areas, into larger units, as shown on Map 7.¹ Thus Brandenburg, Pomerania, and the greater part of Mecklenburg were to form one state (*Land*); the state of Saxony and the greater part of the Prussian province of Saxony, another; Schleswig-Holstein, Hanover, and Oldenburg together, a third. Rhineland and Westphalia, however, remained separate units. Bavaria, Wurttemberg, and Baden, too, were hardly affected, except that the Palatinate was to be added to the Rhineland and Hohenzollern to Wurttemberg. Berlin and the three Hanseatic cities were to constitute each a *Land* by itself.

Made before the Versailles Treaty, the Preuss plan included Austria, and proposed that she should constitute one unit only, except for

¹ Maps 7, 8 and 9, adapted and redrawn for the present purpose, are based on various sources. See especially the valuable book by the historical geographer of Berlin University, Walther Vogel, *Deutsche Reichsgliederung und Reichsreform in Vergangenheit und Gegenwart* (Leipzig and Berlin, B. G. Teubner, 1932). An amusing and, as far as it goes, accurate account of German redistricting problems is contained in a little mimeographed paper edited by the Committee on Public Administration, Social Science Research Council, *Administrative Redistricting in Germany since 1918—An Interview with Wilhelm Cohnstaedt* (Chicago, 1935). The late Dr. Cohnstaedt had been an editor of the *Frankfurter Zeitung*, and was one of the most conscientious journalists active in the reform movement.



MAP 7. THE PREUSS PLAN, 1918

Vienna, which, like Berlin, was to form a separate unit within the national commonwealth.

THE FRANKFORT PLAN (1928)

The city of Frankfort-on-Main was greatly interested in territorial reorganization, because of the preposterous state lines, little changed in the Preuss plan, within that section of Germany of which Frankfort was the natural and historic trade center.² A proposal made by A. Weitzel³ was widely discussed. His plan, shown in Map 8, was very different from that of Preuss. Rhenish Franconia, with its capital city of Frankfort, was to constitute a large region, which under the

² See Chapter VII, under Economics.

³ 'Die regionale Gliederung Deutschlands nach Wirtschafts und Verkehrsgebieten,' *Erde und Wirtschaft*, vol. 1 (1928), and *Deutschlands Neugliederung nach dem Frankfurter Entwurf* (Frankfort on-Main, 1931)

DECENTRALIZATION

Preuss plan would have continued to belong to four different states. The historical boundaries of the southern states, respected by the Preuss plan, were disregarded; Bavaria was to be divided, Baden and Württemberg were to be combined after a considerable cut in the



MAP 8. THE FRANKFORT PLAN, 1928

north. Hessen, Thuringia, and the Hanseatic cities were eliminated as units. On the other hand, Brandenburg and Pomerania, which Preuss wanted to combine, were kept separated, and Lower Saxony was divided into two units. Westphalia was to disappear. Naturally, the plan was severely criticized, especially by Bavaria.

ECONOMIC REGIONS

The Weimar Constitution, in one of its last articles (Article 165), stipulated that workers and employees should have legal representa-

tion on three levels: shop councils, regional councils, and a nation-wide council. The regional councils were to be set up according to 'economic regions' (*nach Wirtschaftsgebieten gegliedert*). Corresponding councils, both in the regions and for the entire nation, were to be formed by the employers. The councils of the workers and of the employers were to meet jointly in 'Regional Economic Councils' and in a 'National Economic Council.'



MAP 9 SCHEU'S PROPOSED ECONOMIC PROVINCES

Only two points of this great plan were realized: shop councils (*Betriebsräte*) and a provisional National Economic Council (*Vorläufiger Reichswirtschaftsrat*) were constituted.⁴ No regional councils came into existence during the democratic period. One reason for this failure was the practical difficulty of establishing adequate economic regions that were not in conflict with the political subdivisions of the

⁴ *Betriebsrätegesetz*, 4 February 1920, as amended 28 February 1928, and Decree of 4 May 1920, Regarding the Provisional National Economic Council. See Lindsay Rogers and W. R. Dittmar, 'Der Reichswirtschaftsrat,' *Political Science Quarterly*, vol. 50 (1935), p. 481.

country. Thus the final execution of Article 165 was closely connected with the general problem of federal reform.

Meanwhile individual scholars tried to mark off economic regions on the basis of objective criteria, such as character of the soil, farm products and farming methods, minerals and coal, processing industries, markets, and means of transportation. Nine economic provinces were constructed along these lines by Erwin Scheu,⁵ as shown in Map 9. His was a study in economics rather than a political proposal for territorial reorganization, but the political units of the Frankfort plan were strikingly close to the economic regions as conceived by Scheu. Like the units of that plan, Scheu's economic provinces cut across almost all historical state boundaries, although they affected Bavaria to a lesser degree than did the Frankfort plan. Each economic province was to be divided into two or three economic districts, which are not indicated on Map 9. The provinces were not, of course, regarded as isolated units.

OTHER PROPOSALS AND COMMENT

It was obvious that the pursuit of extreme schemes of territorial reorganization would have met with almost insuperable difficulties in the various stages of the procedure for constitutional amendment. No two-thirds majorities could be expected if the reform was burdened with decisions of this character. The Reform Committee, therefore, discarded for the moment all specifications for territorial changes, leaving the details to the future. It merely tried to open the road by which reasonable changes could be attained. In regard to the Prussian provinces and the states with fewer than two million inhabitants—all except Bavaria, Saxony, Wurtemberg, and Baden—the decision on boundaries and mergers was entrusted to simple legislation through the national legislative bodies. Only for the four major old states was the procedure of Article 18 of the Constitution to be maintained, which required a constitutional amendment unless the state government consented or the population gave its approval by a plebiscite. This change in procedure for territorial reorganization was the utmost that could be hoped for immediately, if the reform was to be achieved by constitutional means.

The Hitler regime might have undertaken territorial reorganization through dictatorial methods. Surprisingly enough, however, it

⁵ *Deutschlands Wirtschaftsprovinzen und Wirtschaftsbezirke*, Weltpolitische Bucherei, edited by A. Grabowsky, Landerkundliche Reihe, vol. 2 (Berlin, 1928), and earlier publications by the same author.

allowed this opportunity to pass, except for a few local adjustments.⁶ On the other hand, Hitler's government created party regions, defense regions, and economic regions, which overlapped many state and provincial boundaries, as will be described below.⁷

It may be that sometime during the postwar transitional period the problem of territorial reorganization can be approached in a more forthright way, with the people or their representatives asked for their consent after the changes have been tentatively made. There was no such opportunity during the democratic period under the Weimar Constitution, once that document had been adopted.

New suggestions have been forwarded in the meantime. Professor James Pollock, for example, has proposed that the German federal union be divided into nine states—the same number that Scheu suggested for economic provinces. Pollock's proposal differs, however, from former plans in that it preserves Prussia as one of the states, reducing her to her eastern sections (including Brandenburg, Silesia, and the major part of Pomerania). The other variations in his proposal are less fundamental. Schleswig-Holstein, Hamburg, and Lubeck are combined not with Hanover and Oldenburg (as in Scheu's North-Western province) but with Mecklenburg (as in the Frankfort plan), adding the western corner of Pomerania, to form the state of Hansa-Mecklenburg. Baden and Wurttemberg remain separated. The Bavarian Palatinate is included not in Rhenish Franconia (as in the Frankfort plan) but in Baden; and the Bavarian district of Suabia (Augsburg) is transferred to Wurttemberg. Otherwise the prospective states of Lower Rhine, Rhenish Franconia, Lower Saxony, and Upper Saxony would look much like the corresponding units of the Frankfort plan or the Scheu provinces. Pollock's units are meant to serve first for purposes of occupation and later as 'possible units in a new democratic government.'⁸

It seems very doubtful to me whether it would be wise to leave in existence a separate large state of Prussia, which on the one hand would combine unhomogeneous sections such as Silesia and Pomerania, and therefore not be merely an economic region, and on the other hand would offer the appearance of having been 'mutilated,' resembling the Prussia of Frederick the Great's beginnings and that of Napoleon's highest ascent, before the War of Liberation. I feel that

⁶ See Appendix B

⁷ Chapter xv, with map

⁸ James K. Pollock, 'A Territorial Pattern for the Military Occupation of Germany,' *American Political Science Review*, vol. 38 (1944), p. 970, and 'Germany's Post War Boundaries—A Suggestion,' *Journal of Central European Affairs*, vol. 4 (1945), p. 349

the complete elimination of Prussia as a separate unit would promote less resentment than its 'mutilation.'

The other differences of the various plans are less significant. It is certainly desirable for political and economic regions to be co-extensive as far as feasible. Within a federal country, however, the attainment of this ideal is not quite so important as it is within independent states. If control of economic affairs were exclusively a matter for the several state governments, it would of course be of the first importance that economic units be not cut by state lines. But if the power to regulate economic affairs in the general interest rests with the federal government, as it did in Germany even more than in the United States, coincidence of political and economic boundaries is less imperative. If in line with the proposals of the Reform Committee the Prussian provinces had been made states and all undersize states and enclaves had been eliminated as separate units—which Hitler failed to do—boundaries would hardly have interfered seriously with the requirements of a sound economic system, and further adjustments could have been made gradually. If Germany remains a federal union, the states should form suitable *regional* units. Therefore they should not be too large. Three to five million inhabitants as an average would serve regional purposes well. Individual units may have more than five or less than three million.

Attempts to have economic and political boundaries completely conform are artificial and futile. If all coal pits or iron ore deposits were united in a single region, there would be a disruption of agricultural units or timber interests or religious communities or traditional customs. If the seaports in coastal regions were combined, it would be necessary to include also their hinterland, which would thereby be separated from regions of an identical character farther inland. National railroads, following the large rivers or connecting large cities, may require other regional delimitation for their efficient administration than do postal services, cartels, police, or schools. There is, however, a relative optimum, from which the territorial organization of Germany was, and still is, far distant.

XII

Regional Co-ordination

FEDERAL SERVICES' LACK OF REGIONAL CO-ORDINATION

DURING the imperial period no need for regional co-ordination of federal departments could arise, because there were few or no federal field agencies. When they cropped up in the Republic, the agencies of different departments remained independent of one another, much as federal agencies did in the United States.

It should be noted, however, that in contrast with the United States, where any bureau may have its separate machinery in the field, a German ministry as a rule maintained no more than one set of regional agencies to serve all its purposes. Thus regional and local finance offices dealt with customs duties as well as with internal revenues and national property, and labor offices had charge of the employment service as well as of unemployment insurance.

This practice provided regional co-ordination among various services of the same department. As to different departments, however, any regional conflicts that were not settled by agreement—on the basis of mutual consultation or of inter-agency conferences—could be resolved only by reference to headquarters in Berlin, that is, if necessary, through cabinet decision or legislative act. The federal ministries could, of course, and sometimes did, direct their field agencies in specific points of minor importance to accept decisions made by the agency of another department, for example, by the financial agency with respect to the procurement of stationery or the like. But apart from such specific direction there was no procedure for the regional co-ordination of federal activities.

PRUSSIAN SERVICES' STRONG REGIONAL CO-ORDINATION

In contrast with this federal set-up, Prussia, like other German states of the larger type, provided for regional co-ordination of state activities to a remarkable extent. The Prussian administration, through

both the monarchical and the democratic periods, maintained regional 'agents-general' all over the state's territory. Their agencies were not limited to the business of any one department, but were 'multi-purpose agencies,' and the leading officials had the natural function, for which their authority was expressly regulated, of co ordinating the work of various or all ministries in their area.

The *Oberpräsident*, heading the *Oberpräsidium*, held this position for the entire province; and the *Regierungspräsident*, at the head of the district government (*Bezirksregierung* or, shortly, *Regierung*), held it for each governmental district (*Regierungsbezirk*). There were twelve provinces apart from Berlin, and thirty-four governmental districts, an average of two to three to each province. The capital Berlin was treated in a special way as both province and district. The average population of a province was above three million inhabitants, and that of a district above one million; there were, however, wide deviations from the average in both directions.¹

The uninitiated student is inclined to think of the *Oberpräsident* and the *Regierungspräsidenten* as officers who dealt with the same subject-matter on two levels, in the relation of a superior agency and its subordinates. This is not correct, however, and if it had been that way the Prussian administration would have been a clumsy and cumbersome hierarchy of four levels (including the county agencies). Actually, business was divided, generally speaking, between the province and district presidents according as the larger or the smaller area was the more appropriate unit for dealing with it. Relatively few matters, under this principle, were given the *Oberpräsidium*. The bulk was handled by the district governments in direct correspondence with departmental headquarters, and there was a tendency to assign technical functions, even if they required province-wide treatment, to one of the district presidents for province-wide action rather than to the *Oberpräsident*.

Consequently, the *Oberpräsident* was not an intermediate level ('keine Mittelinstanz') between the district governments and the cabinet; this principle was expressed as early as 1815 in the basic ordinance,² and it was restated in recent regulations.³ He was to be kept informed, however, of matters that might require uniform treatment

¹ Under Hitler, the number of provinces was first reduced to ten, but finally (1944) increased to thirteen. See below, and Appendix B.

² Ordinance Concerning the Improved Organization of the Provincial Agencies, of 30 April 1815, Section 4.

³ Ordinance on Simplification and Economies in Public Administration, of 3 September 1932, and regulations regarding its execution, of 25 and 30 March 1933. The regulations of 25 March were published not in the *Gesetzesammlung* but in the *Ministerialblatt für die innere Verwaltung*.

for all or several districts within the same province, and of matters of general political concern. He had to see to it that the general policy of the cabinet was carried through in all districts and, if necessary, to advise the district governments accordingly. Although he could not, as a rule, give them orders, his suggestions naturally carried considerable weight. In some cases he could take over the regulation of matters that required uniform treatment (for example, by issuing police ordinances for the whole province), and in emergencies he could give provisional orders to any state agency. Thus, in various ways, although generally as an adviser or a 'convener' rather than as a superior, he could efficiently work toward co-ordination among the various state services.

The details of the relationship between the two presidents were determined by ministerial decrees, which were modified from time to time. Whether it was advisable to maintain the two offices or to merge them was a subject of constant discussion. Those who favored merger were divided on which of the two should survive, that is, whether the larger area of the province or the smaller area of the district was more appropriate for regional co-ordination. No merger was undertaken, however, during the republican period.⁴

The Hitler regime, too, continued both offices. In 1944 a last-hour beginning was made toward a policy of consolidation: the provinces of Saxony and Hessen-Nassau were split along the lines of their governmental districts, and the offices of *Oberpräsident* and *Regierungspräsident* in each of the four new provinces were merged (see Appendix B). In other provinces, however, the dualism continued.

The regulations of 25 March 1933 described the relationship as follows (No. 17):

The *Regierungspräsident* is not a subordinate of the *Oberpräsident*; nor is he bound, except in an emergency, to obey orders of the latter. Nevertheless, he will always have to keep in mind that the opinion of the *Oberpräsident*, like that of the permanent commissar of the state government, who is more familiar with its aims and plans, carries quite a particular weight. Consequently, the *Regierungspräsident*, in case he thinks that wishes of the *Oberpräsident* cannot be fulfilled, will have either to seek an agreement with him or to report to departmental headquarters. He may by no means tacitly disregard such requests. Above all, he must see to it that the *Oberpräsident* is adequately informed. Any noteworthy events in political, economic, social and cultural matters must always be communicated immediately to the *Oberpräsident*. Reports to departmental

⁴ One incumbent held both offices in the province of Upper Silesia, which had only one governmental district. The same was true in the small Border province, but not in Schleswig-Holstein, although this province, too, was co-extensive with the only governmental district.

headquarters must either be routed over the *Oberpräsident* or he must receive a copy. The selection of reports so to be handled is left to the responsible decision of the *Regierungspräsident*.

Although the emphasis here put on the duties of the district government may mirror the effort to forestall any attempts at sidetracking the new Hitlerite *Oberpräsidenten*, the general tenor is in line with the traditional distribution of functions in the Prussian administration. The functions of a superior level over both agencies were exercised by the cabinet ministers in Berlin. Disciplinary supervision was in the hands of the ministers of the interior and of finance. But no minister held a monopoly with regard to the two field agencies. All dealt directly with them, each in matters of his own jurisdiction, such as commerce, agriculture, finance, education, and the like.

As to the distribution of field work, matters handled by the *Oberpräsident* for the entire province—as distinct from matters handled by the district governments—included the following: (1) supervision of secondary schools, formerly handled by special boards of experts under the chairmanship of the president, but subsequently transferred to the president, with the experts serving only as advisers; (2) a number of miscellaneous items, like air traffic, elections, regional state archives, the licensing of lotteries, and similar matters, which could better be handled for the larger area of the province than for the smaller districts; and (3) any state supervision over the autonomous provincial authorities and other province-wide institutions that was prescribed or permitted by the laws.⁵

The much more voluminous and varied business of the district governments covered all other state activities, except those allotted to the very few special agencies maintained by Prussia in the field. The variety of functions that were thus combined within one regional agency is almost incomprehensible to Americans. The entire business was handled in a few decisions, which were arranged according to uniform principles in each of the thirty-four district governments. Everywhere, the second division dealt with education and church affairs, the third with state-owned land and forests; and the first with all other matters, including political questions, the police, the promotion of commerce and industry and other trade questions, supervision of the subordinate county directors (*Landrate*) and of other state

⁵ Section 3, Ordinance of 3 September 1932. Measures of land reclamation and the like, formerly dealt with by a special agency (*Landeskulturanstalt*) attached to the *Oberpräsident* were transferred to the district presidents (Section 4).

⁶ It must be kept in mind that before Hitler's rise to power the province as an autonomous unit had its own chief executive, elected by a committee of its popular assembly and titled either *Landeshauptmann* or *Landesdirektor*. See Chapter xv for the changes under Hitler.

agencies in the counties, and also supervision of larger municipalities. State-owned land and forests were allotted to two separate divisions under the Hitler regime, in recognition of the practical separation of work that had evolved before. This brought the number of divisions to four. Some district governments lacked one of the divisions, the neighboring district government administering the respective services in both districts. But otherwise the structure was the same in all districts.

It was one of the functions of the *Regierungspräsident* to co-ordinate the practice of the divisions, and also that of numerous local sub-units, within the limits set to administrative discretion by the laws and by ministerial regulations. Originally, he enjoyed full authority only in the first (general) division. In the other divisions the highest technical officers of the district government decided collectively, as boards, while the president was limited to the right of veto; only in urgent cases was he authorized to make the decision himself.⁷ This practice was gradually weakened and finally abandoned⁸ in favor of the full authority of the president in all divisions; but he was directed to report controversies to departmental headquarters whenever the division chief, on grounds of his functional responsibilities, declared this to be necessary.⁹

While both the *Oberpräsident* and the *Regierungspräsident* were agents of the state cabinet and subject to general or specific orders, certain quasi-independent institutions were tied to these officials. Thus in some state matters, such as the issuance of police ordinances or the granting of licenses, the decision was entrusted to the District Committee (*Bezirksausschuss*), of which the *Regierungspräsident* was chairman and of which the majority of members were laymen, elected from among the residents of the district by the standing committee of the provincial assembly (itself elected every four years in popular elections).¹⁰ The District Committee, in the matters of administrative discretion that were entrusted to it, was legally independent of the state government and subject only to the law, but the fact that the agent general of the state could personally take the chair ensured the forceful presentation of his views. Similarly, some of the province-

⁷ Section 24, *Ge. et. ubi die allgemeine Landesverwaltung*, 30 July 1883

⁸ Section 5, Ordinance of 3 September 1932

⁹ Regulation of 25 March 1933, No. 16

¹⁰ Four such laymen served on the committee, along with two officers appointed by the state government, one of whom had to have the qualification for judgeship, the other the qualification for higher administrative service, both were appointed for life in order to emphasize their independence. The district committee served also as a regional administrative court, from which, as a rule, appeal lay to the *Oberverwaltungsgericht* in Berlin.

wide decisions (including the issuance of police ordinances and appeals from the district committees) were made not by the *Oberpräsident* but by a council attached to his office (*Provinzialrat*).¹¹ Again, in matters of social insurance, although handled under federal law, a regional agency (*Obersicherungsamt*) was tied to the district governments, and its chairman was the *Regierungspräsident*; two members were appointed by the state government, and the other members were elected by the employers and the employees.

Summing up, the Prussian general administration (*Allgemeine Verwaltung*) presented an extreme case of regional co-ordination of all state activities.¹² The 'political' meaning of this co-ordination was, of course, very different under the three regimes of this century, just as was the political meaning of the French prefects under the various regimes from Napoleon I to the Third Republic. While under the monarchy and under Hitler the two types of regional presidents were selected to carry through a monarchical or a national-socialist policy, respectively, they were chosen during the republican period for the purpose of democratizing the regional administration; they were appointed by the democratic state cabinet in Berlin with the consent of a committee of the provincial assembly, their appointment thus enjoying a double parliamentary control, at headquarters and in the province.¹³ The 'administrative' function of the regional presidents remained largely the same, however, under all the regimes, not unlike that of the prefects in France. They were multi-purpose agents, in charge of, or co-ordinating, the regional work of various departments.

FEDERAL-STATE REGIONAL RELATIONS

Regional co-ordination in Prussia, therefore, was almost complete in imperial times, when no federal field agencies disturbed it. But with the great number of federal field agencies that arose during the democratic period the picture changed considerably. Above the local

¹¹ This council consisted of five laymen elected by the provincial assembly and one officer appointed by the state government, in addition to the *Oberpräsident*, who as a rule could act as chairman.

¹² See the comparison with American, British, and French practices in *Regional Co-ordination*, Memorandum drafted by A. Brecht and other members of the Special Committee on Comparative Administration, Committee on Public Administration, Social Science Research Council, mimeographed (Washington, 1943).

¹³ Actually the control by the provincial assembly worked in the east as a check on liberal appointments. Thus the final appointment of one of the ablest among the younger democratic administrators, Dr. Hans Simons—now member of the Graduate Faculty, New School for Social Research—to the position of *Regierungspräsident* in Stettin (Pomerania) in 1930, was frustrated by the reactionary majority of the provincial assembly, which refused its consent. Simons eventually became president in the Silesian district of Liegnitz, where he served to the end of the Republic.

REGIONAL CO-ORDINATION

level the citizen had then to deal not only with the Prussian multi-purpose agencies, but also—in matters of finance, labor, war veterans, and others—with specialized federal agencies. No institutional device provided for regional co-ordination between federal and state agencies.¹⁴ Moreover, the geographical area that they covered differed considerably, the federal agencies often including smaller states and enclaves along with Prussian districts. The following figures indicate something of the variety and overlapping of areas. Figures for the Hitler regime have been added here for the sake of comparison; they will be discussed later.

	1930	1939 or later ¹⁵
Regular Subdivisions of the Country ¹⁶	30	29 (1944)
Regional Finance Agencies	26	23
Regional Labor Agencies ¹⁷	23	32 (1943)
Regional War Veterans Agencies	14	12
Regional Railroad Agencies	30	27
Regional Post Agencies	45	45
Defense Regions ¹⁸	7	32 (1942)
Courts of Appeal	26	26
Federal Election Districts	35	33
National Socialist Party Regions ¹⁷		32 (1942)
Economic Regions ¹⁷		23 (1942)

The regional headquarters of these agencies were widely distributed. To illustrate from the Rhine province: the headquarters of its *Oberpräsident* was not in Cologne but in Coblenz, that of its *Landeshauptmann* in Dusseldorf, the five *Regierungspräsidenten* resided in Cologne, Aachen, Dusseldorf, Coblenz, and Trier. Regional finance agencies resided in Dusseldorf and Cologne, the regional labor agency was in Cologne, and the veterans' agency in Coblenz. No regional railroad agencies were in Aachen, Coblenz or Dusseldorf, but there was one in Essen. Conversely, there was a regional post agency in Aachen, but none in Essen.

This variation in locations had some advantages for the cities concerned, but it certainly did not promote regional co-operation.

¹⁴ Special agreements bound the federal government to consult the Bavarian government before changing the incumbents of certain regional offices in Bavaria. See Chapter IV.

¹⁵ Excluding the territories annexed after 1933. In the territory formerly Austrian there were 7 party regions, 2 economic regions, 5 financial regions, 4 railroad and postal regions, and 3 courts of appeal.

¹⁶ The Prussian provinces, including Berlin, and the non Prussian states. See Appendix B.

¹⁷ See Chapter XV.

¹⁸ *Reichsverteidigungsbezirke*. See Chapter XV.

PROPOSED REFORMS

The problems of regional co-ordination were extensively discussed in the Reform Committee. Fusion of the two central governments in Berlin, as proposed by the Committee, was considered an important step toward regional co-ordination, because it made the *Oberpräsidenten* and *Regierungspräsidenten* regional officers of the national government and thus provided an opportunity for the national government to use the machinery of 'general administration' for national purposes. The Committee supplemented this proposal by the following suggestions:

1. The regions of all branches of the national administration to be made co-extensive with one another and with the autonomous units, old and new, wherever possible.
2. Some national official to be appointed top national agent in each region, whose function it would be to co-ordinate the activities of all national field authorities.
3. This top national agent to have no general power to interfere with the substantive functions of special agencies in the regions, but to be equipped with authority to supervise and direct all civilian national authorities within the region in matters of administrative simplification.
4. The holding, by one incumbent, of the offices of head of the state government and top national agent in the region to be permissible. If this should not materialize, the closest possible contact to be established.

These proposals were intended to realize one of the favorite dreams of administrators in all countries: that autonomous units and national administrative regions be co-extensive; that national agencies within each region be well co-ordinated; and that close co-operation between them and the state governments be established.

Regional co-ordination of all national agencies was to have particular importance in the new units, formerly Prussian, in which the federal government was to take over the agents-general of the former state government. The Committee's suggestions could have led there to an arrangement under which in each new unit a national agent-general, corresponding to the former Prussian *Oberpräsident*, would become the top *national* agent in that unit. He would have obtained certain co-ordinating functions with regard to all the special agencies maintained by the federal government within the new unit. He would have kept in close contact with the head of the state government, that is, with the officer corresponding to the former *Landeshauptmann* of the province.

The Committee did not go so far as to make the chief executive

of the individual state (province) automatically the agent-general of the national government. The lack of disciplinary power over state executives, who were responsible only to their state parliaments, seemed to preclude any such automatic solution.¹⁹ But the Committee wished to encourage the federal government to appoint the head of the state government to the office of the federal agent-general, whenever feasible.

This was a promising program of regional co-ordination. Hitler, as will be seen later, adopted it and carried it through in almost every respect, subject, however, to two fundamental changes that arose from totalitarian principles. Firstly, under the Hitler regime the national agent-general in the regional unit was an agent not of a democratically controlled cabinet but of a dictator and his lieutenants. Secondly, to achieve the holding of the two offices by the same incumbent, the democratic head of the state unit was not appointed federal agent-general, but the national agent-general was made ex-officio head of the autonomous unit—the Prussian *Oberpräsident* became provincial *Landeshauptmann*, instead of vice-versa.²⁰ These two changes meant a complete perversion of the original meaning of the plan.

XIII

Delegated Administration

GERMAN practice developed the device of delegated administration (*Auftragsverwaltung*) to a high degree of perfection. In the Prussian tradition it meant that a higher autonomous unit, for example the state, delegated administrative powers to a lower one, for example city, county, or autonomous provincial government, in such a way as to reserve final authority to itself. The most typical illustration is that of the police administration. The Prussian state government appointed local chiefs of police (police presidents), police officers, and men in some forty of the largest cities, such as Berlin and Cologne. In addition, it appointed the members of the mobile police forces

¹⁹ See the following chapter

²⁰ See memorandum on *Regional Coordination*, mentioned above, and also Chapter xv below

(called *Landjager* or *Gendarmerie*) in the rural sections of the state. In medium-size cities like Bonn or Coblenz, however, the state government 'delegated' its police power to the mayor instead of exercising it through its own appointees.

The mayor, elected by the city council for twelve years, discharged these delegated police functions along with his tasks as the chief executive of an autonomous municipality. There was little practical difference between the two categories of work in his normal working day. Federal and state laws limited his discretion in both. Technically speaking, however, the difference was considerable. In municipal affairs the mayor was responsible only to the city council and to the courts under the law. He was not bound to follow orders, directions, or suggestions issued by state authorities. But in police matters—and in other matters that were delegated to him on similar terms—he had to obey any orders, general or specific, that the state government cared to give him. Although actually the state government might not use this discretionary power over long periods, it could use it at any time it saw fit. The home-rule rights that had been granted all municipalities since the early nineteenth century, wide as they were within the economic and cultural fields, did not include police matters. The mayor's administrative power in these matters was not an autonomous but a 'delegated' administrative power.

Other state functions that under the system of delegated administration were performed either by the city government or by specified city officers included the conduct of public elections, the registration of citizens, certain measures of public health, such as vaccination and control of venereal diseases, and the supervision of schools in regard to their curricula and personnel.

The Reform Committee held that the device of delegated administration might remove some of the troubles of duplication that existed between the federal government and the state governments. In several matters in which the federal government could not well be denied ultimate administrative direction, it was felt that the federal government might nevertheless leave the regular operational activity in the field to the autonomous authorities by delegating the administration to them.

While delegation of administrative powers by the states to municipalities was an old institution, delegation by the federal to a state government had only rarely been applied in Germany before, and then only in minor matters. Most important among them was the administration of inland waterways; it had been transferred from the states to the federal government by the Weimar Constitution, but was in practice left to the states as a kind of delegated administration. Such

arrangements were in fact fraught with peculiar difficulties. In delegating powers to a city mayor the state government did not completely deprive itself of its influence over the personnel or waive its rights to apply sanctions in case the mayor did not live up to his duties. Although the mayor was elected by the city council, his appointment, according to the statutes of most German states, required confirmation by the state government. While this confirmation was rarely denied, it could be withheld. It actually was denied during the imperial period whenever socialists and sometimes also when liberals were elected. At the end of the republican period even the democratic Prussian government ordered that National Socialists or Communists, if elected to the office of mayor, should not be confirmed in their positions.¹ Hence there was a certain safeguard that the person to be entrusted with the police power was not completely antagonistic to the state government. In addition, the mayor was, according to German classification, a civil servant. The general Disciplinary Code subjected him, whenever he failed in his duties, to disciplinary procedures before disciplinary courts consisting of judges and other civil servants.

No such controls and sanctions existed when the federal government delegated powers to a *state* government. If a state minister failed to exercise delegated functions properly, the federal government could do nothing but write him letters. To promote delegation of powers by the federal government to state governments the Committee, therefore, proposed to subject the elected heads of the new states, in case they failed in their duties, to disciplinary procedures before disciplinary courts. In regard to the old states the Committee did not go so far as to prescribe the same arrangement, but it was suggested for voluntary acceptance in the state constitutions.

Furthermore, the Committee drafted a model scheme for delegated administration, in order that both the federal and the state governments might know exactly what the rights and duties of each would be. In this scheme it was stated that federal directions should be general only, and not specific, that is, no orders should be given in individual cases. But this was only to be the rule, from which exceptions were permissible. The federal directions, so the model scheme provided, might deal with an individual case, if this was considered necessary because of its peculiar nature. But they could never pertain to the selection of the personnel for the execution of delegated functions. This meant that the state government should be free to select

¹ Regulations of 31 January and 3 July 1930. They were in force until 1932. The Prussian cabinet took care to state that both the National Socialist party and the Communist party were pursuing the aim of overthrowing by illegal means the democratic form of government.

the persons it wished to employ in the execution of delegated administration, provided they met the general qualifications stipulated.

It was further provided that directions should never be given directly to subordinates. They should be addressed only to the state government, unless the latter consented to direct contacts with its subordinates. Such direct contact of the federal government with subordinates of the state government was recommended if the federal government delegated to departments of the state administration the construction of federal buildings and the like.

Conflicts on whether legitimate directions had been violated were to be decided by the Supreme Court for Constitutional Conflicts (*Staatsgerichtshof*), unless disciplinary procedures could be instituted (see above). There were no sanctions with which to enforce the Court's opinion, except the power of the federal government to withdraw delegation. It was felt that the authority of the Court would suffice to settle conflicts without sanctions. This procedure had been tried with good success in Austria for several years.

Having thus made smooth the path for delegated administration, the Committee urged that it be widely used. It could be, they stipulated, whenever the federal government was entitled to execute its functions through its own agencies. Consent of the state government was required, however. Matters particularly suitable for delegated administration were enumerated. They included: administration of federal waterways; administration of federal property and the construction of federal buildings;² police functions, especially those designed to support substantive functions (*Verwaltungs-polizei*, administrative police), such as police measures in the promotion of public health; the collection and distribution of certain federal funds in municipalities (to be delegated to the cities); federal activities for social welfare that went beyond mere money payments (to be combined with similar activities of the autonomous authorities);³ and the transfer of various jurisdictions from the national government to that of the new states during a transitional period.⁴ There seemed, then, to be a large and ever growing field for delegated administration.

In the discussion, the Bavarian member voted against the section on delegated administration as 'too dangerous' for the independence of the state governments. The other delegates were all in favor of it.

² The idea was that in any case all state governments needed agencies to administer public property, especially forests and arable land, and to construct and maintain public buildings. It was uneconomical and undesirable to have the federal government using separate agencies for identical functions.

³ See Chapter ix, No. 13.

⁴ Ibid. No. 12. The text of the recommendations is presented in Appendix G, Part I, III, and Part II, 1 B.

DELEGATED ADMINISTRATION

Several members advocated an even stronger form of model regulation—one that would widen the power of the federal government to give orders in individual cases—because otherwise the federal government might not choose so readily to delegate matters to the states. Furthermore, they recommended that the states should not be free to refuse acceptance of delegated administration, as the report had proposed. These amendments were not carried, however.

PART V

CONSTITUTION VS. TOTALITARIANISM

Last Attempts at a Constitutional Solution

WHEN the full Committee, on 21 June 1930, accepted the new plan with an overwhelming majority, it was expected that the national cabinet would soon bring a Reform Bill before the legislative bodies. According to the Weimar Constitution such a bill would go first to the Federal Council. There it would be referred to the Council's constitutional committee, which consisted of representatives from the same states that had participated in the preparatory discussions. The final vote would be taken in the plenary meeting of the Council, with all the states and the Prussian provinces represented. A two-thirds majority of the votes would be required for the passage of the bill, as for any other constitutional amendment.

There was a fair chance that this majority would be reached. Prussia, Saxony, Württemberg, Baden, Hamburg, and Anhalt, whose representatives had voted for the plan in the Reform Committee, commanded two-thirds of the votes in the Federal Council, provided that all of the Prussian provinces concurred. If some of the latter voted against it, the support of a few more of the other states was sure to make up for them. The majority of the provinces were definitely in favor of the reform. Another combination that commanded a two-thirds majority was Prussia, Saxony, Hessen, and Hamburg, with five of the nine smallest states.

From the Federal Council the bill would go to the Reichstag. After its passage there by a two-thirds majority it would be returned in its final form to the Federal Council. If the Council vetoed it, the Reichstag could overrule the veto by a two-thirds majority. The final decision, therefore, lay with the Reichstag, although in all likelihood this body would wish to find a solution acceptable to the great majority in the Council. If the Reichstag, too, failed to pass the Reform Bill, there was still the possibility of a referendum, a plebiscite, in which the simple majority of all entitled to vote could carry the amendment.

A Cabinet Bill was soon prepared, first separately by the Prussian and Saxon *rapporteurs*, and then, in close collaboration with them, by the federal ministry of the interior.¹ No further progress was made, however, because of the difficulties that developed at the time in Germany's domestic situation. Only a few weeks after the concluding meeting of the Committee (21 June 1930), Chancellor Brüning had taken the momentous step of dissolving the Reichstag (18 July), and the new elections gave the National Socialists 107 seats instead of their previous 12. For a year and a half thereafter Brüning, with the acquiescence of the Reichstag's majority, tried to master the economic and political crisis by presidential emergency decrees. At the same time he attempted to settle the reparation debt and other external problems. Although in favor of the Reform Bill, he thought it necessary to postpone its introduction until the domestic and international atmosphere had cleared. Before that time arrived, he found himself out of office.

His successor, Franz von Papen, surprised the world with his own solution of the reform problem. On 20 July 1932, at his request, Reich President von Hindenburg authorized Papen to dismiss all Prussian ministers and to replace them with the chancellor and other federal commissioners. This solution, ostensibly based on Article 48 of the Weimar Constitution, was simple indeed. But it was definitely unconstitutional, because Article 48, although granting the president formidable powers in emergencies, still withheld the power to change the structure of the Constitution. This action forced the Prussian cabinet to defend Prussia's constitutional rights, in order to defend democracy.

The Supreme Court for Constitutional Conflicts (*Staatsgerichtshof*), on 25 October 1932, decided that it was unconstitutional to dismiss Prussian ministers by presidential decree and to authorize other persons to perform some of their functions, especially those relative to the Prussian legislature and the Federal Council. The Prussian question and the dualism of the two central administrations in Berlin could not be solved by an emergency decree.²

¹ The drafts of the two *rapporteurs* (Brecht and Poetsch-Heffter) have been published in the periodical *Reich und Länder* (Berlin), vol. 4 (1930-31). The draft of the ministry has not been published. See the reference to these drafts (in Appendix F, below) by the Prussian prime minister, Otto Braun. Non-official persons active in this period in the interest of a constitutional solution included especially Hermann Hopker-Aschoff, liberal Prussian ex-minister of finance, and many legislators, officials, and journalists everywhere in Germany.

² On the foregoing see *Prelude to Silence* (cited above, Chapter III), pp. 65, 71, 140, and 145, including translation of Article 48 with commentary, the text of the Decree of 20 July 1932, and the decision of the Supreme Court. The stenographic report of the hearings, containing a great many interesting facts and arguments, was published under

After their reinstatement the members of the Prussian cabinet tried to carry on the reform by constitutional means. Prime Minister Otto Braun submitted to Papen's successor, Chancellor von Schleicher, a Reform Bill in keeping with the plan of the Constitutional Reform Committee. In view of the general situation it was couched in the briefest possible terms. Two formulations, only slightly different, were transmitted to the Chancellor, the first in December 1932, the second in January 1933.³ Both were prepared by the Prussian *rapporteur* to the Committee, who at that time served the Prussian cabinet as acting * under-secretary and leading delegate to the Federal Council. This step taken by Otto Braun should put to rest all doubts whether he was willing to accept reform on the basis of the plan worked out by the Committee.

Chancellor von Schleicher seemed inclined to resume the work for federal reform with constitutional means. If he should fail to do so, the Prussian cabinet was determined to use its own right, reconfirmed by the Supreme Court, to introduce the Reform Bill in the Federal Council. But these negotiations were abruptly broken off. The very day that had been set aside by Chancellor von Schleicher for an informal discussion between him and Braun's representative saw Schleicher's dismissal. Adolf Hitler followed him in the office of Reich Chancellor.

A few days later, Hitler in turn used Article 48 to dismiss the Prussian ministers, under the pretext that they had violated duties toward the national government. The Prussian ministers, in their appeal to the Supreme Court, referred to the negotiations they had conducted with Chancellor von Schleicher to find constitutional means for the solution of the Prussian question and of other federal problems. As evidence of their serious efforts to bring about a constitutional solution they enclosed with their brief the Draft Reform Bill which the Prussian prime minister had put before Chancellor von Schleicher.

Thus to the very last minute of the Republic, the reform of the federal system was a leading issue. A democratic solution of the federal problem was being upheld against the totalitarian solution, undemocratic in form and content, which Hitler was going to force upon Germany.

the title *Preussen contra Reich vor dem Staatsgerichtshof* (Berlin, J. H. W. Dietz, 1933), with foreword by Arnold Brecht, appendices present the entire text of the opinion of the Supreme Court and other relevant material.

³ The second version is given in Appendix H.

Regionalism under Hitler

ABOLITION OF FEDERALISM AND STATE RIGHTS

FEDERALISM was abolished outright under the Hitler regime. Naturally this did not mean that all regional problems, too, were abolished. That was not possible, since economic, social, and cultural conditions remained different in the various sections of the country. Nor can any large country, under any regime, be ruled exclusively from the seat of the national government with the help of urban and rural municipalities. Some regional level of administration must always be established. But regional administration alone does not make a country a federal commonwealth, nor does it become one merely because regional administrators are left a good deal of discretionary power. Federalism is based upon state *rights*. Delegation of powers that can be withdrawn at any time at the discretion of the delegating authority, or the use of which can be directed by the delegating authority in every detail, does not establish federalism.

State rights in Germany were eliminated completely by the Act of 30 January 1934, Concerning the Reconstruction of the Reich.¹ In general that act left the state cabinets in charge of those matters that had been handled by them before. Their powers, however, were no longer derived from state rights. They were 'delegated,' as the statute said, to the authorities of the states by the national government, and they had to be exercised 'by direction, and in the name, of the Reich.' The national government was free itself to exercise these powers 'generally or in individual cases.'

The state legislatures were dissolved without provision for re-election. Consequently the members of the state cabinets were no longer elected by the state legislatures. Instead, Hitler was authorized to ap

¹ The following description of the abolition of state rights draws freely on the findings in *The German States and the Annexed Territories under the Hitler Regime* prepared by Ernst Hamburger for the research project on Germany's Position in European Postwar Reconstruction (Institute of World Affairs, mimeographed, 1944).

point the cabinet members and to remove them at will.² So composed, the state cabinets were authorized to make laws themselves. But even so, any act of legislation they passed needed the approval of the appropriate national minister before it could be promulgated.

The states, then, had no rights left in regard to either the choice of their rulers or the powers to be exercised by them. All their legislation became delegated legislation; and all their administration, delegated administration (*Auftragsverwaltung*). The Federal Council in Berlin, through which the states had exercised their rights in national legislation and administration, was dissolved.³

Although completely deprived of all autonomous rights, the states were preserved as administrative units. Even Prussia was maintained as a single unit. True, many Reich and Prussian agencies were fused, as had been proposed by the democratic Reform Committee of 1928-30: the ministries of the interior, of science and education, of food and agriculture, of economics, of labor, of public communications, and of churches became both national and Prussian ministries under the same ministers for both jurisdictions. But Hitler did not follow this road to its logical end. In contrast with the recommendations of the Committee, Prussia retained a separate prime minister in the person of Hermann Göring. The finance ministries of the Reich and Prussia remained separated, too, until September 1944; only then did the national finance ministry take over Prussian financial affairs, 'in order to set free additional manpower for the conduct of the war.'

Technically speaking, Prussian matters were handled not directly by the national cabinet, but by the Prussian cabinet, whose composition differed from that of the Reich cabinet, especially by the absence of Hitler himself, of the foreign minister, and of the military cabinet members. But the Prussian cabinet had to obey the general and special directions given by the appropriate national ministers. The administration of justice was completely nationalized,⁴ in line with the tendency of the democratic Reform Committee—although not with its majority decision, which had refrained from recommending nationalization beyond the 'new' states, out of respect for Bavaria's objections.⁵ Furthermore, a national Supreme Administrative Court was created, and was fused with the old Prussian *Oberverwaltungsgericht*.⁶ This again was in line with pre-Hitler tendencies.

The other states kept separate state administrations, with all members of their cabinets appointed by Hitler, as mentioned before. In

² This power was originally vested in the governors, but it was transferred to Hitler by the Act Concerning the National Governors, of 30 January 1935.

³ Act of 14 February 1934.

⁵ See Chapter x.

⁴ Act of 16 February 1934.

⁶ Ordinance of 3 April 1941.

addition, National Governors (*Reichsstatthalter*) were created as national watch dogs.⁷ As a rule one governor was sent to each state. In three cases only one governor was appointed for two states: for Brunswick and Anhalt; for Oldenburg and Bremen; for Lippe and Schaumburg-Lippe. Hitler himself assumed the office of governor for Prussia, but delegated all the powers of this office to Hermann Göring. In most of the other states the offices of governor and state ministers remained separated. Exceptions to this rule were—in addition to Prussia—Saxony, Hessen, Thuringia, Hamburg, and the two Lippe states: in Saxony and Hessen the governor became prime minister; in Thuringia he became minister of the interior; and in Hamburg and the two Lippes he was entrusted with conducting all state affairs. In all other states, that is, in Bavaria, Württemberg, Oldenburg, Baden, Brunswick, Mecklenburg, Anhalt, and Bremen, the state cabinets remained separated from the governor's office. In the smaller of these states, however, cabinets were reduced to one state minister.

The governor, unless a member of the state cabinet, had no regular rights of direct interference in state matters. Such interference was left to the national ministers in Berlin. The rights of the governor were limited to asking for information and making suggestions. Only in the event of an emergency could he issue 'provisional directions.'⁸ In addition he had certain formal functions, such as promulgating state laws *after* their approval by the appropriate national ministers.

For the Prussian provinces no special governors were appointed. Instead, the *Oberpräsidenten*—traditional agents-general of the Prussian state government in the provinces—were made permanent representatives in their provinces of the national government as well; in other words, they became at the same time agents-general of the national and of the Prussian state government.⁹ In home-rule affairs, the powers given the *Oberpräsidenten* were much wider than those of the governors in most of the non-Prussian states, for all *Oberpräsidenten* were put in complete charge of home-rule affairs in their provinces, that is, of those affairs that had been conducted by the provinces themselves as autonomous bodies. Consequently the offices of *Landeshauptmann* and *Oberpräsident* were merged. All practical differences between provincial home-rule matters and national or state affairs in the province were thus abolished, and whatever provincial self-government there had been was eliminated.

⁷ Laws Concerning the Co-ordination of the States with the Reich, of 31 March 1933 and 7 April 1933, the latter modified by the acts of 25 April and 26 May 1933; and the Law Regarding National Governors, of 30 January 1935.

⁸ Article 1 of the Act of 30 January 1935.

⁹ Executive Order of 27 November 1934.

Summing up, the position of national agent-general was fused with that of the state or home-rule government in some regions—in all Prussian provinces, and in the states of Saxony, Hessen, Hamburg, the Lippe, and, in part, Thuringia—while the two offices remained separated in the three southern German states, and in Mecklenburg, Brunswick, Oldenburg, Anhalt, and Bremen. The merging was ostensibly in line with the recommendations of the democratic Reform Committee that flexible experiments should be made in having one incumbent hold the top national office in national regions and the leading home-rule office in these regions.¹⁰ But the original meaning of this recommendation was completely distorted by forcing national appointees upon the states and provinces in their home-rule affairs, instead of entrusting certain national functions to the elected leading officers of the states or provinces, as the Committee had proposed.

REGIONAL CO-ORDINATION

Whereas the policy of replacing home-rule agents by national appointees was entirely repugnant to democratic views, no objection could be raised against attempts to achieve a higher degree of co-ordination among the various national agencies. Such co-ordination at the regional level had actually been recommended by the democratic Reform Committee.¹¹ It made remarkable progress under Hitler, especially in Prussia.

First of all, as a result of the fact that the Prussian *Oberpräsidenten* and *Regierungspräsidenten* became national agents, the regional agencies of the national administration and of the Prussian state administration were linked together. In addition, at the beginning of the war, three new national offices were ordered to be established in connection with the office of each *Oberpräsident* and of each corresponding office in other states, namely, a Regional Economic Office (*Bezirkswirtschaftsamt*), a Regional Food Office (*Landesernährungsamt*), and a Regional Forest and Timber Office (*Forst- und Holzwirtschaftsamt*).¹² The regulation emphasized that these offices were to constitute an 'integral part' of the office of the agent-general. Their letterheads were to carry the title of *Oberpräsident*, with the addition of Regional Economic Office or Regional Food Office or Regional Forest and Timber Office, respectively. At headquarters their affairs

¹⁰ See Chapter xii.

¹¹ See *ibid.*

¹² Regulation Concerning Economic Administration, of 27 August 1939. These offices were in some cases subsequently transferred to the agencies of the *Regierungspräsidenten*, because of the smaller economic regions established during the war. See below and Appendix I.

were to be directed by the corresponding national ministries in Berlin, subject to co-ordination by the ministers of economics and of the interior, who had been appointed economic and administrative co-ordinators, respectively.

At the local level, Economic Offices and Food Offices were established in like manner in every rural county (*Landkreis*), in connection with the office of the county director (*Landrat*), and in every city-county in connection with the office of the mayor. Here, too, it was emphasized that the new offices constituted integral parts of the agencies with which they were established.

Only a few days later, National Defense Commissioners were set up in each national defense region.¹³ They obtained no special employees for the execution of their functions, but had to work exclusively with the personnel and the facilities of existing agencies. Actually, the *Oberpräsidenten* were, as a rule, appointed to these new posts.¹⁴ This combination further strengthened regional co-ordination of national and state agencies.

The National Defense Commissioners were charged with the 'uniform steering of civilian national defense,' and with 'bringing the measures of civilian defense into line with the interests of the armed forces.' They were, in addition, to be the regional agencies of the Ministers' Council for National Defense, which had been formed under the chairmanship of Hermann Göring. All ministries had to use them for the execution of 'fundamental' measures of national defense, and to keep them informed of other (non-fundamental) defense measures. On the other hand, all civilian agencies within the region had to clear their reports to the ministries on fundamental matters of national defense through the National Defense Commissioners, and to inform them of non-fundamental measures. All regional military authorities had to direct over the Commissioner their suggestions and requests to civilian agencies within the region.

Exactly how far the authority of the National Defense Commissioner reached was not quite clear. The regulation said at one place that the Commissioner was charged with the 'steering of the administration of all civilian administrative branches.' This sweeping power seemed to apply vaguely to overall questions (steering) of administration, including avoidance of working at cross-purposes. It apparently was not meant to include general interference with the substantial work itself

¹³ Regulation Concerning the Appointment of National Defense Commissioners, 1 September 1939.

¹⁴ See below, on the creation of smaller defense regions later in the war and the passing of the function of Defense Commissioner to the offices of the *Regierungspräsidenten* in some cases.

as done by the individual agencies. Even so, definite exceptions were made regarding the national postal service and the national railroads. The finance offices, too, were exempted from interference with regard to money matters, taxation, and the boundary guards of the customs services. Elsewhere the regulation stated that the Commissioner could give orders to all civilian agencies in matters of national defense. Yet it added that he could do so only in accordance with the directions he obtained from the appropriate ministries.

These involved stipulations revealed that the various ministries had insisted on reserving their functional authority. It seems that each ministry could, if it so desired, 'protect' its own regional agencies from interference by the Defense Commissioner with the substance of their business. Not only the financial, postal, and railroad offices, but also the labor offices seem to have retained a fairly independent position in the regions. The official authority of the Defense Commissioner with regard to all special agencies was that of a 'convener' rather than a superior. This does not mean, however, that his limited authority was useless. On the contrary, it seems to have proved most valuable and efficient in practice.¹⁵

TERRITORIAL REORGANIZATION—ECONOMIC REGIONS

The territorial reorganization of the states made but little headway under Hitler. It was the general plan of the National Socialists to divide Germany into a number of regions of average size. With this end in view they did, in fact, create thirty-two party regions (*Gaue*) within the old boundaries of Germany, even before they seized governmental power.¹⁶ Most of these regions owed their existence originally to electoral campaigns during the democratic period, and therefore they were often coextensive with the thirty five large election districts of the democratic regime, as is indicated by names such as Cologne-Aachen, Coblenz-Trier, Weser-Ems, South Hanover-Brunswick, Westphalia North, and Westphalia-South, all of which had been the names of electoral districts.

The democratic election districts had been so molded that they covered a contiguous territory as far as feasible and had an average population of about 1.7 million. Actually more than half of them had

¹⁵ See the memorandum on *Regional Coordination* (cited above, Chapter VII). The fact that the Defense Commissioner was always a regional party leader (see below) added, of course, to his influence. But the regional party leaders were enjoined in their administrative offices to follow orders and directions of the cabinet members in Berlin, the most important of whom were themselves leading party members.

¹⁶ In addition, ten party regions were established later in the annexed territories, see below.

between 1.2 and 1.9 million inhabitants when the statute on elections was issued in 1924, and none had fewer than 800,000 or more than 2.6 million. Only a few, like Baden and East Prussia, were co-extensive with a state or province. Others, especially in Bavaria and in the Rhineland, consisted only of one or two governmental districts. On the other hand, many cut across state lines, or included enclaves belonging to other states, or embraced several states or parts of several states. Thus South Hanover-Brunswick included the two Prussian governmental districts of Hanover and Hildesheim and the entire state of Brunswick; and Weser-Ems united two other Hanoverian districts with the adjacent territories of the states of Oldenburg and Bremen.

This map of election districts formed the basis of the National Socialist party regions. It underwent slight modifications, however, especially in the east, where each party region came to include either an entire state or an entire province, even where the state or province was cut into several election districts, as in Saxony, Lower Silesia, and Berlin.

After Hitler's access to official power the party regions were maintained. But the regime did not at once proceed, as had been expected, to adjust to them the administrative units—the states and provinces. A slight improvement regarding the provinces was achieved by the abolition of the Border province in 1938 and by the division of the provinces of Saxony and Hessen-Nassau as late as 1944 (see Appendix B). But even then the provinces of Rhineland, Westphalia and Hanover and the new province of Halle-Merseburg remained larger than the party regions; several other provinces had still to share the party region with smaller states and enclaves; and fully ten of the fourteen states outside Prussia were either larger or smaller than the party regions to which they belonged.

The national defense regions, which constituted the area of the National Defense Commissioners, originally deviated in many cases from both party and administrative regions. But in this case important adjustments were made in 1942, when all defense regions became co-extensive with the party regions.

At that time, thirty economic regions (*Wirtschaftsbezirke*) for the old Reich and the annexed territories were created, which were either identical with the party regions or covered several without cutting across them (Map 10). Thus the economic region of Westphalia included the two party regions (and election districts) of Westphalia North and South; the economic region of Hanover, both East Hanover and South Hanover-Brunswick; the economic region of Mid-Elbe, both Magdeburg and Merseburg; the economic region of Dusseldorf, the party regions of Dusseldorf and Essen, or the election districts of

Düsseldorf West and East. In all these areas the smaller party regions were still used as defense regions. The largest economic region was Westphalia with (in 1939) 5.5 million inhabitants. The largest party region, and second largest economic region, was Saxony, with 5.2 million inhabitants.

The regional offices for economics, food, forests and timber, and similar matters were allotted to the new economic regions. Consequently several of these offices passed from the *Oberpräsidenten*, with which they had been connected, to officers with more appropriate territorial jurisdiction, for example to one of the two *Regierungspräsidenten* within the economic region. In this way the *Regierungspräsident* of Cologne, for example, was put in charge of these offices for the economic region Cologne-Aachen, which included the governmental district of Aachen, while in other affairs he remained confined to his own district.¹⁷

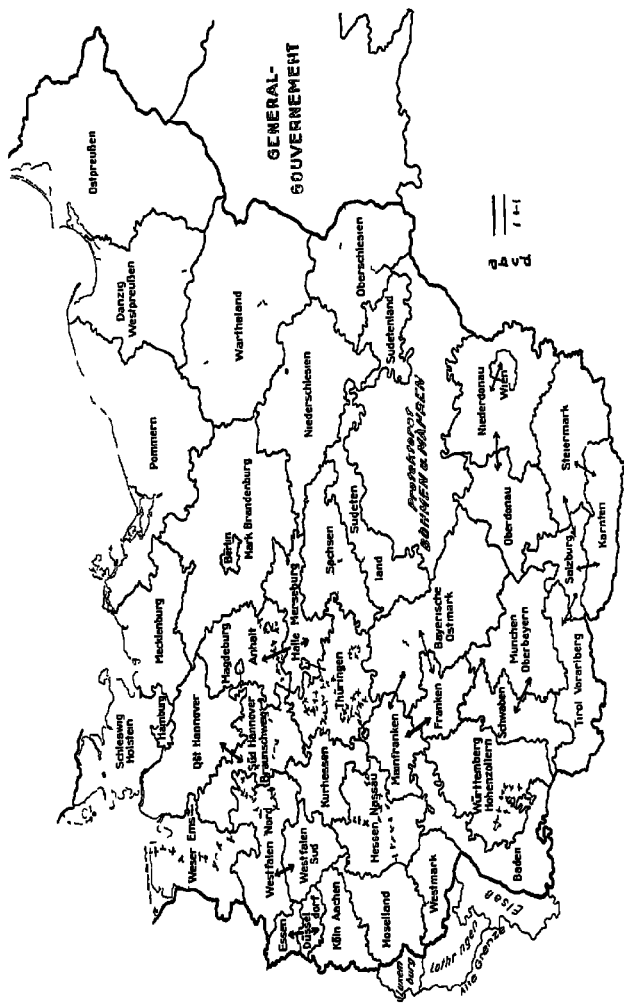
The process of transferring regional offices of the national administration from their older districts to the new regions continued in 1943-44. Thus in 1943 (decree of 27 July) every defense region obtained its own regional labor office (*Gauarbeitsamt*, replacing the former *Landesarbeitsamt*) and trustee of labor (*Reichstreuhänder der Arbeit*); this more than doubled the number of these offices. And in 1944 (decree of 23 June) the offices for price formation (*Preisbildungsstellen*) were transferred from the provinces and states to the offices of the defense commissioners in the defense regions.¹⁸

The economic regions became regional units also for the corporative organizations of commerce and industry that had been created earlier under the Hitler regime. Under the corporative system every businessman had to be a member of two organizations: one geographical, combining all businessmen of his district in a local Chamber of Industry and Commerce (*Industrie und Handelskammer*); the other functional, combining all businessmen of his trade within a nationwide organization (*Wirtschaftsgruppen* and their functional subgroups for special trades). Both geographical and functional organizations maintained regional groupings. These were now established for each economic region, as were the Regional Economic Chambers (*Wirtschaftskammern*), formed from both groupings and from the corresponding corporations of the handicrafts.

After this reorganization of 1942, party regions, defense regions, and

¹⁷ See Appendix I.

¹⁸ *Reichsanzeiger* of 26 June 1944. The price control offices (*Preisüberwachungsstellen*) were originally distinct units, under the district presidents or under corresponding officers of the non-Prussian states. Since, however, the district presidents and corresponding officers in most cases came to function as defense commissioners, 'joint offices for price formation and price control' were formed in most defense regions in 1944.



MAP 10 REGIONS UNDER THE HITLER REGIME, 1943

(Adapted from a Map of Party Regions Published by the German Statistical Office, March 1941)

- a (heavy line)—Boundary of the National Socialist Reich, with annexations
- b (light line)—Boundaries of *Defense Regions*, co extensive with *Party Regions*. These boundaries are identical also with those of the *Economic Regions*, except where crossed by double pointed arrows (see e)
- c (broken line with cross bars)—Some of the boundaries of German *States* or Prussian *Provinces* that were disregarded in forming the Regions. In addition most of the enclaves that are not indicated on the map have been included in the Regions in which they are located
- d (dotted line)—Boundaries of Governmental *Districts* (double pointed arrows)—The eight *Economic Regions* that have been formed out of two or more *Defense Regions* are indicated by double pointed arrows. The names of these *Economic Regions* are (with the names of the *Defense Regions* covered by them added in parentheses) 1 Niederrhein (Essen and Dusseldorf), 2 Westfalen (Westfalen Nord and Sud), 3 Hannover

(Ost Hannover and Sud Hannover Braunschweig), 4 Mittelelbe (Magdeburg Anhalt and Halle Merseburg), 5 Nordbayerern (Mainfranken, Franken and Bayerische Ostmark), 6 Sudbayerern (Munchen Oberbayerern and Schwaben), 7 Donauland (Wien, Niederdonau and Oberdonau), 8 Alpenland (Tirol Vorarlberg, Salzburg, Karnten and Steiermark). The other 22 *Economic Regions* are co extensive with the *Defense Regions* (see Appendix I)

NOTES

- 1 The *Defense* and *Party Region* Bayerische Ostmark was later renamed Bayreuth, and the *Defense* and *Party Region* Hessen Nassau was called Rhein Main
- 2 The *Party Region* of Baden was later extended to include Alsace that of Westmark, Lorraine, that of Moselland, Luxemburg that of Steiermark, *Untersteiermark* (Lower Styria), conquered from Yugoslavia and that of Karnten Sudkarnten (South Carinthia), conquered from Yugoslavia. The respective *Defense* and *Economic Regions* were not affected by these extensions

economic regions became co-extensive to a remarkable degree. The traditional units of administration, however—the states and provinces—were still shaped differently.

This confusing territorial status was mirrored in personnel questions. The positions of all non-Prussian governors and of most Prussian *Oberpräsidenten* were given to regional party leaders (*Gauleiter*). But their administrative regions—the states and provinces—were in some cases much larger and in others smaller than their party regions. To illustrate, Joseph Terboven, *Oberpräsident* of the Rhine province, of which the official seat was Coblenz, was the regional party leader not of the entire province but only of a small part of it; and this part was not Coblenz-Trier (later Moselland)—with Gustav Simon as the regional party leader—but the Essen region in the north. There were two more party regions within the Rhine province: Cologne-Aachen, with Joseph Grohé as the *Gauleiter*; and Düsseldorf, with Friedrich Karl Florian. Bavaria consisted of six party regions: Munich-Upper Bavaria, Bavarian East Mark (later Bayreuth), Franconia, Main-Franconia, Suabia, and part of Saar-Palatinate (later Westmark). The governor of Bavaria, Franz Ritter von Epp, not being a party leader in any of these regions, was invested with the high-sounding party office of *Reichsleiter*, a kind of super-regional party leader.

On the other hand, the authority of the regional party leader of Saar-Palatinate (Westmark) included the Bavarian Palatinate and the Saar territory, which was Prussian in part, and later even Lorraine. Bremen, Oldenburg, and sections of the Prussian province of Hanover, which were united in the party region Weser-Ems, were under separate state governments, but with a single official (Carl Röver) functioning as the regional party leader for the entire region, and as the national governor for Bremen and Oldenburg, although not for the two Hanover districts (at least not until 1944, when this discrepancy was corrected in part; see Appendix B).

Three positions of *Oberpräsidenten* were given to persons other than regional party leaders.¹⁰ As a result of these exceptions, and of the differences in size just mentioned, 14 of the 32 regional party leaders within the old boundaries of the Reich were not—poor souls—either governors or *Oberpräsidenten* (1939).

THE ANNEXED TERRITORIES

In the annexed territories the Hitler regime developed what it seemed to consider the ideal type of completely co-ordinated regional

¹⁰ Prince Philipp von Hessen in Hessen-Nassau, Baron von Lünick in Westphalia, and Von Ulrich in Saxony.

government. Here all party regions and administrative regions were made co-extensive, and in each the regional party leader was placed in charge of the national administration.²⁰ At the same time he headed the home-rule administration of the region, the two functions being exercised through two divisions of his office, the one—national affairs—under an official entitled *Regierungspräsident*, the other—home-rule matters—under another official entitled *Gauhauptmann*.

The authority of the governor was extended to cover all special administrations of the national government, excepting only the courts and the financial, railroad, and postal agencies. In the two annexed Polish regions of Danzig-West Prussia and Wartheland, even these agencies were included. But in the other regions, too, the governor could give directions to the agencies that had been exempted from his direct supervision. Although such directions were subject to correction by the respective ministries, they were not restricted to cases of emergency, as they were in the case of governors within the old boundaries of the Reich.

Differences in the size of the regions caused peculiarities. In the seven regions formed out of Austria certain national services were established for several adjacent regions, because the regions were so small. The governor of one of the regions then headed some such service for several regions, while the governor of another region might head another service for them. On the other hand, in the regions of Sudetenland, Danzig-West Prussia, and Wartheland, matters of national administration, as distinct from home-rule matters, were handled by several district agents, because the regions were so large.²¹ The district agents received the title *Regierungspräsident*, but they were strictly subordinated to the governor.

To sum up, while federalism was non-existent in Hitler Germany, regionalism remained a problematic issue. New regions for economic, defense, and party affairs were created. In various ways the regime tried to obtain regional co-ordination without abandoning final decision by the national ministries in Berlin. This led it to experiment with the institution of a national agent-general within each region. In so far as that agent obtained power over what were formerly home-rule affairs—as was the case especially in the Prussian provinces, and in those states in which the governor was appointed state minister, and also in the annexed territories—this arrangement was in profound conflict with the proposals of the democratic Reform Committee, which

²⁰ See Appendix B. The following data on the annexed territories have been taken from Ernest Hamburger's paper, mentioned above.

²¹ See Appendix B for the districts of these regions.

desired to preserve home rule and even to extend it in the Prussian provinces. But in so far as the national agent-general in the regions was authorized to co-ordinate other *national* agencies within the same region, the arrangement was completely in line with the proposals of the Reform Committee, which were sometimes followed even literally.

Other administrative simplifications in line with the recommendations of the democratic Committee were achieved by the fusion of national agencies and Prussian state agencies, both in Berlin and in the provinces, though in failing to eliminate Prussia as a single unit Hitler remained behind the recommendations of the Committee. On the other hand, in abolishing the rights of the provinces instead of increasing them, and in abolishing the Federal Council instead of making it the representation of more evenly shaped territorial units, he reversed the democratic plans. Furthermore, the advantages derived from the merger of Reich and Prussian agencies were offset in a considerable degree by the new duplication of offices that resulted from the party organization, with its central party staff and regional and local party leaders. The territorial reorganization of the states remained largely unsolved.

XVI

The Structure of Postwar Germany

THE Constitutional and administrative structure of postwar Germany is likely to depend on a number of factors, most of which are outside the scope of the present study. The foregoing analysis of pre-Hitler experience and of the changes effected under the Hitler regime makes it possible, however, to reach some conclusions for the future.

Three layers of administration will be discernible in Germany after the war: the original state administrations, on which the imperial government chiefly relied in administrative matters; the system of federal agencies placed like a gridiron over those old foundations during the democratic period; and the various regions—party, economic, and defense—put like another gridiron on top of the two older systems during the Hitler regime. The resulting complicated structure cannot be dis-

entangled, nor can a workable democratic administration be rebuilt in Germany, without a clear decision on certain fundamental problems.

DIVISION OF PRUSSIA

Prussia ought to be eliminated as a single unit within Germany. This postulate is completely independent of questions of foreign policy. The United Nations may indeed insist on the dismemberment of Prussia for reasons of foreign policy, but whether they do so or not, Prussia's elimination as a single unit is overdue.

Whatever one may think of Brandenburg-Prussia's historical achievement in overcoming the wilderness of petty states during the three centuries after the Thirty Years' War,¹ or of the transient merits of the democratic Prussian cabinets in forcing western views upon the eastern provinces during the republican period,² Prussia was not a suitable unit in a federal state, least of all within a democratic republic. The mere existence of a state of her size within a democratically governed nation made it inevitable that differently composed cabinets in the Reich and in Prussia could pursue conflicting policies on an almost equal scale within the greater part of Germany.³ It led to a duplication of federal and state agencies not only at the regional level but also at central headquarters.⁴ And it made it impossible for the Federal Council to be made up of homogeneous units.⁵

When the official Reform Committee of 1928-30, for these and other reasons, proposed the abolition of Prussia as a single unit it did so without any regard for foreign policy or for the ideas and wishes of foreign countries.⁶

The reasons put forward at that time have only been strengthened and augmented by what has happened since. While it is true that the centralized administration of Prussia facilitated democratic control of the eastern provinces as long as the Prussian state cabinet was itself democratically composed, it is no less true that during both the imperial and the Hitler regimes the centralized state machinery of Prussia could as well be used for the opposite purpose—that of keeping democratic sections of the people under the control of authoritarian governments. To dominate the entire Prussian administrative machinery, covering two-thirds of the Reich, it was sufficient for Papen, and later for Hitler, to have themselves or their followers appointed to a few Prussian cabinet posts, especially to the key positions of prime minister and minister of the interior.

¹ See Chapter III.

² *Ibid.* and Chapter x.

³ See Chapter III.

⁴ *Ibid.* and Chapter VII.

⁵ See Chapter III and Appendix D.

⁶ See Chapter IX.

Therefore Prussia should not be restored in the future as a single unit. It would be an uncalled-for anachronism if, merely for the sake of restoring pre-Hitler conditions, institutions were revived, the abolition of which had been in line with democratic thought. On the contrary, even those relics of Prussia's independent organization that were preserved during the Hitler regime, such as the office of the Prussian prime minister and, until September 1944, that of the minister of finance,⁷ should be abolished without any hesitation.

In the area previously Prussian, the provinces should constitute the next level of governmental units under the national government, until a more suitable division could be determined. Like the older states the new sections should be called *Länder*. The final decision on changes in their boundaries, in so far as it is left to Germany, should be entrusted to the new national government (see below).

The new states may need some trustee in common to administer their undivided property. This function may be performed, however, by a special purpose organization (*Zweckverband*) of the former Prussian provinces. It would be unnecessary, and rather misleading, to maintain for this purpose officers with the titles of prime minister and finance minister.

RESTORATION OF FEDERALISM

Secondly, Germany should have, again, some kind of federal structure. Consequently Hitler's abolition of the autonomous rights of states and provinces ought to be rescinded. The pre-Hitler rights of the larger states other than Prussia and of the Prussian provinces might well be restored in general terms. The Prussian provinces should be given considerably broader rights of self government than they had under the democratic regime. This should not, however, be done in a summary way, without regard for the practical necessities, especially in economic matters.⁸ Rather, the federal government, with the consent of its Federal Council—in which the former provinces themselves would play a major role as new states—should receive a good deal of discretionary power to grant rights to the provinces beyond those of 1932. Until that is done the Prussian state powers should be administered by the Reich government, or by the central military government that is to replace or control the central Reich government during the transition period.

Thirdly, the Federal Council, abolished by Hitler in 1934, ought to be revived. It should be composed of the representatives of the various

⁷ See Chapter xv.

⁸ See Chapter x.

states and of the former Prussian sections. The number of votes accorded each unit should be determined by population. This would distribute the votes in such a way as to give Bavaria and the Rhineland ten or eleven votes each, such units as Schleswig-Holstein and Pomerania two or three votes each, and the smallest units one each.⁹

Actually it is a minor question whether the states should have varying numbers of votes according to population figures, or the same number of votes regardless of population, as in the United States (Senate) and Switzerland (Ständerat). It was impossible to equalize the votes so long as Prussia was one of the units, but it will be feasible with the population of every state numbering between two and eight or nine million. If I hesitate to propose giving the same number of votes to every state, regardless of population figures, it is, to be quite candid, because equalization of votes would strengthen the eastern against the western and southern states. This is not desirable in the interest of liberty and of western civilization. On the other hand, a defect in the system of voting based on population figures is that it operates in favor of industrial as against agricultural regions. But the decision between the alternatives is of no major importance, and one may even look for a compromise between them.

Fourthly, the states with fewer than two million inhabitants, and especially those with a widely dispersed territory, ought not to be restored unconditionally to the full possession of their old state rights. To do that would be another anachronism that could not be justified by the mere desire for restoration. The need for a change in the territorial configuration of the smaller states was generally recognized in pre-Hitler days, in particular by all democratically minded persons. The details should be determined by the people, within the framework of the peace terms. The largest unit of government—that is, if Germany remains undivided, the national government, in which both old and new states participate—should be authorized to reorganize the territories of states with fewer than two million inhabitants, and to determine the amount of autonomy they are to have, as was proposed above in regard to the Prussian provinces. In both cases the decisions should be made by simple legislation, with the consent of a popular chamber and of the Federal Council. Preliminary decisions during the transition period may be made by the provisional government with the consent of the Federal Council alone (see below).

These four points seem to me to form a sound basis for postwar reconstruction in Germany. The plan restores pre-Hitler state rights

⁹ See Appendix D.

to Bavaria, Saxony, Württemberg, and Baden, but not to Prussia. It replaces Prussia by its constituent parts, the present provinces, to which it grants their pre-Hitler rights, leaving their further development and combinations into more adequately shaped units to be determined by the federal government. It likewise leaves the final domestic boundaries and rights of the smaller states to be determined by the federal government.

There may be some doubt whether it is justifiable to exclude from national legislation changes in the boundaries of the four major states. There is no reason for reducing the territory of the state of Saxony. It could be argued, however, that Württemberg and Baden should constitute one state rather than two. Even more definitely could it be said that the Palatinate west of the Rhine is not a natural part of Bavaria, to which it is neither contiguous nor related in origin.¹⁰ Certain sections of the Bavarian districts of Franconia and of the northern parts of Württemberg and Baden might better be included in some new state around Frankfort in the region of the Main River. It may be desirable, therefore, to give the national legislature powers regarding the territorial boundaries even of the states in the south, or at least with respect to their non-contiguous sections. In addition, it may be provided that principles for the administrative structure of all states, even the old four, can be determined by national legislation.¹¹ But however suggestive these two exceptions to the full restoration of pre-Hitler rights in the four major states may be, their realization is a point of only secondary importance.

To use the term federal for a structure in which all state rights are to be determined or may be modified by simple national legislation would not be justified. But the proposals above place certain fundamental rights of all the states, both new and old, beyond the reach of simple national legislation, namely, their right to elect their own governments, and the right of these governments to be represented in the Federal Council. Many other rights will be guaranteed to the old states, and some to all. Such guarantees should not, however, be given for merely academic reasons, but only to such an extent as is warranted in view of all practical implications.

The basis of the German federal system, at least in the greatest part of the country, should be sought in the states' constitutional share in the federal government rather than in any unalterable distribution of jurisdictions between federal and state governments. This basic idea does not exclude exceptions to satisfy peace terms or other requirements of high policy. It is flexible.

¹⁰ See Chapter IV

¹¹ See Chapter IV, Nos 15 and 16

PROCEDURE

The final details of establishing a new governmental structure should be determined by a popularly elected assembly, which (1) would be subject to such obligations as may evolve from the conditions of the armistice and peace, and (2) would have to stay in line with such minimum standards as may be required by a supranational organization.¹²

It may be impossible, however, to establish a workable national government by general elections in Germany soon after the collapse of totalitarianism. The situation may even develop in such a way that new regional governments will be established more quickly than a new national government. In this event, a provisional Federal Council may be the appropriate body to be entrusted with tentative decisions of great importance, such as the election of the provisional national government; adoption of a provisional constitution; determination of the provisional rights and boundaries of the smaller states and of the Prussian provinces in their capacity as new states; passing of legislation prior to the establishment of a national popular chamber; and finally, preparing the elections to such a chamber and fixing the appropriate time and procedure.

In the elections it may be considered necessary to exclude from the franchise and from eligibility to public office certain categories of persons, such as former members of leading National Socialist organizations. Or the rights of the popular chamber may at first be restricted to those of an advisory body or to the making of decisions on specifically enumerated points only. I do not mean to say that the composition and the rights of the popular chamber *ought* to be restricted in just this way. I merely wish to state that questions like these will call for decisions, and for a body to make them, and that, so far as German authorities are concerned, the Federal Council may well serve as this body, if the regions should be able to organize themselves sooner than the nation.

Such 'unicameral' powers of the Council should, of course, be strictly temporary, for the Federal Council is not the appropriate body to make final decisions. That, according to democratic principles, is the people's

¹² On the need for minimum standards, and for their supranational determination and enforcement, see the following papers by Arnold Brecht 'Sovereignty' in *War in Our Time*, ed. by H. Speier and A. Kihler (New York, 1939), 'European Federation—The Democratic Alternative,' *Harvard Law Review*, vol. 55 (1942), p. 561, 'Limited Purpose Federations,' *Social Research*, vol. 10 (1943), p. 135, 'Distribution of Powers Between an International Government and the Governments of National States,' *American Political Science Review*, vol. 37 (1943), p. 862.

business. Any delay in general elections, and any restrictions on the rights of the popular chamber, can be justified only so long as no workable democratic machinery of government can be established in the democratic way, or if there is danger that majority rule will once more be abused to abolish the protection of the individual from arbitrary government.

For preventing the possibility that majority rule will be abused to authorize barbaric measures, the suspension of general elections is not the most desirable method. Other devices may serve this purpose. In the first place, it would be advisable for the new German constitution (and for any other democratic constitution to be enacted in the future) to contain certain sacrosanct principles and standards that could not be abolished or suspended by emergency decrees or by any parliamentary or plebiscitarian majorities, either directly or indirectly (as through enabling acts or similar devices). These sacrosanct principles and standards should be distinct from 'ordinary' rights stipulated in the Bill of Rights, in that they could not be impaired even by constitutional amendments. They should include fundamental principles regarding respect for the dignity of man, the prohibition of cruelties and tortures, the preclusion of *ex post facto* laws, equality before the law, and the democratic principle that the law itself cannot validly discriminate for reasons of faith or race.¹³ In addition to the establishment of such standards, it may be determined that those who have been active in their destruction are ineligible for membership in the assembly. With these and similar precautions the German people should be able at a time not too far distant to form both their federal and state governments according to democratic methods.

Erich Koch-Weser, outstanding democratic leader in pre-Hitler Germany, proposed, shortly before his untimely death in exile in Brazil, that the first national assembly in Germany after the war be formed without holding elections.¹⁴ The assembly would be composed of the surviving members of the German Reichstags from 1930 through 1932, with the exception of any who during that period or later were members of the Nazi party, its affiliated organizations, the Elite Guard,

¹³ Some elements of these principles and standards can be considered invariant (absolute) in the idea of justice. See A. Brecht, 'Relative and Absolute Justice' and 'The Rise of Relativism in Political and Legal Philosophy,' *Social Research*, vol. 6 (1939), pp. 58 and 392, 'The Search for Absolutes in Political and Legal Philosophy,' *ibid.* vol. 7 (1940), pp. 201 and 385 (erratum), 'The Myth of Is and Ought,' *Harvard Law Review*, vol. 54 (1941), p. 811, and 'The Impossible in Political and Legal Philosophy,' *California Law Review*, vol. 29 (1941), p. 312. But philosophical considerations are not the only ground, or the only criterion, for the inclusion of amendment proof principles and standards in a democratic constitution.

¹⁴ In a memorandum made available to the present writer.

THE STRUCTURE OF POSTWAR GERMANY

or the Storm Troops. No one who was a member of a Reichstag elected after 1933, or who held a political office after 1933, would have a place in this first assembly. According to the author of the plan, the main purpose of the assembly would be that of electing a chief executive with extraordinary powers for four years. During that time the new constitution should be drafted by a special council. This draft—and an alternative to it, to be worked out by the chief executive, if he so desired—should then be placed before the people, who would decide by referendum.

Several objections, however, can be raised to reliance on the members of the 1930-32 Reichstags. To mention only one, if all non-Nazi members were still alive, and if all attended, the assembly would have a socialist majority, as indicated by the following figures.

		July	Nov.
	1930	1931	1932
Members of the Reichstag	577	607	584
Members of the Nazi party	107	230	196
Non-Nazi members of the Reichstag	470	377	388
Non-Nazi members			
Social Democrats	143	133	121
Communists	77	89	100
Total Socialists	220	222	221
Other non-Nazi parties	250	155	167

The theoretical margin of the socialists would be even greater than these figures show, because numerous members of the other non-Nazi parties, especially of the German Nationals, have held office under the Nazi regime and would therefore be ineligible. And a procedure which would give the two socialist parties automatic preponderance would certainly be criticized in view of the fact that under free elections they never reached a majority. In practice this preponderance would not be likely to materialize, because of the great number of socialists that have been killed or will not return from emigration. In any case it does not seem desirable that the accidental number of survivors should decide the relative strength of the parties. These objections would be less grave if the assembly were to have only advisory functions, but in that case some other body would have to make the preliminary decisions.

Legally speaking, the new federal system would be *in statu nascendi* until the popularly elected assembly, acting as a constitutional convention, made the final decisions.

PARTITION OF GERMANY?

The history of German federalism during the three regimes of this century has proved that the inner coherence of the German people, including such sections as Bavaria, the Rhineland, and Hanover, was very strong. Even in the Rhineland and in Hanover the great majority of the people, in their desire for independence, never went beyond the goal of forming units of government within the German union, along with Bavaria, Saxony, and other medium-size states. Nor was there in Bavaria any noticeable separatist movement that went beyond demands for changes in the balance of power within the German nation.

Separatist tendencies may emerge from Germany's defeat, whether out of a hope of obtaining better treatment as separate states or out of fear of bolshevism, but it is probable that they will reflect merely a short-time tendency and will soon be offset by an ever-growing movement in favor of reunion. The speeches of the Bavarian prime minister on the democratic Reform Committee were as significant in this respect as was the result of the Saar plebiscite of 1935, in which, under the League's administration, a population composed mainly of Catholics and Social Democrats voted overwhelmingly for reunion with Germany, regardless of their profound disagreement with Germany's form of government under the Hitler regime.¹⁵

Nothing could be more detrimental to liberal trends in German reconstruction than a situation in which popular demands for national reunion would place democratic governments of separated Germanic states in the dilemma of having either to espouse or oppose such demands. If they should approve them and make them their own, this would bring them into conflict with the outside world. If they opposed the tendencies toward union they would lose popular support and be replaced by undemocratic governments.

ADMINISTRATIVE REGIONALISM

If we now turn from political to administrative regionalism, certain further points can be made in regard to postwar German reconstruction. In the provinces the compulsory amalgamation of the offices of *Oberpräsident* (state agent) and *Landeshauptmann* (provincial agent), as introduced by Hitler, should, of course, be abolished. The provinces, as new states, must have the right to reestablish their own home-rule administration. They may use the traditional name of *Landeshaupt-*

¹⁵ See Chapters IV and X and Appendix E.

mann or *Landesdirektor* for their chief executive, but they should be free to choose that executive. His office should be merged with that of the regional agent of the national government only if the national government should decide to delegate its regional functions to the elected chief executive of the provincial government. This the national government should be able to do at any time.¹⁶

On the other hand, those decrees of the Hitler regime that made Prussia's regional state agents into national agents were in line with the democratic program,¹⁷ and should not be repealed. It would be advisable, however, to change the titles of these regional officers, because the old names of *Oberpräsident* and *Regierungspräsident* are misleading both in meaning and in historical connotations. They convey the idea of an authoritarian and rather personal government in a subject territory.

The Prussian *Oberpräsidien* and *Regierungen* in the provinces have always been multi-purpose agencies. There can be little objection to having regional officers of the central government attend to a number of functions of the central administration within one regional agency.¹⁸ This will often prove to make for economy and administrative efficiency. It may be tried out to any degree compatible with the limited span of control of a single agent general, and with the maintenance of ministerial authority democratically controlled.

The newly established national economic and food offices may remain closely connected with the offices of the national multi-purpose agents in the regions.¹⁹ If the restored autonomy of states and provinces should leave no room for national activities in these fields, the national economic and food offices should, of course, be abolished. But if they are needed there is no reason why they should be established as unco-ordinated national agencies at the regional level. Indeed, all regulations that would promote regional co-ordination among national agencies should be left in force, until experience makes it advisable to modify them.

ECONOMIC REGIONS

It is clear that the National Socialist 'party regions' (*Gaue*) must be abolished as such, that is, as units for the organization of the party and for its control over the political freedom of the people. But long before they became party districts most of these regions were states or provinces, or were democratic election districts. They gradually

¹⁶ See the recommendations of the Reform Committee, Chapters xii and xiii.

¹⁷ See Chapter ix.

¹⁸ See Chapter vii.

¹⁹ See Chapter xv.

came to be used as units for regional administration in economic matters, and also for the co-ordination of all national agencies in emergency situations. Economic and food offices, and regional agencies of industry and commerce, were established for such regions or combinations of them.²⁰

In abolishing the party regions it would be advisable to maintain these economic regions for the national administration. They provide more evenly shaped administrative districts than do several of the states and provinces, with their enclaves and accidental historical boundaries. None of the economic regions has more than 5.6 million inhabitants. This makes it convenient to use them, either separately or in combinations of two or three, as regional units for administrative purposes of the national government. Changes in their size can be accomplished gradually, according to practical needs. Indeed, it would be advisable to adjust the boundaries of states and provinces to those of the economic regions, or vice versa, so that each state or province would cover one or several economic regions without cutting across them.

SUMMARY

Pre-Hitler rights of the larger states and the Prussian provinces should be widely restored. But no restoration should be undertaken in favor of conditions that were outmoded or were repudiated by democratic thought even before Hitler came to power. Therefore Prussia ought not to be restored as a single unit, but its sections should become direct constituent units of federal Germany. Undersize states should not be endowed with rights that cannot be modified by national legislation. The territorial reorganization of Germany, at least outside Bavaria, Saxony, Wurttemberg, and Baden, should be determined by simple legislation. The medium size regions that have been used for the administration of economic matters should be preserved. The national multi-purpose agents at regional levels should also be preserved, although their official designations (*Oberprasidenten* and *Regierungsprasidenten*) may well be changed. A new Federal Council should be created, composed of the representatives of the various states and provinces. Both the old states and the new ones should have the same name (*Lander*). In due time a popular assembly should be convened and should be given, within the framework of the peace terms, the final power to determine the principles of federalism and regionalism in Germany.

²⁰ Ibid

APPENDICES

THE DUAL SOURCE OF EBERT'S AUTHORITY

AFTER announcing the Emperor's abdication, the last imperial Reich chancellor, Prince Maximilian von Baden, called for Friedrich Ebert and transferred the chancellorship to him. In so doing he acted on the theory that the throne had become vacant and that therefore the *de facto* authority to take appropriate action fell upon himself, as the highest legitimate representative of the government. Democratically minded, he felt that his action had to be in line with democratic ideas, the more so because Germany's transformation into a democratic commonwealth had been resolved by the Reichstag and the Federal Council only two weeks before (amendment of 28 October 1918 to the constitution of 1871). Friedrich Ebert was the leader of the largest party in the Reichstag, that of the Social Democrats, which occupied 110 of the 397 seats. It was therefore logical, Prince Maximilian argued, that Ebert should take charge of the executive functions and prepare for general elections to a constitutional convention.

Almost simultaneously, however, a mass assembly of representatives of workers and soldiers in the Berlin Busch Circus appointed Friedrich Ebert first of six Commissars of the People.

Ebert's authority, then, had a dual source, one traditional, the other revolutionary. This was of greater importance for the transformation of Germany into a republican commonwealth than has been generally recognized. While the masses saw him as the representative of the revolutionary assembly, and as their own delegate, the civil servants, the army, and the bourgeoisie respected him as the quasi-legitimate successor to the last imperial chancellor. The state bureaucracies, too, based their recognition on this latter source of Ebert's authority, rather than on his revolutionary mission.

APPENDIX B

GERMANY'S POLITICAL SUBDIVISIONS, 1815-1945¹

CHANGES FROM 1815 TO THE END OF THE WEIMAR REPUBLIC

THE German Confederation (1815-66) consisted originally of 39 states, but there were 42 that belonged to it at one time or another. Of these the following 13 lost their independence before 1870, in the years indicated:

Birkenfeld	1817	incorporated in Oldenburg
Geroldseck	1819	" " Baden
Lichtenberg	1834	" " Prussia
Hohenzollern-Hechingen	1850	" " "
Hohenzollern-Sigmaringen	1850	" " "
Anhalt-Köthen	1853	" " Anhalt
Anhalt-Bernburg	1854	" " "
Lauenburg	1864	" " Prussia
Holstein	1866	" " "
Nassau	1866	" " "
Hessen-Kassel	1866	" " "
Frankfurt-am-Main	1866	" " "
Hannover	1866	" " "

In addition, the King of the Netherlands proclaimed, in 1866, the withdrawal of the Dutch district of Limburg from the Confederation, and in the same year Luxembourg withdrew.

The remaining states, except Austria and Liechtenstein, formed the German Reich in 1871. Thus the Reich consisted originally of 25 states. Alsace-Lorraine, won from France, was made a *Reichsland*, a federal territory.

During the monarchical period, from 1871 to 1918, no changes took place in this alignment except for a slight revision in the status of Alsace-Lorraine, granted in 1911. Alsace-Lorraine was returned to France after the war, and certain other sections were severed from Germany by the Treaty of Versailles. But the number of states was not affected by that treaty. The Weimar Republic, therefore, started out with 25 constituent states, all of which adopted the republican and democratic form of government.

During the period of the Weimar Republic, from 1919 to 1933, the fol-

¹ Prepared in collaboration with Ernest Hamburger.

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lowing 9 states (called *Länder* after the founding of the Republic) lost their separate status, in the years indicated, most of them entering the new state of Thuringia. This reduced the number of states from 25 to 17.

Sachsen-Weimar-Eisenach	1920	Entered the new state of Thuringia
Sachsen-Coburg-Gotha	1920	Entered Thuringia, except the section of Coburg, which was incorporated in Bavaria in 1919
Sachsen-Meiningen	1920	Entered Thuringia
Sachsen-Altenburg	1920	" "
Schwarzburg-Rudolstadt	1920	" "
Schwarzburg-Sondershausen	1920	" "
Reuss, ältere Linie	1920	" "
Reuss, jüngere Linie	1920	" "
Waldeck	1929	Incorporated in Prussia

THE GERMAN STATES AND PRUSSIAN PROVINCES AT THE END OF THE WEIMAR REPUBLIC

At the beginning of 1933 the 17 states were those listed in Table B-1. It should be noted that at that time Prussia included about three-fifths of the German population, Bavaria and Saxony together one-fifth, and all the other 14 states together only one-fifth. In May 1939 the German population living within the old boundary lines of 1933 was 68,765,838; including the Saar territory it was 69,629,574. The Memel territory (see below) is not included in either of these figures.

Table B-1. THE GERMAN STATES, 1933

State	Capital	Area in sq. km.	Population	
		(1939)	1933	1939
Preussen	Berlin	294,158	39,746,901	41,759,928 ^a
Bayern	München	77,837	7,774,777	8,279,828
Sachsen	Dresden	14,995	5,196,652	5,206,822
Württemberg	Stuttgart	19,508	2,696,324	2,907,131
Baden	Karlsruhe	15,070	2,412,951	2,518,103
Thüringen	Weimar	11,763	1,659,510	1,760,170
Hamburg	Hamburg	746	1,218,447	1,692,695 ^a
Hessen	Darmstadt	7,691	1,429,048	1,469,921
Mecklenburg-Schwerin	Schwerin	15,721 ^b	691,000	910,166 ^b
Braunschweig	Braunschweig	3,672	512,989	599,208
Oldenburg	Oldenburg	5,396	573,853	582,400 ^a
Bremen	Bremen	258	371,558	400,194 ^a
Anhalt	Dessau	2,314	364,415	436,506
Lippe	Detmold	1,215	175,538	188,598
Lübeck	Lübeck	(298) ^c	136,392	 ^a
Mecklenburg-Strelitz	Strelitz	(2,929) ^c	114,000	 ^a
Schaumburg-Lippe	Bückeburg	340	49,955	54,168 ^a
TOTAL				
German Reich ^d	Berlin	470,687	65,124,310	68,765,838

^a For changes in territory between 1933 and 1939 see the following section.

^b These figures for 1939 refer to Mecklenburg-Schwerin and Strelitz combined; see the following section.

^c Figures refer to 1933.

^d Not including the Saar territory.

The largest state, Prussia, was divided into twelve provinces, shown in Table B-2. Nine of these provinces had more inhabitants each than any

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of the non-Prussian states except the four largest. Five had more than any except Bavaria and Saxony. The Rhine province had about the same number of inhabitants as Bavaria, and Westphalia about the same as Saxony.

Berlin (884 square kilometers, 4,332,242 inhabitants, in 1939) was not included in any Prussian province, but had a status of its own. Thus it must be counted as an additional, a thirteenth, unit at this level.

Table B-2 THE PRUSSIAN PROVINCES, 1933 ^a

Province	Residence of Oberpräsident	Area in sq. km (1933)	Population	
			1933	1939
Ostpreussen	Königsberg	36,992	2,333,301	2,488,122 ^b
Brandenburg	Berlin	38,275	2,692,080	3,007,937
Pommern	Stettin	38,401	2,268,084	2,393,844
Grenzmark Posen-Westpreussen	Schneidemühl	7,714	337,578	
Niederschlesien	Breslau	26,981	3,204,004	4,868,764
Oberschlesien	Oppeln	9,714	1,482,765	
Sachsen	Magdeburg	25,529	3,400,648	3,618,458
Schleswig-Holstein	Kiel	15,682	1,420,265	1,589,267
Hannover	Hannover	38,705	3,236,868	3,476,056
Hessen-Nassau	Kassel	16,845	2,584,828	2,675,111
Westfalen	Münster	20,215	5,039,963	5,209,401
Rheinprovinz	Coblenz	24,477	7,690,266	7,915,830

^a For changes in territory between 1933 and 1939 see the following section.

^b Not including the Memel territory (2,567 square kilometers, 154,694 inhabitants), regained from Lithuania in 1939.

The Saar territory (1,924 square kilometers, 863,736 inhabitants, in 1939) was neither a state nor a Prussian province. It consisted of those sections of the Prussian Rhine province and of the Bavarian Palatinate that were administered after 1920 by a committee appointed by the League of Nations under the Treaty of Versailles.

CHANGES WITHIN THE 1933 BOUNDARIES OF THE REICH DURING THE HITLER REGIME

During the Hitler regime the following changes took place in the alignment of states and provinces within the old boundaries of the Reich.

Changes in Number of States

The number of states decreased from 17 to 15, as a result of the following mergers, which occurred in the years indicated.

Mecklenburg-Schwerin	1934	formed the new state of Mecklenburg, with its capital in Schwerin
Mecklenburg-Strelitz	1934	
Lubeck	1937	
		incorporated in Prussia, now part of Schleswig-Holstein province

Changes in Prussian Provinces

The number of Prussian provinces declined in 1938 from 12 to 10, but increased in 1941 to 11, and in 1944 to 13, as follows:

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Grenzmark Posen-Westpreussen	1938	divided among the provinces of Brandenburg, Pommern and Schlesien
Niederschlesien Oberschlesien	1938 & 1941 1938 & 1941	formed the new province of Schlesien (capital in Breslau) in 1938, restored as separate provinces in 1941
Sachsen	1944	
		divided into two provinces (1) Magdeburg (capital in Magdeburg), co extensive with the governmental district of Magdeburg, and (2) Halle-Merseburg (capital in Merseburg), co extensive with the governmental district of Merseburg, the governmental district of Erfurt was placed under the national governor for Thuringia, who was commissioned to discharge the functions of an <i>Oberpräsident</i> for the Erfurt district, although no change in state lines was made
Hessen-Nassau	1944	divided into two provinces (1) Kurhessen (capital in Kassel), co extensive with the governmental district of Kassel, and (2) Nassau (capital in Wiesbaden), co-extensive with the governmental district of Wiesbaden, the counties of Hanau, Gelnhausen and Schluchtern were transferred from the Kassel district to the Wiesbaden district, and the county of Schmalkalden to the Erfurt district (see above)
Hannover	1944	the governmental districts of Aurich and Osnabruck placed under the national governor in Oldenburg and Bremen, who was commissioned to discharge the functions of an <i>Oberpräsident</i> for these districts, although no change in state lines was made

The division of the administrative provinces of Saxony and Hanover did not affect the 'autonomous' affairs of the former provinces (provincial institutions and the like) As regards these affairs, the old provinces remained undivided units under the direction of the *Oberpräsidenten* in Merseburg and Hanover, respectively. Even certain national and state matters, including the administration of waterways, remained under the direction of only one of the *Oberpräsidenten* for the entire area of the old provinces of Saxony and Hanover.

In the former Hessen province most of the 'autonomous' affairs had always been conducted separately for the two governmental districts, and therefore no general exception from the division for such matters was deemed necessary.

In each of the four new provinces of Magdeburg, Halle Merseburg, Kurhessen and Nassau, which were now co-extensive with only one governmental district, the agencies of *Oberpräsident* and *Regierungspräsident* were combined The functions of the *Regierungspräsident* were to be discharged by the general deputy of the *Oberpräsident* under the title '*Der Regierungspräsident in . . .*' The *Regierungspräsident* in Erfurt was to act as the general deputy of the governor of Thuringia for the district of Erfurt, and the *Regierungspräsident* in Osnabruck as the general deputy of the governor in Oldenburg and Bremen for the districts of Osnabruck and Aurich.

Territorial Exchanges between States

1 The state of *Hamburg*, in 1937, was enlarged by the incorporation of the neighboring Prussian cities of Altona, Wandsbeck and Harburg-Wilhelmsburg and some smaller municipalities. In turn Hamburg yielded to Prussia several communities, among them the city of Cuxhaven on the mouth of the Elbe River, which was incorporated in the governmental district of Stade of the Hanover province. Prussia lost to Hamburg 492,000 inhabitants and received from Hamburg 34,000 inhabitants.

2 The state of *Oldenburg*, in 1937, was enlarged by the incorporation of the formerly Prussian city of Wilhelmshaven (28,000 inhabitants) on the mouth of the Jade River. A new town of Wilhelmshaven was formed from that city and the adjacent Oldenburg city of Rustringen. On the other hand, the state of Oldenburg yielded to Prussia two counties located as enclaves in Prussia, a long distance from the main territory: the county of Lubeck (48,200 inhabitants, in the neighborhood of the former city state), which was incorporated in the Prussian governmental district of Schleswig, province of Schleswig-Holstein, and the county of Birkenfeld (58,500 inhabitants, near the Saarland), which was incorporated in the Prussian district Coblenz, Rhine province.

3 The city-state of *Bremen*, in 1939, was enlarged by the addition of several municipalities adjacent to it. In turn, Bremen yielded to Prussia the harbor city of Bremerhaven (27,500 inhabitants) on the mouth of the Weser River, it then formed, with the Prussian town of Wesermünde, the city of Wesermünde. Prussia lost to Bremen 63,000 inhabitants, and received from Bremen 27,500 inhabitants.

4 The two largest of the many isolated patches that formed the state of Brunswick were linked, in 1941, by incorporating into that state the area that separated them, that is, the Prussian county of Goslar (Hanover province) and adjacent communities. In exchange Prussia obtained the county of Holzminden and adjacent communities at the western end of this new Brunswick 'main'. Other exchanges between Prussia and Brunswick took place in the same year, and between Prussia and Anhalt in 1942.

The Saargebiet

The Saargebiet was returned to German administration in 1935, after the plebiscite held in that year in conformity with the Treaty of Versailles. It was later administered by the 'National Governor of the Westmark' (*Reichsstatthalter in der Westmark*), directly under the national government.

INCORPORATIONS IN THE REICH DURING THE HITLER REGIME

Incorporations during the Hitler regime took place in 1938 and afterwards, and occurred in two ways: either by incorporation of the newly

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gained regions in existing regional units, such as Prussian provinces; or by formation of national regions (*Reichsgaue*).

Austria

Austria, incorporated in the German Reich in March 1938, and at first administered in its entirety by a National Commissioner (*Reichskommissar*), was dissolved and divided, effective as of 1 April 1940, into seven national regions (*Reichsgaue*), whose area (in square kilometers) and population (1939) were as follows

	<i>Sq km</i>	<i>Population</i>
Wien	1,216	1,929,976
Niederdonau ¹	23,502	1,697,676
Oberdonau ²	14,216	1,034,871
Steiermark	17,384 ³	1,116,407 ⁴
Kärnten	11,554 ⁴	449,713 ⁴
Salzburg	7,133	257,226
Tirol-Vorarlberg	13,126	486,400

The boundaries of these national regions were in general identical with those of the former Austrian states (*Länder*), with, however, the following important differences, in addition to minor changes.

The former state of Burgenland, ceded by Hungary in 1922 after a plebiscite held in 1921 according to the Treaty of Trianon, was dissolved and divided between Niederdonau and Steiermark.

Vorarlberg, formerly a separate state, was made an administrative district (*Verwaltungsbezirk*) within the national region of Tirol-Vorarlberg.

The national regions of Niederdonau and Oberdonau were enlarged by the addition of small parts of Czechoslovakia (see below).

Steiermark and Kärnten were enlarged after the conquest of Yugoslavia in 1941 (see below).

Sudetenland

Sudetenland (29,110 square kilometers, with 3,396,294 inhabitants) was separated from Czechoslovakia and incorporated in the German Reich in October 1939. Most of it became the national region (*Reichsgau*) of Sudetenland, and was divided into three governmental districts (*Regierungsbezirke*), with area and population as follows

	<i>Sq km</i>	<i>Population</i>
Aussig District	7,277	1,328,784
Eger District	7,463	803,300
Troppau District	7,846	811,103
National Region of Sudetenland	22,586	2,943,187

¹ Formerly Lower and Upper Austria. The name Austria was eliminated everywhere after the annexation.

² German estimates for 1941, including Niedersteiermark (see below), were 23,500 square kilometers and 1,685,000 inhabitants.

⁴ German estimates for 1941, including Südkärnten (see below), were 15,000 square kilometers and 650,000 inhabitants.

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The rest of the territory was incorporated in adjacent German national regions or states as follows: about 2,700 square kilometers, with 200,000 inhabitants, were incorporated in the adjacent national region of Niederdonau (included in the figures for that region given above, under Austria); about 1,800 square kilometers, with 100,000 inhabitants, were incorporated in the national region of Oberdonau (included in the figures for that region given above, under Austria), certain smaller parts were incorporated in the state of Bavaria; the Hultschin territory was incorporated in the Prussian governmental district of Oppeln, province of Silesia, of which it had been a part before the Treaty of Versailles.

Memel Territory

The Memel territory (2,567 square kilometers, with 154,694 inhabitants), regained from Lithuania in 1939, was reincorporated in Prussia, in the governmental district of Gumbinnen, province of East Prussia.

Danzig and the Polish Territories⁵

Danzig and those western Polish territories that were incorporated in the German Reich after their conquest in 1939 were transformed into national regions, except some sections which were added to the adjacent Prussian provinces, East Prussia and Silesia. The two new national regions (Danzig-West Prussia and Wartheland) were constituted as follows, with area and population as indicated:

	<i>Sq km</i>	<i>Population</i>
Danzig District	9,890	978,681
Marienwerder District	8,740	654,433
Bromberg District	7,426	570,752
National Region of Danzig-Westpreussen	26,056	2,203,866
Posen District	15,419	1,274,729
Hohensalza District	14,441	1,188,400
Litzmannstadt District	14,045	2,083,274
National Region of Wartheland	43,905	4,546,403

As for the sections incorporated in East Prussia, a fourth governmental district, called Zichenau (12,913 square kilometers, with 842,819 inhabitants), was added to that province's three existing districts of Königsberg, Gumbinnen and Allenstein, the Suwalki territory was included in the governmental district of Gumbinnen; and certain small areas were retransferred from Poland to the governmental district of Allenstein.

In turn, the province of East Prussia yielded its former fourth district, Marienwerder, constituted in 1920 (remainder of the old Prussian province of West Prussia, which had been lost to Poland by the Treaty of Ver-

⁵ The figures on these areas are based on a census taken in the 'incorporated eastern territories' partly in December 1939 and partly in the middle of 1940

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sailles), to the national region of Danzig-West Prussia (see the tabulation above). After all these changes the province of East Prussia reached a size of 52,727 square kilometers and a population of 3,336,777.

To the province of Silesia (Upper Silesia after the redivision of Silesia in 1941) was added the Kattowitz district, of 8,924 square kilometers and 2,966,852 inhabitants. Three big cities (Beuthen, Gleiwitz, and Hindenburg) and two counties (Beuthen-Tarnowitz and Tost-Gleiwitz), which had been parts of the Silesian district of Oppeln, were transferred to the new district, and are included in these figures.

The governmental district of Oppeln, which lost through this transfer about 800 square kilometers and 500,000 inhabitants, was enlarged by the addition of certain Polish counties and also Hultschin (as noted above, under Sudetenland); these additions amounted to 2,751 square kilometers, with 326,424 inhabitants. The province of Upper Silesia then had 20,618 square kilometers and 4,341,084 inhabitants; its capital was Kattowitz.

Eupen, Malmedy, and Moresnet

The Belgian counties of Eupen and Malmedy and the municipality of Moresnet, separated from Germany by the Treaty of Versailles, were reincorporated in Prussia in 1940. They were added to the district of Aachen, in Rhine province. The district of Aachen was thus enlarged by 1,056 square kilometers and its population increased by 68,590.

Other Territories

In addition, the following territories were brought into a particularly close connection with Germany: Alsace, Lorraine, Luxembourg, Lower Styria, Southern Carinthia, and Bialystok. Their incorporation was not, however, announced by any promulgated law or decree, as was that of all the incorporated territories mentioned above. They were each administered by a Civil Commissioner (*Chef der Zivilverwaltung*), who was directly subordinated to Hitler. Such commissioners were appointed in the first three territories in August 1940, and in the last three in April and July 1941. The names of the appointees, and their additional positions, were as follows:

Elsass	Robert Wagner	National Governor and Regional Party Leader of Baden
Lothringen	Joseph Buerckel	National Governor and Regional Party Leader of Westmark
Luxemburg	Gustav Simon	Regional Party Leader of Moselland
Niedersteiermark	Siegfried Ueberreither	National Governor and Regional Party Leader of Steiermark
Südkärnten	Kutschera	Deputy Regional Party Leader of Kärnten
Bialystok	Erich Koch	Oberpräsident and Regional Party Leader East Prussia

Elsass (8,294 square kilometers, 1,219,381 inhabitants) consisted of the two French *départements*, Haut-Rhin and Bas-Rhin. Lothringen (62,241

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square kilometers, 696,246 inhabitants) was the French *département* of Moselle⁶. The territory of the two together corresponded to that of the old *Reichsland* Alsace-Lorraine (1871-1918).

Luxemburg was the *grand-duché* of Luxembourg in its old boundaries, with a size of 2,586 square kilometers and a population of 301,000 (1938).

Niedersteiermark and Sudkarnten were taken from the northern half of Slovenia. Niedersteiermark, or Lower Styria, consisted of that part of the old imperial Austrian province of Styria which had been given to Yugoslavia by the Treaty of St. Germain, including the capital, Maribor, and some additional territory (about 6,000 square kilometers, with 570,000 inhabitants). Sudkarnten, or Southern Carinthia, included a small territory which had been severed from Carinthia by the Treaty of St. Germain and a large section of Carniola, with its capital, Krainburg (about 3,500 square kilometers, with 200,000 inhabitants).

Bialystok (about 1,500,000 inhabitants) consisted of a region in part Russian and in part Polish.

In each case the Regional Leader (*Gauleiter*) of the adjacent German (or formerly Austrian) Party Region was appointed Civil Commissioner, except in Southern Carinthia, where the Deputy Leader of Carinthia was made Civil Commissioner. As far as the party organization was concerned, each territory was combined with the adjacent Party Region (*Gau*).

In all six territories many German laws and decrees were introduced. Individual inhabitants who used German as their mother tongue and served in the German armed forces, or were admitted to the Nazi party or regarded as having served the German cause well, or who transferred their residence to Germany, were made German citizens. But German official speech continued to distinguish between Germany (*'Reichsgebiet'*) and these other territories, thereby indicating that they were not, or not yet, a part of Germany.⁷

It seems that later on two more such 'associated' territories were created in the south, the first called *Alpenvorland*, including the cities of Bozen and Trient (Bolzano and Trento), the second, *Adriatisches Kustenland*, including Trieste (Trieste), Pola, and Fiume.

Total Size of the Reich, Including Annexations

According to official German statistics, in 1940 the total size of Germany's old national territory and of the annexed regions was 681,160 square kilometers, with 89,660,000 inhabitants. These figures exclude the territories listed immediately above, the 'Protectorate of Bohemia and Moravia' (48,959 square kilometers, with about 7,000,000 inhabitants), and the 'Government General for the Occupied Polish Territories' (95,625 square kilometers, with 10,565,000 inhabitants).

⁶ Figures from the last French census (1936).

⁷ See for example, the decree by the German minister of the interior of 9 July 1943 (*Ministerialblatt für die innere Verwaltung* p. 1141), regarding the admittance of certain inhabitants of Alsace, Lorraine and Luxembourg to German citizenship.

TERRITORIAL REORGANIZATION UNDER THE
WEIMAR CONSTITUTION

ARTICLE 18 of the Weimar Constitution described the division of Germany into states and the procedure for territorial changes within Germany as follows:

(1) The division (*Gliederung*, that is, constructive division, as of a body into its members) of the Reich into states (*Länder*) is to serve the purpose of achieving the greatest possible efficiency of the nation in economic and cultural affairs while taking into consideration the will of the populations concerned as far as feasible. Changes in the territory of states, or the formation of new states within the Reich, will be effectuated by national statutes passed with qualified majorities as required for amendments to the Constitution (*verfassungsänderndes Reichsgesetz*).

(2) No more than a simple national statute is required, however, to effect a change in the territory of states or the formation of a new state, whenever the states immediately concerned consent to it. A simple national statute shall suffice, furthermore, even if one of the states concerned should fail to consent, whenever the change in the territory of a state or the formation of a new state is demanded by the will of the population and required by paramount national interests.

(3) The will of the population shall be ascertained by vote. The federal cabinet shall order the vote to be taken whenever this is demanded by one-third of the inhabitants entitled to vote at Reichstag elections and residing in the territory to be separated.

(4) Three-fifths of the votes cast—representing, however, at least the majority of those entitled to vote—shall be required for the popular decision either on a change in the territory of a state or on the formation of a new state. The people residing in an entire Prussian governmental district, or in an entire Bavarian *Kreis*, or in a similar administrative district of other states, shall be consulted even if only a section of such district is to be separated. A particular national statute can declare, however, that the will of the people residing within the section to be separated shall be sufficient, if that section is not contiguous to the other parts of the district.

(5) After the population has been found to declare its consent, the national cabinet shall submit an appropriate bill to the Reichstag for the latter's decision.

APPENDIX C

(6) Controversies that may arise about the distribution of public property on the occasion of a merger or separation shall be decided, at the request of one of the parties concerned, by the Supreme Court for Constitutional Conflicts (*Staatsgerichtshof für das Deutsche Reich*).

Further details of the procedure were dealt with in a federal statute of 8 July 1922.

DISTRIBUTION OF VOTES IN THE FEDERAL COUNCIL

GERMAN CONFEDERATION, 1815-66

THE *Bundesversammlung*, or *Bundestag*, in Frankfort-on-Main met either in Full Assembly (*Plenum*) or as an Inner Council (*Engerer Rat*).

In the Full Assembly the votes (originally 69, later fewer, as the number of members decreased) were distributed as follows:

- (a) 4 votes each: Austria, Prussia, Hanover, Bavaria, Saxony, and Württemberg.
- (b) 3 votes each: Baden, the Electorate Hessen, the grand duchy Hessen, Holstein, and Luxembourg.
- (c) 2 votes each: Brunswick, Mecklenburg-Schwerin, and Nassau.
- (d) 1 vote each: all others.

In the Inner Council the eleven states enumerated above under (a) and (b) had one vote each (*Virilstimmen*). All other states together had six group votes (*Kuriatstimmen*), that is, they formed six groups of states (*Kurien*), each group commanding one vote, which was cast by their common representative for the entire group. The total of votes in the Inner Council was, therefore, 17. The six groups were composed as follows:

- 1. The four Saxon duchies in Thuringia: Sachsen-Weimar, Sachsen-Meiningen, Sachsen-Altenburg, and Sachsen-Coburg-Gotha.
- 2. Brunswick and Nassau.
- 3. The two Mecklenburgs.
- 4. Oldenburg, Anhalt, and the two Schwarzburgs.
- 5. The other small principalities: Hohenzollern, Liechtenstein, the two Reusscs, Schaumburg-Lippe, Lippe, Waldeck, and later Hessen-Homburg.
- 6. The four free cities: Lubeck, Hamburg, Bremen, and Frankfort-on-Main.

The individual groups determined the procedure by which they exercised their group votes. It was different from group to group. In view of Winston Churchill's speech of 21 March 1943, in which he alluded to the possibility that a European Council might be formed, composed of delegates of the major states and of groups of minor states,¹ it may be of more than historical interest to describe these various procedures.

¹ 'One can imagine that under a world institution, embodying or representing . . . some day all nations, there should come into being a Council of Europe . . . And . . .

In Group 1, Sachsen-Weimar always had the technical 'leadership in voting' (*Stimmführung*), that is, the Weimar delegate cast the vote and made the common statements. He could do so in line with the decisions of his own government whenever one of the other three governments concurred. Even if all three opposed, their opinion did not necessarily prevail. Then the vote was cast alternately, once in accordance with the opinion of Weimar and the next time, in another matter, in line with that of the other three. This procedure mirrored the high authority of Sachsen-Weimar in the time of Goethe.

Similarly, in Group 4, Oldenburg always had the technical leadership and could cast the vote in line with the opinion of the Oldenburg government whenever one of the other three governments concurred. When all the other three opposed, however, their common opinion decided the matter.

In Group 3, Mecklenburg-Schwerin always had the technical leadership. When the two states of this group disagreed, the vote was cast in accordance with the opinions of Schwerin every first and second time, and with those of Strelitz every third time.

In the other three groups the technical leadership rotated among the members. It did so monthly in Group 5, every three months in Group 2, and yearly in Group 6. When the members disagreed, the majority decided within Groups 5 and 6, while the vote of Group 2, which consisted of only two members, was cast in different matters alternately in accordance with the opinions of the one or the other member.

If a tie occurred in Group 6, the opinion of the city that happened to have the technical lead decided, while if a tie occurred in Group 5, the vote was cast in line with the majority of the other five groups.

This variety of patterns offers provocative precedents for a discussion of the technique of group votes in a postwar European Council.

GERMAN EMPIRE, 1871-1918

The votes of the individual states in the imperial Bundesrat (Federal Council) remained essentially the same as they had been in the *Plenum* of the Confederate Assembly, except for Prussia, which obtained 17 votes, and Bavaria, which got 6. The Prussian votes were added up from the former votes of Prussia herself (4) and of the states incorporated by her: Hanover (4), the Electorate of Hessen (3), Holstein (3), Nassau (2) and Frankfort (1). Thus the total of 58 votes was distributed as follows:

17 votes: Prussia.

6 votes: Bavaria.

4 votes each: Saxony and Württemberg.

can see that this Council . . . must eventually embrace the whole of Europe and that all the main branches of the European family must some day be partners in it . . . Side by side with the great powers there should be a number of groupings of states or confederations which would express themselves through their own chosen representatives, the whole making a council of great states and groups of states.'

VOTES IN THE FEDERAL COUNCIL

3 votes each: Baden and Hessen.

2 votes each: Mecklenburg-Schwerin and Brunswick.

1 vote each: all others.

Alsace-Lorraine obtained 3 votes in 1911, which were not counted, however, if Prussia's opinion was carried only because of that support. This half-hearted solution reflected the fact that the emperor, who was king of Prussia, appointed the chief executive of Alsace-Lorraine, who in turn cast the vote in the Federal Council through his delegate. Thus the votes were never cast against Prussia in any matter of consequence. On the other hand, when they were cast for Prussia they were not counted if only through their addition Prussia obtained the majority; therefore they were of no practical importance.

Each state had one vote in the committees of the Bundesrat. The institution of group votes was abandoned.

WEIMAR REPUBLIC, 1919-33

The votes in the Federal Council (now called Reichsrat) were distributed according to population figures. Every 700,000 inhabitants entitled a state to one vote, and a surplus of 350,000 gave it one additional vote. Each state had at least one vote. To meet the problem of Prussia's size it was stipulated that no state could have more than two-fifths of the total number of votes and, in addition, that half of Prussia's votes should be given to the Prussian provinces.

At the end of the democratic period, the votes were distributed as follows:

13 votes: Prussia, state cabinet (exclusive of the votes reserved to the provinces).

11 votes: Bavaria.

7 votes: Saxony.

4 votes: Württemberg.

3 votes: Baden.

2 votes each: Thuringia, Hessen, and Hamburg.

1 vote each: the remaining ten states and the thirteen Prussian provinces, including the city of Berlin.

The vote of each Prussian province was cast by a representative appointed by the standing committee of the elected provincial assembly.² He was free to vote according to his personal convictions. None of the other votes in the Reichsrat was a personal vote, but those of each state were cast uniformly by its representative in line with the directives he received from his state cabinet. When all the Prussian provincial members voted against the Prussian state cabinet, which happened in a few cases, Prussia's total vote was actually nullified.

The total number of the votes in the Reichsrat was 66 at the end of

² Prussian Statute of 3 June 1921. The chief executive of the province (*Landeshauptmann*) was an ex-officio member of the committee.

APPENDIX D

the democratic period. Before little Waldeck was incorporated in Prussia in 1929, the total had been two more, one for Waldeck and one for Prussia. The incorporation of Waldeck reduced rather than increased the number of Prussia's votes, because it diminished the total number of votes and therefore indirectly the maximum allowed to Prussia (two fifths of all votes)³

In the committees of the Federal Council each state continued to have one vote, as during the monarchical regime. There were no group votes.

PROPOSALS OF THE REFORM COMMITTEE, 1928-30

The Reform Committee recommended that after the elimination of Prussia as a single unit all states, old and new, should have votes in proportion to their population figures. Those of the former Prussian provinces should not be personal but should be cast on behalf of their home rule governments, exactly like those of all other states. The votes were to be directed by the chief executive and the standing committee of the assembly.

The distribution of the votes, which would have totaled about 95 until geographical adjustments took place, would have been approximately as follows:

- 11 votes Bavaria
- 10 votes Rhineland
- 7 votes each Saxony (state) and Westphalia
- 6 votes Berlin
- 5 votes each Saxony (province) and Hanover
- 4 votes each Württemberg, Brandenburg, and Lower Silesia
- 3 votes each Baden, East Prussia, Pomerania, and Hessen-Nassau
- 2 votes each Thuringia, Hessen, Hamburg, Silesia, and Schleswig-Holstein
- 1 vote each all others (ten)

The Prussian representative in the Reform Committee proposed that one third of the votes of those states that had fewer home rule functions than others (the new states) be given to the national cabinet. This plan would have given the national cabinet about 18 votes, thereby diminishing the votes of the former Prussian provinces by one vote each, except those of Berlin, Saxony, Hanover, and Westphalia, which would have been diminished by two votes each, and of the Rhineland, which would have been reduced by three votes. This proposal was supported by the two eminent professors of political science, Drs. Triepel and Anschütz, but was turned down by the majority. It was regarded at the time as one of the questions that would be reconsidered in the Federal Council in the final political discussion of the reform. The present writer would probably not repeat this proposal, however, under the changed conditions of the present time.

³ Theoretically, if the other nine small states had also been incorporated in Prussia, her votes, including those of the provinces, would have been reduced to twenty out of fifty-one and if all states except Bavaria had been incorporated in Prussia, neither of the two would have been allowed to have more than two fifths of their combined vote, which would have been an insoluble puzzle.

INDEPENDENCE MOVEMENTS IN PRUSSIAN PROVINCES¹

THE RHINE PROVINCE

As a consequence of geography and history, people in the Rhineland have always shown certain affinities with Latin civilization. Their natural character has been livelier than that of other Germans of the north, more easy-going, fond of fun and laughter, fanned by the glow of light wines and punches rather than by the vapors of beer, and somewhat more inclined, in public life, toward a social intermixture of classes. They exhibited a greater aversion to authoritarian government, royal Prussian style, than did the middle and upper classes elsewhere in Prussia,² and, unless their national feelings were gravely aroused, their general outlook was rather supranational. Having been among the first in the nineteenth century to acquire a large industrial and urban population, the Rhineland generally reached a higher standard of living than central and eastern Germany.³

Yet despite many common characteristics the Rhineland was never a political unit, from medieval times to the beginning of the nineteenth century. Like southern Germany it consisted of numerous territories. Most important among them were the archbishoprics of Cologne, of Trier, and of Mainz, governed by archbishops who were elector princes of the Holy Roman Empire; the duchy of Cleve in the north, under Brandenburg rule from the early part of the seventeenth century; and the duchies of Jülich and Berg—to the west and east of the narrow strip formed by the archbishopric of Cologne—under Palatinate-Bavarian rule. The city of Cologne itself was long a free city, not covered by the rule of the several princes; the same was true of Aachen. In addition there were many other small units, including the 'counties' of Blankenheim and of Gerolstein, of

¹ This appendix has been prepared, except for some of the historical remarks, by Ernest Hamburger. It does not claim to offer more than a survey of basic data. For an extensive history of the Rhineland during the years immediately after the First World War, see Ernst Fraenkel, *Military Occupation and the Rule of Law, Occupation Government in the Rhineland, 1918-1923* (Studies of the Institute of World Affairs, New York, 1944).

² See Chapter v for the evidence in election statistics.

³ See Chapter vii, section on Finance.

Schleiden, of Virneburg, of Sponheim and of Saarbrücken, and the 'principalities' of Aremberg and Simmern. Farther to the south were the Palatinate, reunited with Bavaria in 1777; a section of Hessen; and, once more, tiny principalities, counties and free cities.

All these separate dominions were abolished when Napoleon, in 1801, incorporated the territory west of the Rhine in France; and, with the exception of the Palatinate and the Hessian area, they were not restored when the wars of 1813-15 liberated the Rhineland from Napoleonic rule. Instead, the whole northern part was given to Prussia, which before this period had owned only the relatively small northernmost section. In 1822 Prussia transformed its old and new Rhenish possessions, including a considerable strip to the east of the river, into one province, and thereby, for the first time since the Carolingian period, gave the greater part of the Rhineland the character of a coherent political unit within Germany, under Prussian rule.

Thus the historical situation of the Rhineland within Prussia was different from that of Hanover, for example. While Hanover in 1866 came under Prussian rule as a defeated sovereign state annexed by the victor, the Rhineland had been wrested from Napoleonic rule. And while the Hanoverians could look back to their old situation as an independent entity, the Rhinelanders had no such former status of unity to which they could have wished to return. Nevertheless, Prussian rule was not popular with large parts of the Rhenish people, because of its authoritarian character and its Protestant and anti-Catholic trend. Many Rhinelanders longed for local autonomy within the German Reich. Their main grievances referred to confessional discrimination. Protestants were at an advantage everywhere in public life, to the prejudice of Catholics, although the latter numbered more than two-thirds, and in large sections even more, of the Rhenish people. Members of the Catholic Center party were all but excluded from important positions in Prussia as a whole, as well as in the Rhineland, and many non-Rhenish persons were appointed to key positions in the Rhine province.

The peak of indignation was reached during Bismarck's *Kulturkampf* in the eighteen-seventies, but much uneasiness and antipathy against Prussian rule remained in the following decades. Resentment of Prussian rule did not, however, affect the undivided loyalty of the Rhenish population toward Germany, of which it always felt itself an integral part.

The collapse of Germany, the military defeat of 1918, and the revolution brought about a movement for Rhenish autonomy. It was directed not against Germany but against Prussia, in consequence of all the mistakes made by the former monarchical government. On 4 December 1918 an important political meeting in Cologne, in which outstanding chiefs of the Center party participated, adopted a resolution in favor of a Rhenish-Westphalian republic. The resolution strongly stressed, however, the need for safeguarding the unity of the Reich, of which that republic was to be a part. This movement appealed to many Catholics, who not only were influenced by their old grievances but also were worried about the allegedly

anti-clerical policy of the socialist 'People's Commissars' in Berlin, concerning religious and educational matters.

Such anti-Prussian tendencies were opposed by other groups, including not only the political Right but also the Social Democrats. Opinions were also divided on whether a separation from Prussia would be favorable to the common aim of keeping the Rhineland within the boundaries of the Reich, in opposition to tendencies toward annexation by other powers. Although the situation was clarified to a certain extent when the Treaty of Versailles left the Rhineland to Germany, the status of the valley remained endangered, for some of the French occupation authorities encouraged separatist orientations. These conditions induced the great majority of the population to oppose any change for the time being. Even separation from Prussia appeared perilous, as foreshadowing a farther-reaching movement. Hence the groups which co-operated with French authorities for a separatist solution consisted only of small minorities.

The most ardent leader of propaganda for Rhenish separation was a Prussian district attorney, Hans A. Dorten.⁴ On 1 June 1919 he proclaimed a Rhenish Republic, to remain within the frame of the Reich, but he met with the determined resistance of the population, including the workers, who opposed his move by proclaiming a universal strike. Neither Dorten nor other separatist leaders, such as Smeets⁵ and Matthes, came out—at least publicly—with a program for separating the Rhineland from Germany. Manifestly there was no chance of any support for that purpose. The success of their avowedly anti-Prussian propaganda was hardly greater. The events of 1918 and 1919 had transformed Prussia into a democratic and republican state, and the Prussian government had developed into the strongest pillar of the democratic Republic. Not only had the key positions in the Rhineland been turned over to persons of Rhenish origin, but the Catholics had obtained a considerable influence in all national and Prussian affairs, through their participation in the Berlin cabinets of the two governments.⁶ Therefore the political spokesmen of the great majority of the Rhenish population continuously expressed their firm determination to remain in the Reich and in Prussia. They refused, during the period of occupation, to consider any application of Article 18 of the Weimar Constitution, which provided the legal means of changing the boundaries of existing states and creating new states within the Reich.⁷ Declarations to this end were made repeatedly by all party groups, from the German Nationals at the right to the socialists at the left, in the newly elected provincial diet of the Rhine province, and at special gatherings in Königswinter, on 9 June and 12 December 1921. The oppositional Independent Socialist Party, although refusing to join the other parties in a common declaration at the Königswinter meetings, held identical

⁴ See Fraenkel, op. cit. p. 14 and *passim*; G. E. R. Gedyé, *The Revolver Republic, France's Bid for the Rhine* (London, 1930); Hans A. Dorten, 'The Rhineland Movement,' *Foreign Affairs*, vol. 3 (1925), pp. 399-410.

⁵ On the Smeets case, see Fraenkel, op. cit. p. 157.

⁶ See Chapter III.

⁷ See Chapter II and Appendix C.

views, stating that the separation of the Rhineland from the Reich would not be in line with the political and economic interests of labor and that therefore the party would fight to the utmost all such tendencies. Similar proclamations were issued on 27 April 1922 and 3 May 1923, at the time of the occupation of the Ruhr territory; they were signed by authorized spokesmen of all parties, trade unions, women's associations, bodies of industrialists, farmers, and public officials.

A last flare-up of the separatist movement occurred in the fall of 1923, when the passive resistance against the Ruhr occupation broke down, when money lost any value and the utmost despair swept the country, when particularist plans spread in Bavaria under the Kahr government and Hitler prepared his Munich Beer Hall Putsch. In these disastrous circumstances some important persons in the Rhineland were about to lose hope, for example the mayor of Cologne, Conrad Adenauer, and the banker, Louis Hagen, who negotiated with the High Commissioner of the Rhineland on the creation of a new currency. If the worse came to the worst they were willing to consider the temporary separation of the western parts of Germany. In the Bavarian Palatinate the Social Democrat and onetime Bavarian prime minister, Johannes Hoffmann, took a step which he meant to be directed against Bavarian particularism but which actually appeared as an action of anti-Bavarian separatism: he declared to General de Metz of the French Rhineland administration that the Palatinate wished to be separated from Bavaria and to become a separate state within the Reich. Hoffmann was disavowed, however, by the diet (*Kreistag*) of the Palatinate and by his own party. The restoration of orderly conditions in Bavaria and the liquidation of the Ruhr occupation put an end to these various plans.

At that time the original separatists, too, made a last attempt. Their moves were confined to the French and Belgian zones of occupation, where they were favored by the occupation authorities. Under the leadership of Dorten, Smeets, Matthes, Decker, and Heinz-Orbis, armed gangs gathered, the population was terrorized, a Rhenish Republic was proclaimed in Aachen and Düren, and a provisional Rhenish government was formed. In the south the Palatinate was proclaimed an autonomous republic, and many local putsches were instigated. The uproar met not only with firm measures by the administrations but also with strong countermoves by the Rhenish population. The Rhenish and Westphalian provincial diets met on 8 and 9 November 1923 and, in a resolution adopted by all members irrespective of party lines, demanded the suppression of the terrorism being exercised by the separatists. They emphatically rejected any separation of the Rhineland from the Reich and Prussia.

After two months constitutional order was restored everywhere. The Inter-Allied Rhineland High Commission set up a committee of investigation, whose work contributed to the final liquidation of separatism. With the development of normal political and economic conditions in 1925 the separatist movement faded away. The fact that the Rhine province belonged to the Reich and Prussia remained uncontested by the Rhenish

population. Even when the question of the division of Prussia was taken up later, for more general reasons, by the movements for constitutional reform, the Rhineland exhibited no particular interest in the details. Its spokesman in the official Reform Committee, *Landeshauptmann* Dr. Horion, although in favor of the division of Prussia, cautioned against giving the provinces too much independence within Germany in view of modern economic, social, and administrative developments.⁸

Under the Treaty of Versailles, the Saar district, which included parts of the Prussian Rhine province and of the Bavarian Palatinate, was subjected for fifteen years to a provisional regime exercised by the League of Nations. Thereafter a popular referendum was to decide on its future. When the plebiscite was held in January 1935, 90.6 per cent voted for return to Germany. Only 8.6 per cent expressed themselves in favor of a free state.⁹ Apparently these did not wish to accept the Hitler regime, an inevitable implication of return to Germany, but probably they would have voted for Germany under other conditions and thus have made the vote practically unanimous. Nazi terror may have influenced the plebiscite, although it was held under the administration of the League. But this factor alone cannot explain the pro-German result.

UPPER SILESIA

Silesia became a part of Prussia at the end of the First Silesian War (1740-42). Previously it had belonged to Bohemia and Austria for about four centuries, and before that to Poland. Although the Polish period had ended about the middle of the fourteenth century, distinct evidences of it remained. In Upper Silesia, which constituted a governmental district (*Regierungsbezirk* Oppeln), there were a number of counties east and north of the Oder River, near the Russian-held Polish territory, where the people spoke as their mother language a kind of Polish with German interspersions. Religious services in these areas and religious education in the schools were given in Polish by Catholic clergymen. About 90 per cent of the Upper Silesian population were Catholics, no other part of the Prussian monarchy showing so strong a Catholic majority.¹⁰

After the middle of the nineteenth century, papers and magazines in the Polish language appeared in Upper Silesia and tried to educate the Polish-speaking population to cherish their mother tongue and Polish cultural values. The trend assumed political traits in the seventies, as a consequence of the Bismarckian *Kulturkampf*. The population, aroused against the Prussian government and its policy, strongly contributed to the success of the Catholic Center in general elections. This party defended the economic and cultural aspirations of the Polish-speaking German citizens

⁸ He voted with the majority of the Reform Committee against the motions introduced by the Bavarian prime minister, Dr. Held, who proposed that the Prussian provinces be given the same status as Bavaria. See Chapter x.

⁹ Votes for incorporation in France amounted to 0.4 per cent of the total, and another 0.4 per cent of the votes were invalid.

¹⁰ See Chapter v, on the relative strength of the Catholics.

and bitterly attacked the administration, composed almost exclusively of Protestants and persons from outside Upper Silesia, on the ground of its hostility to the use of the Polish language. From the beginning of the twentieth century the Center lost some of its mandates to candidates of the Polish party, who had considerable success especially in the industrialized parts of Upper Silesia. Four out of the eighteen members of the Polish party in the last monarchical Reichstag (1912) were elected in Upper Silesia.

After the military defeat and the armistice of November 1918, Upper Silesia's fate was uncertain. Originally its incorporation into Poland was intended. One of the few concessions made to the Germans in the peace negotiations was the provision incorporated in the final draft of the Treaty of Versailles, Article 88 and Annex G, according to which a plebiscite was to be held in Upper Silesia, with the exception of four counties in which the population was considered indubitably German. The district of the plebiscite was to be temporarily occupied by troops of the Allied powers.

A separatist movement, confused and of short duration, swept the whole of Silesia soon after the 1918 armistice. It originated in the dissatisfaction with the policy of the former Prussian government, in the fear of attacks from Poles and Czechs, and in the aversion especially of the Catholic parts of the population to the supposedly anti-religious views of the revolutionary People's Commissars in Berlin. Some separatists proposed the creation of an independent Polish state, of which Upper Silesia should form a part; others, the creation of a state of Silesia within the boundaries of the Reich but independent of Prussia. The tension was eased after a meeting in Breslau, on 30 December 1918, between leading representatives of the new Reich and Prussian governments and all Silesian political leaders. Assurances were given that all decisions regarding Silesia would be taken in close contact with Silesian political leaders, and that the interests of the Catholic Church would be safeguarded. A few days later the People's Commissars in the Prussian government who were members of the Independent Socialist party tendered their resignations, following the example of their colleagues in the Reich government. Among them was the commissar in charge of education, who had been particularly unpopular among religious groups because of his radical views. By this change, and by the subsequent formation—after the elections to the constituent assemblies in January 1919—of coalition governments that included the Catholic Center both in the Reich and in Prussia, the tension was further decreased.

Nevertheless, German legislators felt the need for structural changes in the status of Silesia. An act of the Prussian National Assembly, effective November 1919, divided the old province by creating out of the former district of Oppeln a new province to be known as Upper Silesia. The inhabitants of the new province were thus given direct influence upon their provincial home-rule administration, and indirect influence upon the provincial state administration, because the appointment of the *Ober-*

präsident and *Regierungspräsident* required approval by the standing committee of the elected provincial assembly.¹¹ The new province participated in central legislation through its representatives in the Prussian State Council (*Staatsrat*)—a second chamber created by the democratic Prussian Constitution of 1920—and in the Federal Council.

An amendment of 27 November 1920 to the Weimar Constitution authorized the Upper Silesian population to decide by plebiscite, within two months after the return of the occupied province to German administration, whether the province should remain Prussian or become a new state within the Reich. The normal prerequisites for the creation of new states, as formulated in Article 18 of the Weimar Constitution,¹² were dropped for this specific case; the plebiscite was to be held with the minimum of formalities.

In so far as this policy was designed to influence the plebiscite held on 20 March 1921 in conformity with Article 88 of the Treaty of Versailles, its aim was not fully attained. In that plebiscite about 60 per cent of the votes (709,318) were cast for Germany, and about 40 per cent (479,474) for Poland. The Council of the League of Nations decided to divide Upper Silesia between Germany and Poland. Thus 9,703 square kilometers, with 1,299,072 inhabitants, remained German. The separation was effected on 15 June 1922.

After the partition the separatist movement in the German part of Upper Silesia was reduced to unimportance. In the plebiscite on the future status of Upper Silesia within Germany, held on 3 September 1922, 720,593 persons were entitled to vote (all men and women 20 years of age or older), and 568,149 exercised that right. Of these, 517,760 (91 per cent) voted for the *status quo*, and 50,389 (9 per cent) for separation from Prussia. The 9 per cent who voted for separation were, in whole or in part, persons with pro-Polish inclinations; they were spread over about ten counties. Obviously the great majority of the Upper Silesian population were not interested in further changes of the status of the province.

¹¹ See Chapter XII. Upper Silesia formed only one governmental district, coextensive with the province; the two presidential offices were held by the same incumbent.

¹² See Chapter II and Appendix C.

COMPOSITION AND AUTHORITY OF THE REFORM COMMITTEE—THE POSITION OF PRUSSIA

THE Reform Committee (*Verfassungsausschuss der Länderkonferenz*), which drafted and adopted the official reform plan of 1930, consisted of twenty members: ten were appointed by the Reich cabinet and the other ten (one each) by the cabinets of ten of the states. Of those appointed by the Reich, four were members of the cabinet, representing the appropriate departments and various parties. Two were outstanding professors of political science: Dr. Triepel of Berlin University, and Dr. Anschütz of Heidelberg, the commentator of the Weimar Constitution. Others were Heinrich Brüning, at that time *rapporteur* for financial matters in the Center party, two years later Reich chancellor; Dr. Busch, ex-civil servant; and Eduard Hamm, Bavarian democrat and ex-minister of both Bavaria and the Reich.

Erich Koch-Weser, an ex-officio member from June 1928 to April 1929, retained his seat in the Committee when he ceased to be federal minister of justice. Carl Severing, Social Democrat and federal minister of the interior, 1928-30, was during this period chairman of the subcommittees without a vote. When replaced by Joseph Wirth (March 1930), Severing was appointed an expert member in the place of Dr. Brüning, who assumed the chairmanship in the full committee. In the final meeting Dr. Horion, representative of the Rhine province, originally called in as an adviser by the Committee, replaced Severing, who could not attend.

The ten states appointed their respective prime ministers, with the exception of Prussia, whose cabinet assigned to this task one of its delegates to the Federal Council, a member of the civil service who formerly had headed the constitutional division of the federal ministry of the interior (the present writer). Doubts about whether the Prussian member's proposals for the elimination of Prussia as a single state would have been backed by the Prussian prime minister Otto Braun have been removed by the fact that in January 1933 Braun submitted to Chancellor von Schleicher the draft of a constitutional amendment, in line with these proposals, for a constitutional solution of the conflict between the Reich and

Prussia,¹ and by the testimony Braun has given in his memoirs. There he wrote:²

I delegated Ministerial Director Brecht to represent Prussia on the Committee with the understanding that his proposals would not bind either myself or the Prussian government. Of course, Brecht acted in tacit agreement with me. The Committee did a very valuable job despite the contradictory tendencies there expressed. The logic of the actual facts and, in view of the economic distress, the compelling need to establish a more rational public administration won through. I therefore considered it timely in the summer of 1931 to abandon my reserved attitude also in public . . . In agreement with me Dr. Brecht, together with a particularly competent colleague among the members of the States' Conference,³ had worked out a draft bill for first measures toward federal reform. This draft was in accord with my directives mentioned above. Following my instructions [*In meinem Auftrage*] Brecht had established contacts with the appropriate persons in the federal government in order to induce them to take the initiative in the direction I desired.

Technically, the authority of the Prussian member did not differ from that of the other members of the Committee. All spoke as experts only, and not as officially empowered delegates of their governments. None committed the government of his state in the technical sense.

Many members were replaced during the course of the deliberations because of a change in the respective cabinets. The federal cabinet that had taken the initiative late in 1927 consisted of Catholic Centrists, German Nationals, National Liberals (German People's Party) and a member of the Bavarian People's Party. Changes began in June 1928, when the German Nationals left the cabinet and the first chairman, the Centrist Dr. Marx, was followed by the Social Democrat Hermann Müller, who in turn was succeeded after two years by the Centrist Heinrich Brüning. Saxony was represented at first by Dr. Heldt, next by Dr. Büniger (who some years later was president of the Supreme Court's senate that conducted the trial in connection with the Reichstag fire), and in the final stage by Mr. Schieck. They were National Liberals. Württemberg's first delegate, Dr. Bazille, a German National, was followed by Dr. Bolz, a Centrist. Baden's representative was first the Social Democrat Remmele, then the Centrist Dr. Schmitt. Hessen was first represented by Dr. Ulrich and later by Dr. Adeling, both Social Democrats. Thuringia first sent a National Liberal, next a Liberal and later a member of a farmer party; Mecklenburg, first a Social Democrat and later a German National.

At the final meeting, only the representative of the Bavarian People's Party in the Reich cabinet, the delegates of Prussia and Bavaria, and the original expert members had been in the Committee since the beginning; Brüning had kept a seat, though in a different capacity. All other members, federal and state, had been replaced, and several of them more than once.

¹ See Chapter xiv and Appendix H.

² Otto Braun, *Von Weimar zu Hitler* (New York, Europa Verlag, 1940), pp. 359, 360.

³ Ministerial Director Poetzsch-Heffter of Saxony.

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Despite these changes, continuity in the negotiations was perfectly maintained. This fact testifies to the soundness of the course pursued, which took into account not only the best expert advice available, but also general political possibilities and particular currents in the various sections of the country. Discussions in the respective cabinets at home often preceded the Committee meetings.

THE RECOMMENDATIONS OF THE REFORM
COMMITTEE: OFFICIAL TEXT

(21 June 1930)

PART I¹

ORGANIZATION OF THE STATES—
THEIR INFLUENCE ON THE FEDERAL GOVERNMENT²

Note: The following recommendations (numbered 1 to iv) refer only to the Prussian provinces and to Bavaria, Saxony, Württemberg, and Baden. Their effect on the other [the medium and small] states is discussed in Part III below.

I. ORGANIZATION OF THE STATES

1. The Prussian provinces are to become states (*Länder*), subject to territorial changes and to the following principles:

- (a) Their constitution will be established for all of them in common by central legislation; see iv.
- (b) They shall have power to legislate only in so far as such power is especially transferred to them; see iv.
- (c) In their territory a general national administration, similar to the present Prussian state administration, will operate side by side with their state (up to now provincial) authorities and with special national agencies (for example, the postal service and the railroads).

Unless it is obvious that federal regulation offers essential advantages for the country as a whole, all matters should be left to autonomous regulation by the states.

¹Part I was designated Part II in the original. The reversed order, as here chosen, is more logical and easier to understand. All references hereafter are to this order.

² (Official Footnote) This part is based on Joint Report No. III prepared by the *rapporteurs*, Ministerial Director Dr. Brecht (Prussia); Ministerial Director Dr. Poetzsch-Heffter (Saxony); State President Dr. Bolz (Württemberg); and President of the Senate Dr. Petersen (Hamburg). The second subcommittee passed on this part on 19 November 1929 and 20 June 1930 [and the full committee on 21 June 1930].

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2. The constitutional principles regarding elections to popular state assemblies (Article 17, Sect. 1, sentence 2, of the National [Weimar] Constitution) apply to all the states.

3. The following clauses are added to Article 17, Sect. 1, sentence 3 of the [Weimar] Constitution:

A state constitution may provide that the state cabinet is to be appointed for a definite period, not to exceed the term of the state assembly. The cabinet must resign if the assembly by a two-thirds majority withdraws its confidence, provided that two-thirds of the legal number of representatives are present when the vote is taken.

In the states formed out of the Prussian provinces the state cabinets may be appointed beyond the duration of the assembly if their constitution provides for a disciplinary procedure against members of their cabinets.

4. The common constitution of the states formed out of the Prussian provinces shall be generally shaped in line with the present provincial constitutions, providing for a chief executive (*Landeshauptmann*), an assembly (*Landtag*), and a standing committee of the latter (*Landesausschuss*). The chief executive is to be elected by the state assembly for a definite period, which should be of considerable length. He will be subject to disciplinary procedure, as provided under No. 3.
5. It is not necessary that the organization of all state governments be standardized by nationwide rules compelling each of the large states to use exactly the same designations and modes of appointment for, and the same number of, governmental authorities as any other, or as the states formed out of the Prussian provinces.
6. In all states there should be counties (*Kreise*) which combine several communities in units of public law below the state level (*Untere Kommunalverbände*).

II. REGIONAL ORGANIZATION OF FEDERAL ADMINISTRATION WITHIN THE STATES

1. The following principles shall be applied in organizing federal activities within the states, if such activities are carried on directly by federal agencies [that is, are not delegated to the state governments, see III below]:
 - (a) The various civilian agencies of the federal government within each state are to be fused at the top. The top federal official need not be given authority to interfere with all the functions of all federal agencies. He should, however, have far-reaching authority to supervise and direct all of them in matters of administrative simplification.
 - (b) His jurisdictional area should, if feasible, be made co-extensive with the state area. As long as small-size states continue to exist, several of them may be combined within one federal region. Supervision by the top federal official shall extend over

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all civilian federal agencies in so far as their jurisdictional areas lies in his region. It should be attempted to adjust jurisdictional areas in such a way that they do not overlap.

- (c) The postal service may be exempted from subordination under the top federal official to the extent that such exemption proves necessary.
- 2. Closest possible contact should be established between the top federal official and the state government. With this aim in view provision should be made that:
 - (a) The federal government can entrust the office of top federal official to a member of the state government. This shall not be made compulsory, however, until warranted by further experience. It may be done only with the consent of the state government, and may be renounced by either party.
 - (b) If such union of offices in one person cannot be established, consultation between the top federal agent and the state government should take place through conferences held at stated intervals on all matters of common concern.

III. ORGANIZATION OF DELEGATED ADMINISTRATION BETWEEN THE FEDERAL GOVERNMENT AND THE STATES

Whenever the federal government is entitled to execute functions through its own agencies it may, instead, delegate execution to the state governments in accordance with the following principles:

- (1) In matters of delegated administration the federal government can give directions to the state government, and may do so on grounds of legality as well as expediency.
- (2) Directions shall, as a rule, be general in character. They may deal with an individual case if this is considered necessary because of its peculiarity. Yet they must never relate to the individual selection of personnel for the execution of delegated functions.
- (3) Directions must be addressed only to the highest state authorities and not, unless with their consent, to subordinates. Exceptions may be indicated when the administration of federal property or the construction of federal buildings is delegated to state agencies.
- (4) The highest state authorities are responsible to the federal government for the due execution of the latter's directions. On request, the Supreme Court for Constitutional Conflicts (*Staatsgerichtshof*) shall decide whether legitimate directions have been violated, if a judicial decision should be necessary and no disciplinary proceedings have been provided by the state constitution.
- (5) In all matters of delegated administration the federal government has the right to obtain full information, to inspect matters on the spot, and to examine public records. Its request for information or inspection of records must be directed to the state government and not, unless with the latter's consent, to its subordinates. The states

government must be informed of local inspections early enough that it can participate in the proceedings.

- (6) State employees do not become federal employees merely on the ground that they execute delegated functions.
- (7) State governments will negotiate agreements with the federal government on the delegation of technical functions such as building construction, reforestation, or administration of public property, whenever with a view to simplification or expediency it appears desirable that any such function be carried through by one government for the other as a matter of delegated administration. They will place agencies and facilities at each other's disposal for the delegation of such activities.
- (8) None of the rights that remain with the governments of the old states in accordance with the [Weimar] Constitution shall be affected by the institution of delegated administration.

IV. ORGANIZATION OF THE CENTRAL GOVERNMENT— CENTRAL LEGISLATION

A. *The Central Government*

1. There will be no separate Prussian central government.
2. The Prussian ministries will be combined with the federal ministries except in so far as their functions cease to exist by being transferred to the states formed out of the Prussian provinces.

B. *The Process of Central Legislation for the States Formed Out of the Prussian Provinces*

1. The Prussian state assembly will be united with the Reichstag. Legislation common to the states formed out of the Prussian provinces will be enacted in the same way as federal legislation (Section 5 of the National Constitution).

It should be considered, however, whether only those members of the Reichstag and of the Federal Council that are delegated by the states formed out of the Prussian provinces are to participate in such legislation, instead of all the members of the Reichstag and the Federal Council.

For the period of transition, the following procedure may be established:

Laws common to the states formed out of the Prussian provinces will be enacted by a Common Assembly elected from these states. Such laws need the consent of the federal cabinet. If no agreement can be achieved, the Reichstag, by a two-thirds majority of votes cast when at least two-thirds of the members are present, can enact legislation for these states upon the request of either the federal cabinet or the Common State Assembly.

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All elections to the individual state assemblies shall simultaneously serve the purpose of electing representatives to the Common State Assembly. The lists of candidates for the individual state assembly shall be valid also for the election to the Common Assembly. A certain number of votes entitles a candidate to a seat also in the Common Assembly. The National Election Act and the National Election Regulations apply to all these elections.

The Common State Assembly has no control over the appointment or dismissal of the federal cabinet.

2. In so far as the process of common legislation for the states formed out of the Prussian provinces differs from that of legislation for the entire Reich (see above), the special process is to be applied whenever:
 - (a) the constitution and the organization of the states formed out of the Prussian provinces are concerned;
 - (b) legislation restricted to these states deals with matters regarding which the other states have the power to legislate independently.

C. *The Federal Council (Reichsrat)*

1. The Federal Council is to be maintained.
2. Each state should obtain a number of votes in accordance with Article 61, Sect. 1, of the National [Weimar] Constitution [that is, according to population].
3. The principle that the votes of each state are cast uniformly in accordance with the directions given by the individual state government (cabinet) is to be maintained.

It should be established in the constitution of the states formed out of the Prussian provinces that their votes will be directed by the chief executive (*Landeshauptmann*) of the state, with the consent of the standing committee of its assembly (*Landesausschuss*). In this the chief executive and the members of the committee shall be responsible to nobody, but solely to their conscience. In case of differences of opinion among them the majority shall decide. Further details shall be regulated by the constitution of these states.

PART II

DISTRIBUTION OF POWERS BETWEEN THE REICH
AND THE STATES³

I. ADMINISTRATION

The division of administrative powers should, in bald outline (*in grossen Zügen*), be as follows:

A. Federal Administration Executed by Federal Agencies

1. Foreign affairs.
2. Army and Navy.
3. Postal Service.
4. Railroads, in line with Articles 89 ff. of the National [Weimar] Constitution, due reservations being made for international agreements.
5. Currency.
6. Financial administration according to federal legislation, especially according to the Financial Equalization Act, which should be revised (see Report No. II); * concerning the collection of internal revenue, see B.
7. The administration of federal property (including property owned by the Prussian state as it exists to date), except in so far as such administration will be transferred to the states; see No. 6 of the Introductory Remarks of the Joint Report⁵
8. The construction and maintenance of federal buildings, unless the federal government transfers these functions to the states as 'delegated administration.'
9. The promotion of Germany's general economy; the general regulation and promotion of foreign trade, and the social control (*gemeinwirtschaftliche Aufsicht*) of private business (cartels, coal, potash, insurance, etc.) in accordance with federal legislation.
10. Any central governmental institution, necessary in the general interest, within the fields of labor and social welfare (e.g. National In-

³ (Official Footnote) This part is based on Joint Report No. 1 made by the following rapporteurs: Ex Minister Koch Weser (delegated by the federal government), Ministerial Director Dr. Brecht (Prussia), Minister of the Interior Dr. Remmele (Baden), and the chief executive of the Rhine province (*Landeshauptmann*) Dr. Horion. The second subcommittee passed on this part on 6 July 1929 [and the full committee on 21 June 1930].

⁴ No joint report on this subject appeared. A report produced by Professor H. Nawiasky (*Grundsätzliche Betrachtungen über die finanzielle Auseinandersetzung zwischen dem Reich und den Ländern*) did not reach the stage of discussion.

⁵ No. 6 of the Introductory Remarks said that the property owned by the Prussian state should be administered in the interest of all the states formed out of Prussia, which parts of such property might be transferred to individual states could only gradually be clarified.

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surance Office, National War Veterans' Court, national headquarters of the public employment service); and also the arbitration of labor disputes; see D.

In addition, the following matters shall be handled by direct federal administration in all states except Bavaria, Saxony, Württemberg, and Baden:

11. The administration of justice, which should, however, be thoroughly deconcentrated.
12. The police administration—including the uniformed police, the criminal police, and the supervision of aliens—in so far as the respective functions are not transferred to the states or to local self-government; also air traffic police. Concerning administrative police, see B.
13. The supervision of communities and of professional organizations, in so far as supervision is not transferred to the states.
14. The supervision of industry and commerce, in so far as it is not transferred to the states as 'delegated administration.'
15. Religious affairs; scientific institutions previously operated by the Prussian government; and educational matters, including governmental supervision of schools—in so far as these matters are not transferred to the states or to local self-government. Concerning the care of monuments, see C.
16. The administration of waterways, in so far as not transferred to the states.

Bavaria, Saxony, Württemberg, and Baden retain the administration of the matters covered in Nos. 11-15, in line with the existing [Weimar] Constitution. It is desirable that special agreements be reached to secure uniformity in the exercise of the police power in criminal matters, in matters of aliens, and in matters of aviation. The administration of national waterways will remain 'delegated administration' in these four states, subject to special regulations for the Elbe and Rhine rivers.

These special rights of the above-named four states are to be established in the National Constitution. Revision of the Finance Equalization Act should see to it that the four states obtain the amounts which the federal government saves as a result of the fact that its administration in the matters in question does not extend to these states.

As to the other non-Prussian states, see Part III (below).

B. Federal Administration Executed by State Agencies as 'Delegated Administration'

1. With respect to every administrative branch which, according to A, can be transferred to the states or communities, it must constantly be considered whether its administration cannot be transferred to them at least as 'delegated administration,' if transfer to autonomous administration is not possible. This important use of delegated administration must chiefly be left to federal executive decision.
2. Delegated administration may be suitable for the following ~~functions~~ in particular:

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- (a) in Bavaria, Saxony, Württemberg, and Baden: for the federal waterways administration;
 - (b) in all states that have the necessary facilities: for the administration of federal property and of federal building construction and maintenance;
 - (c) furthermore, in the newly formed states: for 'administrative police' in so far as the police power is to support services operated by these states;⁶ and, during a transitional period, for any matters that ought finally to be handed over to autonomous administration by the states (see C, below).
3. The use of delegated administration should also be considered as a means of unifying the bursars' offices, where due payments can be made to, or received from, federal, state, and municipal treasuries (*Ver einheitlichung des Kassenwesens*). See also sections 22 and 23 of the National Tax Code (*Reichsabgabenordnung*);
 4. See below, D, regarding the use of the idea of delegated administration for certain functions of national labor administration, of social insurance, and of war veterans' administration. See No. 5 of the Introductory Remarks, concerning the transfer of the uniformed police to the communities through delegated administration.⁷
- C. *Autonomous State Administration (including administration by local self-government according to federal or state law)*
1. Social welfare, including public relief, especially the execution of the federal Mandatory Relief Decree (*Fürsorgepflichtverordnung*).
 2. Public health (in combination with the work of the regional agencies of Old Age and Disability Insurance in the same field; see D).
 3. Juvenile welfare administration.
 4. Public housing (in co-operation with the regional agencies of Old Age and Disability Insurance; see D).
 5. State finance, but the administration of state taxes may be entrusted to the federal finance administration, as to date.
 6. Agricultural administration, including settlement of farmers, land reclamation, redistribution of undersize and disconnected lots (*Landeskultu ramter*), in so far as the administration is not left to professional organizations. This is not to interfere with the promotion of the general economy, which is a federal activity according to 1, A, 9.
 7. Inter-municipal zoning, i.e. the distribution of housing, park, and traffic areas.

⁶ (Official Footnote) Bavaria, Saxony, Württemberg, and Baden are to retain autonomous police powers in all matters (see above under A) Transfer to autonomous administration is preferable to transfer as delegated administration also with respect to the states formed out of Prussian provinces, unless police matters in the narrower sense of modern law concepts are involved

⁷ No. 5 of the Introductory Remarks said that whenever the government which has the right to supervise municipalities delegates the uniformed police or other matters to municipalities under its supervision, it is free to determine the conditions and to give orders, even in the individual case See Chapter XIII, above

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8. Traffic and roads, subject to federal regulation of railroad, air, and highway traffic.
9. Care of monuments and preservation of characteristic local features (*Heimatschutz*).
10. All functions that are not lawfully claimed by the federal administration—unless the federal government has exclusive jurisdiction—especially in the fields of economics, traffic (*Verkehr*), culture, and education; furthermore, in the case of the 'old' states, all other fields of public administration, in so far as no special arrangement is made in these recommendations.

The right of Bavaria, Saxony, Württemberg, and Baden to have the administrative branches mentioned under 1-9 and in the latter part of 10 (including agricultural administration) left to their autonomous state administration, in line with the present [Weimar] Constitution, is to be established in the Constitution.

Constitutional amendments designed to curtail the rights reserved to the 'old' states according to A and C are to be regarded as rejected in the Federal Council if the number of votes cast against the amendment is equal to the total number of votes to which these states are entitled.

In the case of the states formed out of the Prussian provinces it is permissible for those functions which up to the present have been performed by the Prussian state administration, to be transferred to the newly formed states at first only as 'delegated administration,' until more experience has been gained.⁸

D. *Combination of Special Social Agencies of the Federal Government with General Administrative Agencies of the States*

1. Federal administration in the fields of labor, social insurance and care of war veterans should be connected more closely than heretofore at the regional level with state administration, and at the local level with either state or local administration, in so far as this will not impede the fulfilment of the respective functions. This rearrangement is not meant to interfere with the autonomous bodies representing the contributors to social insurance funds, or with their rights to make certain decisions. These decisions, however, must be executed by administrative agencies of the states and communities, or by offices connected with them.
2. How this rearrangement can best be carried through must be determined separately for each of the administrative branches concerned. If necessary use can be made of the concept of 'delegated administration,' or of the principle that one individual can hold several offices. The goal which must be achieved, however, is that at the regional and local levels the same specialists handle the overlapping executive functions of federal, state, and local services in matters of social welfare.

⁸ See Part III below for the medium and small states.

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3. The present differences in boundaries of state districts and of regional districts under the national labor administration will be eliminated in most cases by the impending revision of the latter. By no means may boundary problems be allowed to stalemate the execution of the foregoing recommendations. The advantages that flow from the union of separate administrative offices are much greater than the disadvantages involved in the change of administrative districts of special agencies. By way of a makeshift, it may be considered whether the appropriate agency in one of the national regions may be authorized to decide certain general questions also for adjacent districts of another region.

II. LEGISLATION

- A. The newly formed states enjoy separate legislative powers only if such powers are especially transferred to them. Legislative powers which according to the National Constitution are entrusted exclusively to the federal government cannot be so transferred.
- B. The states of Bavaria, Saxony, Württemberg, and Baden retain the powers of legislation that they now have under the National Constitution. The following changes, however, are proposed:
 1. To be added to the matters concerning which, under Article 7 of the National Constitution, the federal government has concurrent legislative powers: the institution, organization, and procedure of administrative courts. This addition is to eliminate controversies as to the meaning of Article 7, No. 3, of the Constitution.
 2. To be added to the matters concerning which, under Article 10 of the National Constitution, the federal government has the right to establish principles:
 - (a) the general administrative law in the states;
 - (b) the administrative structure of the states and the constitution of the communities in so far as common principles are necessary for the execution of federal functions;
 - (c) public examinations and the recognition of examinations.

PART III

SPECIAL REMARKS CONCERNING THE MEDIUM AND SMALL STATES⁹

- I. In considering the effect of these recommendations upon the other [the medium and small] states, the question arises whether, in addition

⁹ The remarks printed under No. 1 are contained in a section called 'Concluding Remarks' following the resolutions recorded above in Part I. The remarks under No. 11 originally constituted a paragraph (No. 2, c) in the Introductory Remarks to the Joint Report on the Distribution of Powers. They were expressly referred to, however, in the last paragraph of the resolutions recorded above in Part II under 1, and were reprinted as a footnote to that paragraph in the official publication.

to the two suggested main forms of organization of states, intermediary forms should be recommended. The authors of the Joint Report on Organization have dispensed with further discussion on this subject for the time being, because it is too closely tied up with that of the distribution of powers. They agree, however, that it should remain possible to grant an intermediate form of organization to a sufficiently large state for which neither the form of organization recommended for the states formed out of the Prussian provinces nor that proposed for the four major states is suitable. Such an intermediate form of organization can likewise be considered when new states come into being by merger. In all these cases special recommendations will have to be made in order to fit the state into the frame of the total organization. But whenever the powers of the state in question are defined in the same way as the powers of the states formed out of the Prussian provinces, its form of organization should also be the same, if possible.

The Hanseatic Cities [Hamburg, Bremen, and Lübeck] may be allowed to retain for their city administration their traditional organization (Senate, Burghers' Council), and a certain self-determination over that organization, and they may also be privileged as cities to keep their present votes in the Federal Council. This can be done irrespective of whether after territorial reorganization and redistribution of powers they remain states.

- II. We do not submit any special recommendations with respect to the medium and small states regarding the distribution of powers. A fusion with adjacent districts will be necessary in the cases of all of these states, in order to create workable regional agencies with economically effective jurisdictional spheres for the various branches of administration. Particular necessities and natural functions of individual states can receive due recognition in the distribution of powers as well as in the legislation on financial equalization. Whenever a small state is incorporated in a state consisting predominantly of Prussian territories, the distribution of powers should not deviate from that designed for the latter. If, however, the new state consists predominantly of non-Prussian areas, as may happen for example after the territorial reorganization of Thuringia and Hessen, then it will be possible to deviate from the distribution of powers in the Prussian area, provided there are substantial reasons for it. In the case of the Hanseatic Cities [Hamburg, Bremen, and Lübeck] the municipal government may obtain increased powers regarding certain functions without affecting the state organization. Details can be clarified only in direct negotiations between the governments concerned. Our general recommendations for the distribution of powers in the various administrative branches leave enough leeway for any special arrangements, since they allow for entrusting administrative functions, in part or in toto, to the states and communities. Special conditions can also be met by having a single official serve as head of the respective state and as the highest regional official of the federal administration. (See Part 1 above, under No. II, 2.)

APPENDIX H

DRAFT REFORM BILL OF JANUARY 1933

THE following draft bill was handed to Reich Chancellor Kurt von Schleicher on behalf of Prussian Prime Minister Otto Braun after preliminary, though not yet completed, deliberation in the Prussian cabinet, in January 1933 (Chapter xiv). The Prussian cabinet declared that it 'would not agree to any arrangement that would make the Prussian citizen a citizen second class'. In view of the emergency situation, the draft bill limited itself to pronouncing the elimination of Prussia as a single unit and to authorizing the federal government to determine, by means of simple legislation, the boundaries, organization and rights of the new territorial units to be created within the area of Prussia and within that of the smaller states. The bill did not affect the geographical boundaries, organization and rights of Bavaria, Saxony, Württemberg, and Baden, except as expressed in Article iv. In Article iii it laid down the principle of decentralization in general terms, referring for all details to the resolutions of the Constitutional Reform Committee, as discussed in Chapter ix and Appendix G.

FEDERAL REFORM BILL

(To be adopted as an Amendment to the Weimar Constitution)

Article I National Administration

In Prussia and in all states with a population of fewer than two million,¹ the following branches of administration pass from state administration to national administration, except in so far as a new decentralization is put in force under Article iii, namely, (a) Police, (b) Justice, (c) Supervision of communities, (d) Supervision of industry and commerce, (e) Church affairs and the affairs of elementary and secondary schools, including the supervision of such schools.²

Article II National Legislation

(1) The federal government alone has the power to legislate within the territories named in Article i, except for the extent to which, by legislative

¹ That is, all states with the exception of Bavaria, Saxony, Württemberg, and Baden.

² In an official footnote the Prussian cabinet reserved its final opinion on the inclusion of (e), which had been proposed by the Reform Committee. See above, Appendix G, Part II, 1 A, No 15.

act, it expressly entrusts legislative powers to existing or newly established territorial units, in line with the principle of decentralization established in Article III.

(2) Regarding these territories the federal government determines by legislation:

1. The Constitution of the existing and newly formed territorial units, all of which shall obtain the same designation [*Länder* or the like].

2. Their borders. These are to be drawn in such a way that they establish suitable units for both the regional agencies of the national administration and the highest administrative agencies of the respective units. No enclaves shall be allowed to exist.

3. Federal supervision over the governments of the territorial units and of their subdivisions.³

4. The power to execute the laws.

Article III. Decentralization

Unless it is obvious that federal regulation offers essential advantages for the country as a whole, legislative and administrative powers in all matters are to be entrusted to the existing or newly established territorial units, or to their subdivisions, to be exercised either independently or as delegated powers.⁴

Article IV. Special Principles Applicable to the Larger States

With regard to non-Prussian states having more than two million inhabitants,⁵ the federal government receives the power:

1. to legislate on the institution, organization, and procedure of administrative courts;
2. to establish fundamental principles (Article 10 of the [Weimar] Constitution) regarding:
 - (a) the general administrative law;
 - (b) the administrative organization (*Verwaltungsaufbau*) of the states, and the constitutions of communities and combinations of communities, in so far as uniform principles are necessary for the execution of federal laws;
 - (c) public examinations and recognition of examinations.

Article V. Stable State Administrations

The state cabinets and the cabinets of the new territorial units must be appointed for a definite period, namely, for the duration of the state

³ That is, the extent of federal supervision and the methods through which it could be exercised.

⁴ (Official Footnote) This principle is to apply also to the administrative functions mentioned in Article 1. For its application, the Constitutional Reform Committee of the States' Conference has given detailed directives. (End of original footnote.) See above, Chapter IX and Appendix G, on these directives, and Chapter XIII on the difference between autonomous and delegated administration.

⁵ Bavaria, Saxony, Württemberg, and Baden.

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legislature, unless their terms are fixed otherwise. The cabinet has to resign, however, if the state legislature withdraws its confidence by a two thirds majority vote, provided that at least two thirds of the legal members are present.

Article VI The Federal Council

The representation [number of votes] of the several states and new territorial units in the Federal Council in matters of national legislation and administration is to be newly determined by national legislation

Article VII Directives for the Period of Transition

Until further legislation is passed, Articles I V are to be carried through as follows

SECTION I

The present state and provincial constitutions remain in force in the states with fewer than two million inhabitants and in the Prussian provinces, until the reorganization under Article II, Paragraph 2, takes place. The designation of State Minister (*Landesminister*) is replaced, however, by that of State Director (*Landesdirektor*) in these units

SECTION 2

Those Prussian votes in the Federal Council that heretofore have been cast by the Prussian State Cabinet shall be cast by a State Directorate, appointed by the Prussian legislature according to the principles governing the formation of the Prussian State Cabinet, until such time as the votes in the Federal Council have been newly distributed among the existing and newly formed units by national legislation according to Article VI

SECTION 3

Until new principles of decentralization are established in line with Article III, the entire administration now executed by the Prussian State Government, including those administrative branches that are not mentioned in Article I, shall pass to the federal administration

Article VIII Personnel

No official can refuse to accept his transfer to another administrative unit ^o in execution of this Amendment. This also applies to judges

Article IX

- (1) This Amendment becomes effective as of
- (2) The federal cabinet is directed to send without delay a bill to the legislative bodies, designed to change the wording of the [Weimar] Constitution in accordance with this Amendment

^o For example, from a Prussian ministry to a federal ministry or to a ministry of a new state government

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(3) Until final regulation by national legislation, the federal government will issue the necessary executive directives by decree.

(4) The federal government will administer the property of the Prussian state for the common benefit of all Prussian territories, subject to supervision by the State Directorate (Article VII, Sect. 2), until other regulations are issued (Article III). Whenever laws or regulations in execution of this Amendment deal with public property or financial questions, the Supreme Court of the German Reich for Constitutional Conflicts (*Staatsgerichtshof für das Deutsche Reich*) can be asked by any of the territorial units concerned to decide whether the financial interests of the unit have been given due consideration. As far as Prussian state property (Paragraph 4) is concerned, the State Directorate has the right to make requests for court review during the transition period.

OFFICIAL REMARKS IN SUPPORT OF THE DRAFT BILL

It is politically sound to start from the results of the States' Conference of 1928-30. The Amendment must limit itself to those principles that were adopted by a large majority at that conference. The solution of special problems, for which such a broad basis does not yet exist, must be left to further legislation.

The bill has been drafted with this general idea in mind. Articles I-V correspond essentially, and to a large extent even literally, to those decisions of the Constitutional Committee of the States' Conference that have been made by large majorities, which included the prime ministers of Württemberg and Baden. The final decisions of the Constitutional Committee were carried by a vote of 15 to 3. The principles expressed in Article I and in the first paragraph of Article II, when put to a separate vote, were adopted by even greater majorities, and those expressed in Article III and Article V were unanimously accepted, although the latter were so formulated by the Committee that for the larger states they were only optional and not compulsory. The principles stated in Article IV were accepted only by a simple majority of the Committee, when put to a separate vote . . .

Special wishes of Bavaria cannot be considered in this Prussian draft of the Amendment. They were mainly directed toward guarantees that no further encroachments of Bavarian constitutional rights would be made, and were rejected by a majority of the Constitutional Committee.⁷ It must be left to Bavaria to introduce amendments to this bill. The same applies to similar though less far-reaching desires of Saxony, Württemberg, and Baden, and to proposals of a few states requesting special privileges, which can be granted in the framework of Article III.

⁷ (Note by the present writer) The Committee majority did, however, agree that further constitutional amendments affecting the rights of the four old states should be held rejected in the Federal Council if opposed there by these four states or by a number of votes corresponding to the aggregate of their votes. See Chapter X and Appendix G.

APPENDIX I

ECONOMIC REGIONS AND DEFENSE REGIONS UNDER THE HITLER REGIME ¹

ECONOMIC REGIONS (*Wirtschaftsbezirke*)

Within the 1936 Boundaries of the Reich ²

<i>Economic Region</i>	<i>Politscal Units Covered ³</i>	<i>Agency in Charge of Economic Matters</i>
1 Ostpreussen	Province Ostpreussen	Oberpräsident in Königsberg
2 Oberschlesien	Province Oberschlesien	Oberpräsident in Oppeln
3 Niederschlesien	Province Niederschlesien	Oberpräsident in Breslau
4 Brandenburg	Province Brandenburg	Oberpräsident in Berlin
5 Berlin	Stadt Berlin	Stadtpräsident of Berlin
6 Pommern	Province Pommern	Oberpräsident in Stettin
7 Mecklenburg	State Mecklenburg	Staatsministerium in Schwerin
8 Schleswig-Holstein	Province Schleswig-Holstein	Oberpräsident in Kiel
9 Hamburg	State Hamburg	Reichsstatthalter (Staatsverwaltung) in Hamburg
10 Weser-Ems	The two states of Bremen and Oldenburg plus two districts (Aurich and Osnabrück) of the Prussian province Hannover	Reichsstatthalter in Oldenburg and Bremen, Bremen office
11 Hannover	Province Hannover (except the districts of Aurich and Osnabrück and the county of Schaumburg)	Oberpräsident in Hannover
12 Mittelelbe	Province Sachsen (without the Erfurt district) plus the state of Anhalt	Oberpräsident in Magdeburg
13 Sachsen	State Sachsen	Reichsstatthalter (Landesregierung) in Sachsen, Dresden
14 Thüringen	State Thüringen plus Prussian district of Erfurt (province of Sachsen) and county of Schmalkalden (province of Hessen)	Thüringisches Wirtschaftsministerium in Weimar

¹ The data in this appendix have been gathered from a decree of 16 November 1942 and its enclosure. See also Chapter xv and Map 10.

² Some of these regions included small sections of territory outside the 1936 boundaries. See Appendix B.

³ Small enclaves were allotted to the economic regions within which they were situated, even if they belonged politically to states or provinces not covered by that economic region. This rule applied in general terms to any enclave that did not constitute at least a county.

REGIONS UNDER THE HITLER REGIME

<i>Economic Region</i>	<i>Political Units Covered</i>	<i>Agency in Charge of Economic Matters</i>
15 Kurhessen	The Kassel district of Hessen province, except the counties of Gelnhausen, Schluchtern, Schmalkalden and Hanau	Oberpräsident in Kassel
16. Westfalen	Province Westfalen plus the two states of Lippe and Schaumburg-Lippe plus the Schaumburg county of Hannover province	Oberpräsident in Münster
17 Niederrhein	The Düsseldorf district of Rheinprovinz	Regierungspräsident in Düsseldorf
18 Köln-Aachen	The two districts of Köln and Aachen in Rheinprovinz	Regierungspräsident in Köln
19 Moselland	The two districts of Coblenz and Trier in Rheinprovinz	Regierungspräsident in Coblenz
20 Westmark	Westmark, composed of parts of Prussia and Bavaria	Reichsstatthalter in the Westmark, Saarbrücken
21 Rhein-Main	State Hessen plus the Wiesbaden district (Prussian province of Hessen) plus the counties of the Kassel district not included in the Kurhessen region	Regierungspräsident in Wiesbaden
22 Baden	State Baden	Badischer Finanz- und Wirtschaftsminister in Karlsruhe
23 Württemberg	State Württemberg plus Prussian Hohenzollern area	Württembergischer Wirtschaftsminister in Stuttgart
24 Nordbayern	The three districts of Mainfranken, Oberfranken-Mittelfranken, Niederbayern-Oberpfalz	Regierungspräsident in Ansbach
25 Sudbayern	The two districts of Oberbayern and Schwaben	Bayerischer Wirtschaftsminister in München

Outside the 1936 Boundaries of the Reich

26 Danzig-Westpreussen	National region ⁴ of Danzig-Westpreussen	Reichsstatthalter in Danzig
27 Wartheland	National region of Wartheland	Reichsstatthalter in Posen
28 Sudetenland	National region of Sudetenland	Reichsstatthalter in Reichenberg
29 Donauland	The three national regions of Wien, Niederdonau and Oberdonau	Reichsstatthalter in Wien
30 Alpenland	The four national regions of Tirol-Vorarlberg, Salzburg, Steiermark, and Kärnten	Reichsstatthalter in Salzburg

⁴ See Appendix B and Chapter xv on national regions in the annexed territories

APPENDIX I

DEFENSE REGIONS (*Reichsverteidigungsbezirke*)

Of the 30 economic regions 22 were co-extensive with defense regions, the area of each of these economic regions being identical with that of one defense region. Each of the other 8 economic regions covered 2 or more defense regions—together 20—but without cutting across their boundaries. These were the economic regions of Hannover, Mittelbe, Westfalen, Niederrhein, and Südbayern (2 defense regions each); Nordbayern and Donauland (3 defense regions each); and Alpenland (4 defense regions). Hence there were 42 defense regions.

Each defense region was headed by a National Defense Commissioner (*Reichsverteidigungskommissar*). In most of the 22 defense regions that were co-extensive with economic regions, the official in charge of economic matters (see the preceding table) was made National Defense Commissioner; the exceptions were Mecklenburg and Thüringen, where the National Governors (*Reichsstatthalter*), and Württemberg and Baden, where the ministers of the interior, were put in charge of defense matters.

The 20 defense regions not identical with economic regions were as follows:

<i>Defense Region</i>	<i>Political Units Covered</i>	<i>Defense Commissioner</i>
23. Oschannover	The two districts of Lüneburg and Stade (Hannover province)	Regierungspräsident in Lüneburg
24. Sudhannover-Braunschweig	The two districts of Hannover (except Schaumburg county) and Hildesheim, plus the state of Braunschweig	Oberpräsident in Hannover
25. Magdeburg-Anhalt	District Magdeburg (now Magdeburg province) plus the state of Anhalt	Oberpräsident in Magdeburg
26. Halle-Merseburg	District Merseburg (now Halle-Merseburg province)	Regierungspräsident in Merseburg
27. Westfalen-Nord	The two districts of Munster and Minden (Westfalen province) plus the two states of Lippe and Schaumburg-Lippe, plus Schaumburg county (Hannover province)	Oberpräsident in Munster
28. Westfalen-Süd	District Arnsberg (Westfalen province)	Regierungspräsident in Arnsberg
29. Essen	That part of the Düsseldorf district (Rheinprovinz) which forms the party region of Essen	Regierungspräsident in Düsseldorf
30. Düsseldorf	That part of the Düsseldorf district which forms the party region of Düsseldorf	Regierungspräsident in Düsseldorf
31. Mainfranken	District Mainfranken (Bavaria)	Regierungspräsident in Würzburg

REGIONS UNDER THE HITLER REGIME

<i>Defense Region</i>	<i>Political Units Covered</i>	<i>Defense Commissioner</i>
32. Franken	That part of the Bavarian district Oberfranken-Mittelfranken which forms the party region of Franken	Regierungspräsident in Ansbach
33. Bayreuth	That part of the Bavarian district Oberfranken-Mittelfranken which forms the party region of Bayreuth, plus the Bavarian district of Niederbayern-Oberpfalz	Regierungspräsident in Regensburg
34. München-Oberbayern	District Oberbayern, except Friedberg county	Bayrischer Minister des Innern in München
35. Schwaben	The Bavarian district Schwaben, plus Friedberg county of Oberbayern district	Regierungspräsident in Augsburg
36. Wien	National region Wien	Reichsstatthalter in Wien
37. Niederdonau	National region Niederdonau	Reichsstatthalter in Niederdonau, Wien
38. Oberdonau	National region Oberdonau	Reichsstatthalter in Oberdonau, Wien
39. Tirol und Vorarlberg	National region Tirol-Vorarlberg	Reichsstatthalter in Tirol-Vorarlberg, Innsbruck
40. Salzburg	National region Salzburg	Reichsstatthalter in Salzburg
41. Kärnten	National region Kärnten	Reichsstatthalter in Kärnten, Klagenfurt
42. Steiermark	National region Steiermark	Reichsstatthalter in Steiermark, Graz

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