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**Civil Servants in a Federal System:  
The Case of Germany**

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## Introduction

This paper is about the effects of federalism on policy-making in the public administration. It goes without saying that the institutions of a federal system shape the structures of administrations. As a rule, sub-national governments are responsible for a great deal of administrative tasks. In Germany, the decentralisation of administration has historical roots. The modern state with its bureaucratic administrative system came into being at the level of the *Länder* before the nation state was created. The first German unification of 1871 integrated the *Länder* with their fully fledged bureaucracy into the German “*Reich*”, and after 1945 the *Länder* again preserved their administrative powers against the newly formed federal state [Lehmbruch, 2002]. For these reasons, the administration has remained the domain of the *Länder* until today despite centralist tendencies that were promoted both by the standardising effects of the rule of law (*Rechtsstaat*) and the development of the welfare state.

Decentralisation of institutional structures, however, does not necessarily lead to regional variation in the behaviour of civil servants or in the outcome of policy-making in public administration. Certainly, institutions do shape processes, i.e. actors’ behaviour, strategies and interactions, but they do not determine them. Following the approach of an actor-centred institutionalism [Scharpf, 1997], we need to consider additional factors influencing the way administrators fulfil their tasks. Of most importance are patterns of *cognitive-normative orientations* which are shaped during their education and training and through the adherence to professional groups or to persisting policy-networks. The latter often cut across the boundaries of a territorially differentiated administration in the federal system. Following Samuel Beer [1978] we can distinguish networks of “technocrats”, i.e. of civil servants from specialised departments pursuing the particular interests of a “policy sector” and following the norms of their specific profession, and networks of “topocrats”, i.e. of actors that feel as representative of a territorial unit (like a municipality, a region or a “*Land*”). Besides these linkages, the orientations of decentralised administrations can be shaped by the *national laws* they have to implement. For these reasons, we cannot expect a direct relationship between decentralised institutions of administration and regional differentiation of policy-making and implementation, and several scholars of political and administrative science in Germany have suggested that public administration has strongly contributed to the evolution of what is known as “unitary federalism” [Lehmbruch, 2000 : 110-112 ; Wagener, 1975].

However, this portrait of unitarisation needs to be critically evaluated in the face of recent regionalist tendencies (Benz et al., 1999). While not reflected in institutional reforms, these tendencies result from changing interactions between politicians and civil servants. In the following section, we regard leading civil servants as crucial actors in the multilevel system of German federalism and analyse whether they still contribute to a unitarisation of German federalism or whether they reinforce regionalisation and interregional competition. Our argument goes as follows: Qualified as lawyers, economists or technical experts in a decentralised, but largely standardised system of education and training, civil servants nevertheless behave, to an increasing extent, as political bureaucrats, as policy-makers instead of rule-oriented bureaucrats. As a consequence, they are increasingly involved in a particular regional setting of co-operative policy-making in their *Land*. This setting encourages specific policies and thus leads to variation of policy-making in public administrations. However, there are still strong linkages between regional administrations which contribute to the diffusion of policy innovation and to intergovernmental coordination of policies. Hence the differentiating effects of regionalisation are counterbalanced by interregional cooperation. The result is unitarisation not by central rules or professional orientations, but by mutual

learning. The dynamics of the federal system is driven by the interplay between these unifying and regionalist trends.

What we present in the following sections are hypotheses. Although we have included datas and research results, we are not able to provide empirical evidence for all of our assumptions. Therefore, this article outlines a research programme. We do not claim to summarise systematic research.

## I. Civil service and leading civil servants

At present, the majority of civil servants work as employees for the *Länder* governments (51.2 per cent in 1998) or for local administrations (35.7 per cent). The federal share of the civil service declined from 42 per cent in 1960 to 13.1 per cent in 1998. One important reason for this trend is the privatisation of the two most important federal public administrations, the German Railway and the German Telekom which became effective in the 1990s. In statistical terms, this reduced the number of federal employees by about 0.8 million. The relative growth of the *Länder* administration can also be explained by the expansion of the education sector which constitutes the main part of the public sector of the *Länder*. While in 1960 the share of this sector amounted to 12.2 per cent, it has in the meantime increased to 32.2 per cent. During the same period, the share of the so called general administration has remained constant at about 12 to 13 per cent [Derlien, 2000 : 3].

The German civil service differentiates between specific career tracks (four different service classes: *einfacher, mittlerer, gehobener und höherer Dienst*) which go back to the 19<sup>th</sup> century. Access to a particular track is bound to specific education requirements. The career in the highest grade of the service is usually open only to candidates with a university degree. Civil servants working in the upper grade usually are trained in colleges (*Fachhochschulen*)<sup>1</sup>, while access to the middle grade service requires secondary school education. At all grades, civil servants have to pass an additional training programme in the administration. Although moving from a lower to a higher career track is today possible under specific conditions, the traditional vertical differentiation between service classes still characterises the reality of the German administration.

In this paper we are interested in “leading” civil servants of the highest career group. This group can be described by the following characteristics: The category of “higher” civil servants (*höherer Dienst*) includes a total of 645.000 employees in 1998 compared to 160.000 in 1960 (8.7 per cent) [Derlien, 2000 : 4]. Among them are not only employees in leading positions, but also those adhering to specialised staff. Moreover, 16.7 per cent of these employees work directly responsible position. Therefore, it makes sense to speak of leading managers only for civil servants which are the head of a considerable number of personnel. In federal and *Länder* ministries the head of a division (grade B 6 on the salary scale) or of a sub-division will assume this responsibility. Furthermore headmasters of schools (whom we do not consider in this paper) and chief officers of specialised agencies (grade A 16 on the salary scale) will be in this position. In addition, the political civil servants (*politische Beamte*) in the ministries are to be labelled as leading civil servants. They include the under-

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<sup>1</sup> Since 1973 the *Länder* governments have established special “internal” administration colleges (*Verwaltungsfachhochschulen*), first in Berlin and Baden-Wuerttemberg. In 1979 the Federal government founded its own school. Students of these schools are members of the civil service (*Inspektorenanwärter*). Education in these colleges adds to the practical training in the administration.

secretaries of state (*Staatssekretäre*) and the ministerial directors (*Ministerialdirektoren*)<sup>2</sup>. Holding positions at the interface between the political and administrative sphere they depend on the personal trust of the government and their minister while in office [Kugele, 1978]. Otherwise, they may be displaced and send into retirement immediately and without any reasons to be stated by the responsible minister. It is hardly astonishing that after both federal government changes in 1969 and 1982 every second under-secretary of the state and every third ministerial director had to take his leave [Derlien, 1990]. Even if data concerning the change of government in 1998 are not available, there are indications that this practice has continued.

## II. The institutional framework of administrative federalism

### *A) The influence of federalism on administrative behaviour : some theoretical considerations*

From a political scientist point of view we consider civil servants as policy-makers. In contrast to Max Weber's ideal type of a bureaucrat, this characterisation implies two features: On the one hand, actors in the administration not only apply laws in a purely technical manner but define problems and select solutions among different alternatives and according to normative considerations. On the other hand, civil servants do not fulfil their tasks "*sine ira et studio*". They pursue individual interests. Beyond their interests in specific decisions, they wish to advance their career, to increase their income or to be appreciated and supported by their clients. These motivations of actors are emphasised by different theories of public administration. While in particular policy scientists regard civil servants as policy-makers, rational choice theorists like Niskanen [1971] focus on individual interests. Both theories can be combined into a individualist model of administrative behaviour.

What is ignored in such a theoretical approach are action orientations that are influenced by the institutional context of public administration. For this reason we should extend the individualist model of administrative behaviour and integrate it into an "actor-centred institutionalism" [Scharpf, 1997]. This approach emphasises the dual role of institutions. By defining jurisdictions, responsibilities, and procedures and by allocating resources, they guide and constrain the behaviour of policy-makers. But they also provide a cognitive and normative framework. Constraints result from the "hardware" of rules and incentives in institutions, whereas it is the "software" of the institutional culture and general normative principles which shape action orientations [Scharpf, 1989 : 121]. In studies on public administration, this "software" is often referred to as administrative culture.

Administrative culture in Germany has been often portrayed as legalistic [Feick & Jann, 1988 ; Jann, 1983]. This is understandable in the face of the strong tradition of the rule of law ("*Rechtsstaat*"). A considerable percentage of leading civil servants are qualified as lawyers, and the traditional training programmes for the civil service are designed to socialise members of the civil service as rule-oriented bureaucrats. On the other hand, the institutional framework of German public administration is based on two other important principles. One of them is the welfare state which requires a service-oriented administration. The welfare state has induced centralisation, but in addition it has generated the type of a policy-making civil servant ("political bureaucrat"). The second institutional feature is German federalism with a decentralised administration which is mostly neglected in studies on public administration or

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<sup>2</sup> In Germany, the political civil servants emerged during the years of the liberal revolution 1848/49 when the idea of a constitutional government gained ground. In order to impede the rise of an independent power, leading bureaucrats were to be bound to the political programme of the government.

merely considered as an obstacle to institutional reform. Administrative decentralisation as well as politically sensitive civil servants should have an impact on how the system of German administration works.

In the following sections we develop preliminary ideas and provide some evidence on the impact of the federal framework on policy-making in the German civil service. At first glance, the nature of this impact is far from obvious. Federalism generally leads to territorial differentiation and decentralisation of public administration. It could be concluded that the interaction of this institutional framework with the action orientations of civil servants promotes regionalisation in policy-making. However, German federalism is distinguished by extensive intergovernmental relations and these linkages between the federal and the *Länder* level particularly exist in public administration. This could mean that action orientations of civil servants are much more shaped by patterns of intergovernmental cooperation than by the decentralised structure. Moreover, the uniformity of the law in the German “*Rechtsstaat*” could predominate regionalist differentiation.

Before further outlining these hypotheses on the interplay between institutions and administrative behaviour and supporting them through some empirical evidence, we describe the most important features of the federalist framework of public administration in Germany.

### ***B) Federalism and administrative decentralisation***

According to the German constitution (Articles 30 and 83), public administration is in principle assigned to the *Länder* governments and the municipalities which therefore implement most of the Federal law. Federal government is responsible only for some special administrative fields. Whereas e.g. education (including vocational education and universities), hospitals, the police, measures to protect the environment, road construction (including the construction, but not the planning of motorways), parts of the social securities, social services and other administrative tasks are fulfilled by *Länder* and local authorities, only the Foreign Affairs Office, the administration of the armed forces, the administration of federal waterways as well as the Federal Labour Office are left to the national level since railways, postal services and air-traffic control were privatised [Naschold & Bogumil, 2000 : 136].

This federalised structure of public administration and its high degree of decentralisation result from the “path-dependent” development of federalism [Lehmbruch, 2002] and local self-government in Germany. Federalism evolved as a particular kind of administrative federalism. The principle of the rule of law, the idea of the nation state and the welfare state caused centralisation of the public sector. However, because of the powerful position of the *Länder* governments in the history of the German state the central government could expand its powers only with regard to legislation and since the late 19<sup>th</sup> century became responsible for social security, while the *Länder* kept their powers in administration. The principle of local self-government, which resulted from liberal reforms in the early 19<sup>th</sup> century, supported administrative decentralisation.

As a consequence, the responsibility for making laws and for implementing the law is regularly allocated to different levels of government. This implies that the autonomy of the *Länder* governments in Germany basically concerns administration. Uniformity of living conditions, which is an important political goal, is guaranteed by federal laws and the federal supervision regarding the legality of decentralised administration. In limited fields of mandated administration (*Auftragsverwaltung*), the Federal government can control the effectiveness of *Länder* and local administration, too. The strong administrative decentralisation is associated with a homogeneous legal system throughout the state, but the power of the *Länder* governments in administration never was disputed. Even the nation-wide

integrated party system, the highly centralised associations and the uniformity of the economic system have not fostered centralisation in public administration.

However, it is important to note that the division of legislative and administrative functions between levels requires that *Länder* administrations contribute information and expertise in the preparation of federal laws. Moreover, *Länder* governments coordinate their policies in order to avoid intervention of the Federal government. These inter-administrative relations [Benz, 2001] that exist between areas of responsibilities of the Federal and the *Land* governments are an essential feature of German “cooperative” federalism. Most leading civil servants intensely participate in these structures. Apart from a multitude of institutionalised patterns of inter-administrative relations, leading civil servants interact informally. These intergovernmental policy networks have a strong impact on action orientations and policy-making in German public administration. On the one hand, they favour uniformity of knowledge and problem solutions, on the other hand, they give rise to policy networks of administrative experts who focus on sector-specific issues rather than on general concerns of a territorial unit.

What may be even more important regarding actors’ orientations in the civil service is that the *Länder* governments are responsible for education and training. The Federal government’s efforts to build up its own training institutions for civil servants had only to a limited degree been successful. In Germany there are no special elite schools for the education and training of the public service as in Great Britain or in France. The “German School for Administrative Sciences” in Speyer, which is financed by the Federal and all *Länder* governments, offers a post-graduate programme for students preparing for a position in the public sector. Administrative science in the Anglo-Saxon sense of the term can be studied at the universities of Konstanz and Potsdam. Neither of these institutions can claim to have the status of a central institution for the formation of an administrative elite, comparable e.g. to the universities of Oxford and Cambridge in Great Britain or the *Ecole Nationale d’Administration* in France.

Nevertheless, most of the leading civil servants experience a similar education. After studies at a university, the majority enters a preparatory stage of two years. Usually, and in accordance with the tradition of the German state, applicants for the civil service have finished their studies at law faculties. Although social scientists and economists have in principle the same right of access, lawyers predominate. The two year preparatory training in the public sector and the so called 2<sup>nd</sup> state exam (2. *Staatsexamen*) integrated into the education of lawyers, gives them a particular advantage compared to students of other disciplines. Therefore, since about 30 years the portion of lawyers in Federal or *Länder* ministries has remained constant at a 65 per cent rate. Economists have gained in importance with the rise of economic policy, and now their share of the higher civil servants has increased to 15 per cent [Derlien, 2000 : 14]. It goes without saying that these figures vary between different ministries with a higher share of lawyers working in the ministry of the interior (70 per cent), but even in the ministry of economics, the percentage of lawyers (40 per cent) exceeds those of economists [Hauschild, 2001 : 492]. All this reveals the strong role of the principle of the “*Rechtsstaat*”. Formal rules and regulations governing public action as well as their stability and predictability are highly valued in Germany.

The orientations actors learn during their education are stabilised during their work in a particular career track. For this reason it is important to note that a majority of the leading civil servants pass through the career system of the public service (“*Laufbahn*”). Only a small number enters higher ranks in the administration from outside.<sup>3</sup>

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<sup>3</sup> Between 1949 to 1984, 87 per cent of the leading civil servants in the federal administration made their professional career in the public sector. 13 per cent crossed the lines between the public and the private sector

Furthermore, knowledge and attitudes of leading civil servants are influenced by specialised training programmes. For federal civil servants, the „Federal Academy for Public Administration“ (*Bundesakademie für öffentliche Verwaltung*) has developed its own concept of advanced training.<sup>4</sup> On the *Länder* level, Bavaria (since 1968) and Baden-Württemberg (since 1986) organise their own training programmes lasting between 14 to 15 months. Since 1991 other countries such as Rhineland-Palatinate, Hesse, Lower Saxony, Saarland and Schleswig-Holstein send their leading civil servants to the School of Administrative Science in Speyer. These training measures are not adequately integrated into concepts of human resource management. Those who participate have no guarantee to get a better job opportunity, which reduces the effect and the attractiveness of participation in training programmes. But efforts of forming an administrative elite are evident [Derlien, 2000 : 10], even if one takes into account the restricted possibilities for participation. What is remarkable are *Länder*-specific activities which go hand in hand with particular policies of modernizing administration.

To conclude: Public administration in general as well as basic and permanent training is to a large degree decentralised in the German federal system. On the other hand, the law and career system (including its legal framework) is rather uniform both on different levels and in different *Länder*. In addition, intergovernmental relations contribute to uniformity. Nevertheless, we can observe policies of the *Länder* governments designed to create their own administrative elite. Whether this leads to specific orientations in the particular regional setting is an open question. In the following sections we try to give an answer and consider the consequences for policy-making in the federal system.

### **III. Action orientations : Civil servants as policy-makers**

We assume that federalism makes a difference for policy-making in public administration and that the uniformity of the rule of law and the unitary federal system is counteracted by the impact of decentralisation. Up to now, we have no empirical data available to prove regional differentiation in administrative behaviour. However, we can provide evidence for changes in the action orientations of leading civil servants which support our assumption. They increasingly act as political bureaucrats and no longer as rule oriented bureaucrats. These changed action orientations conform to new styles of policy-making, which we explain in the next section. Both lead to an upgrading of the regional context of administration.

As regards action orientations we refer to the well-known differentiation between the classical and the political bureaucrat [Steinkemper, 1974]. Following a monistic concept of public interest the classical bureaucrat makes all efforts to implement the law. He takes rules and the law as a basis for an “objective” and equal treatment of citizens while he rejects the influence of political institutions like parliaments, political parties or associations on public administration. In contrast, the political bureaucrat appreciates the intervention of political actors in decision-making processes as legitimate and as an element of democracy. Implementation of programmes or laws are regarded not as professional issues but as political processes that require bargaining. For him, decisions reflect compromises among different interests. His attitude towards political parties and interest groups is positive.

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[Derlien, 1990]. Topical data for the Land level are not available. However we can assume that external recruitment is the exception.

<sup>4</sup> Here every year nearly 400 classes are carried out with 8.000 participants, about 50 per cent coming from the higher service [Hauschild, 2001 : 498].

In their renowned comparative study Robert Putnam et al. [Putnam, 1976 ; Aberach, Putnam & Rockman, 1981] found out that in 1976 about 60 per cents of the employees in Germany ministries regarded the political aspects of their work in a positive way [Putnam 1976 : 39]. As the typical German civil servant was often described as a classical bureaucrat, the authors expressed their surprise about this result. In fact, the findings reflect a fundamental change in the German civil sector from an apolitical bureaucracy to a political administration. To be true, we still find elements of classical attitudes. The action orientations of civil servants combine elements of the classical and the political bureaucrats. However, the reality of public administration has to be characterised as predominated by actors who perceive their work as policy-making. And there are indications of a growing politicisation of the administration [Tils, 2002].

The political dimension of public administration can be comprehended in different ways [Lorig, 2000 : 185]. One is the influence of political parties. This is not really a new phenomenon. At all times political loyalty played an important role in the recruitment of civil servants. However, the influence of political parties has increased and this is more and more accepted as “normal”. About 40 per cent of the civil servants regard the affiliation to the party in power as an important precondition for an administrative career [Kroppenstedt & Menz, 2001 : 463]. Whether this is true or not is open for dispute. In any case an increasing number among the leading managers are members of a party. Between 1970 and 1987 the share of employees which were not members of a party dropped from 72 per cent to 43 per cent [Mayntz & Derlien, 1991]. Experts assume that this trend has progressed [Derlien, 2000]. The impact of the party political factor on the recruitment of leading civil servants is supported by formal rules. External advertisement of a position is not required and even internal advertisement can often be avoided.

A second aspect of politicisation of public administration is the blurring of boundaries between party politics and administration. Both spheres are not clearly separated in Germany, even if the idea of a division of power is an important element of the constitution [Bogumil, 2002a ; Hesse & Ellwein, 1997 : 364]. Nevertheless, since the 19<sup>th</sup> century, vacant positions in ministries have been appointed by political actors. Moreover, the main function of the administration of a ministry is to prepare political decisions. This contributes to the overlapping of political and administrative arenas. As a consequence, the activities of civil servants are regarded as political from a functional perspective. This

“functional politicization (...) implies a greater sensitivity of civil servants for consideration of political feasibility, and institutes a kind of political self-control of top bureaucrats through their anticipation of the reactions of the cabinet and of parliament to their policy proposals and legislative drafts” [Mayntz & Derlien, 1989 : 402].

While from a normative point of view the influence of political parties is controversial, there is nowadays no doubt about the relevance of the latter aspect of politicisation of public administration. From this follows that the traditional rule orientation of civil servants has turned into a more pragmatic orientation towards the solution of problems. The fact that a considerable share of leading civil servants are lawyers does not contradict this trend. Lawyers learn to deal with conflicts and to apply different, sometimes inconsistent rules to practical situations. In addition, training for the civil service ensures a great deal of pragmatism in coping with conflicts between private and public interests. Hence even lawyers understand their administrative job as policy-making. They know the law but they also know its limits and its flexibility. For political bureaucrats, the interactions with politicians and private actors, the negotiation of solutions instead of unilateral decision is essential. This dimension of politicisation can be observed in the practice of a “cooperative” public administration.



#### **IV. Policy networks and cooperative administration**

The term “cooperative administration” is used in German administrative science to clarify that administration is no longer the “technical” application of law by autonomous bureaucrats but the negotiation of decisions among public and private actors [Benz, 1994 ; Dose, 1997]. While comparative studies on government and public administration often classified Germany as a country with a strong tradition of an autonomous state and bureaucracy, empirical studies revealed a different reality. Not only in the administration of welfare services but also in the implementation of the law, negotiation and cooperation is rather the rule than the exception in the practice of public administration.

Cooperation can be regarded as a strategy designed to deal with complicated matters better and to conciliate public and private interests. This way, the general interest defined by the law remains the principle guideline of public administration. However, cooperation is often stabilised in policy networks, and the more administrators are integrated in these networks, the more their action orientations are shaped by interactions with their partners. They are increasingly involved in the definition of social interests and in the aggregation of interests [Jann, 1998 : 263]. The policy-making function of administration is considerably reinforced.

This development has two important consequences.

Firstly, administration by cooperation with private actors and in policy networks impels the responsible civil servants to take their political role seriously. They need more discretionary power that has to be legitimised. This means that they have to find support by politicians, at least by the responsible minister or the political leaders of their organisation. Administration has become part of a complicated structure of a “cooperative state”. In association with politicians it tries to mobilise the self-controlling capacities of collective actors as well as to balance divergent interests in policy-networks. Politics does no longer take place only in parliament. It has shifted to the arena of administration and leading civil servants increasingly see their task as a political one<sup>5</sup>.

Secondly, interactions between politicians, civil servants and private actors take place in a territorial context. Whereas “technocratic” networks, i.e. intergovernmental policy networks in specific administrative sectors, are more or less shielded against the influence of politicians and provide access only for particular private interests, the networks of cooperative administration are open. However, such extended linkages open in both dimensions, towards the political arena and towards the private sector are only possible in a constrained territorial context. For this reason, decentralisation of public administration in the federal system gives impetus to cooperative administration. And the latter reinforces the regional and local dimension of public administration despite the framework of a “unitary federalism” [Hesse, 1962].

#### **V. Regionalisation of policy-making in public administration**

The following examples should illustrate the hypothesis that cooperative strategies revitalise the impact of decentralisation of public administration and promote regional variations in administrative policy-making. We start with the implementation law in regulatory policies where one could expect the predominance of uniform law to prevail. In the

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<sup>5</sup> The concept of New Public Management with its model of a responsive administration points in another direction. Similar to the traditional model of a hierarchical organisation of the state it presupposes the division of functions between politics and administration. One of the reasons for its failure is that the theory of NPM does not adequately take account of the reality of cooperative administration (cf. Bogumil, 2002b).

ensuing section we portray the case of labour market policy as an example of service delivery. Again, regionalisation is not obvious in this field because administrative responsibilities are divided between the federal and the *Länder* levels and because of the existence of strong intergovernmental linkages.

### A) *Regulatory policy*

Regulation seems to require a hierarchical relation between the state and the regulated societal actors. However, empirical studies on different regulatory policies reveal that this is not the case. In Germany, where close links between public bureaucracies, the political parties and interest associations have a long tradition, the practice of “negotiated regulation” is of particular importance. Government, despite its power to regulate, often prefers informal arrangements or formal contracts with private organisations. Kenneth Dyson summarises the findings of studies in various German policy fields, by concluding that “...typical was a style of cooperative regulation, exhibited in a preference for sectoral self-regulation (as in health and in industrial relations) and a tendency for change to be informally negotiated with the main organized interests (as in insurance, environmental pollution and commercial broadcasting)” [Dyson, 1992 : 259].

Even if the government resorts to legislation this does not mean that those affected by the law have to conform without being able to exert influence. Cooperative forms of implementation are - to a certain degree - induced by changes in the law itself. Studies on the practice and effects of regulation show that the high complexity of regulated social fields, typical for modern welfare states, has induced adjustments in the substance of the law. Instead of immediately constraining the behaviour of citizens and organisations, the state relies more on setting goals, defining standards, and providing procedural rules or organisational frameworks. As a consequence, the regulatory effect of the law depends to a great extent on the implementation by the responsible administrations, which gain considerable discretionary power. These changes in the law were initially discovered for the Anglo-Saxon political and administrative culture [Nonet & Selznick, 1978]. More recently, the same development has been described in Germany. Despite of its legalistic tradition, “German statutes are not precise statements of policy, but are full of vague and undefined terms that require further interpretation before the acts can be implemented” [Rose-Ackerman, 1994 : 1288].

The discretion in administrative decision-making, which is granted by the law, is used by decentralised administrations to develop solutions which fit into the particular context. This context is defined by patterns of interactions in networks of “administrative interest intermediation” [Lehmbruch, 1991], but also by the particularities of the territory demarcating the jurisdiction of an administration. Cooperative implementation of the law varies according to different administrative organisations, as the study of Nicolai Dose has shown for environmental policy [Dose, 1997]. It varies also according to the different strategies of *Länder* governments and the influence of party politics on the administration: While the conservative Bavarian government, for example, tries to execute regulations against protest movements with the power of a strong state, other *Länder* apply more liberal strategies and support negotiations between the administration and the conflicting private actors. Finally, *Länder* administrations differ in their leniency or rigidity in the implementation of the law. Most successful are those administrations that negotiate with addressees of the law while threatening to resort to a strict application of the law in case of failure of cooperation. In contrast, the lowest level of regulation is achieved by administrations which avoid cooperation but at the same time abstain from strict implementation. Usually, scarcity in personnel and in financial resources explains this result. Independent of the reason for these differences between the *Länder*, they give rise to different administrative cultures or styles of

regulation which result from the interplay of political and institutional conditions and action orientations of civil servants.

### ***B) Provision of services: the case of labour market policy***

In contrast to regulatory policies, the federal constitution of Germany grants the *Länder* governments extended powers for the provision of public services. Therefore it is no coincidence that regionalist trends can be observed in particular in these policy fields. Examples include cooperative approaches in regional economic policy and public-private partnerships in the production of infrastructural facilities. In addition, cooperation has gained attention in local administrations providing social services.

An interesting example of regionalisation concerns administrative activities designed to reduce unemployment. In Germany, this is one of the domains of federal administration. Labour market policies are implemented by the Federal Office for Labour (*Bundesanstalt für Arbeit*), a federal institution with regional and local offices. Given the salience of unemployment as a national affair, there is no doubt about the responsibility of the federal government for labour market policies and its administration.

However, in the face of different developments in the regions, *Länder* governments became more active during the last two decades. In contrast to the Federal government they engage in cooperation with unions and employers' associations to set up programmes for job creation and the re-integration of young and long-term unemployed into the labour market. As Josef Schmid has shown in a comparative study on labour market policy of the German *Länder* [Schmid & Blancke, 2001], the policy approaches of the individual *Länder* governments vary to a considerable degree. While some *Länder* focus on training programmes for unemployed and on cooperation with individual firms, others integrate labour market policy in their strategies to promote regional economic development. A third group of *Länder* governments limit their activities to the co-financing of federal services.

Diversity exists in this policy field although the Federal government determines rules and institutions. The *Länder* governments indirectly got their foot in the door of this federal domain by using complementary powers for promoting regional economic development. The field administrations of the Federal Office for Labour profit from the cooperation with *Länder* and local experts and from the development of regional cooperation with employers and unions. As Josef Schmid reported, this diversity gives rise to a kind of policy competition between regional administrations. Innovative *Länder* governments profit in elections while less innovative and less successful *Länder* governments are doomed to lose support of their electorate. Thus, innovative solutions are copied. As a consequence, regional diversity is reduced due to the diffusion of innovations, which is accelerated by channels of communication that are available in horizontal and vertical intergovernmental relations [Schmid, 2002].

## **VI. Intergovernmental relations and diffusion of innovation**

The case of labour market policy sheds light on a further consequence of regionalisation. Despite the regionalist tendencies, the federal system is still characterised by intense linkages between levels of government and between the *Länder*. Regional orientations in public administration have introduced an element of competition into the unitary federal system, however, they have not reduced the relevance of cooperative relations between leading civil servants working for different governments. For this reason it could be doubted whether the trend towards a decentralised cooperative administration will prevail and whether it really counteracts uniformity of policy-making.

Indeed, we cannot deny that this is one possibility of future development. However, it is also likely that the character of intergovernmental relation changes. While the relations between administrations in the federal system are dominated by specialist networks (“technocrats”) that tend to de-politicise administrative policy-making, i.e. to protect the independence of administration against parliaments, political parties and societal interests, we assume that the newly developing relations rather include the “topocrats”, the representatives of regional concerns, and are more open to cooperative policy-making and to the influence of democratic institutions. Our observations in different policy fields suggest the following hypotheses.

Intergovernmental relations in the cooperative federalism increasingly serve for the diffusion of innovations that are generated in regional settings. Unitarisation is no longer achieved by an ex-ante coordination of decisions, but by “lesson-drawing” [Rose 1991], i.e. in a sequence of adjustments of regionalised policies to innovations in other regions.

In contrast to the more traditional coordination processes, civil servants are less oriented to the special concerns of their task and are more inclined to represent the interests of their *Land*. Policy networks become more open to territorial interests as well as to the political aims of a *Land* government. Whether this renders intergovernmental cooperation more difficult is an open question although distributive conflicts presumably increase.

Finally, we can observe in some policy fields that regionalisation of administrative policy-making gives rise to conflicts between the *Land* government and regional administrations below the land level. One striking example for this is the rise of regional governance in regional planning and development policy in city regions. Here new forms of cooperative policy-making between public administrations and private actors have emerged. This way leaders of regional administrations quite successfully manage regional key projects and find support by politicians in regional councils. The *Länder* governments who assisted recent reforms of governance structures react with increasing suspicion to the extension of powers of the leading regional managers and the regional parliaments that have been established in some regions<sup>6</sup>.

## Conclusion

In this paper we analysed the role of leading civil servants in the German federal system. Such an actor-centred perspective on federalism is unusual in our country and so is the integration of research on federalism and on public administration. Therefore we want to put an emphasis on the relevance of public administration for the study of federalism as well as on the relevance of federal structures for understanding public administration.

The argument outlined above can be summarised as follows: In contrast to assumptions that still predominate in discussions on intergovernmental relations in Germany, we draw attention to the changing action orientations and strategies of leading civil servants in the federal system. While they were formerly regarded as the principal promoters of unitarisation and technocratic sectoral policy networks cutting across levels of government and while these intergovernmental networks were criticised as an important reason for institutional inflexibility of German federalism, we assume that civil servants increasingly support regionalisation of policy-making. This hypothesis is suggested by the following observations.

1.- Leading civil servants perceive administrative action as policy-making. German administration is not controlled by classical bureaucrats but by political officials. This means

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<sup>6</sup> We refer to a recent project of the Bertelsmann-Foundation on regional governance in Germany. The results will be published in December 2002. A summary is given by Benz/Fürst, 2002.

that the administration is much more politicised, both in functional terms and in terms of party politics.

2.- The functional politicisation is revealed in practice by strategies of cooperative administration. When implementing laws or providing services civil servants enter into negotiations with those affected by their decisions. And instead of imposing the “public interest” that they discover in the law, they try to find a compromise between public and private interests.

3.- For cooperative administration the regional context is important. Not only do negotiations require direct contacts, the mutual adjustment of public and private interests is also only possible regarding particular conditions and problems. Decisions can no longer be made in a standardised way. They necessarily become more diversified.

4.- Regionalisation of administrative policy-making is enabled by institutional decentralisation in the federal system. Nevertheless, German federalism is still characterised by intense linkages between levels of governments and between the *Länder*. These intergovernmental relations still are used to coordinate policies. However, political civil servants represent *Land* interests instead of focusing on the special concerns of the policy they are responsible for. Moreover, intergovernmental relations serve as channels for the diffusion of innovations emerging in regional contexts.

5.- While we can expect more competitive relations among decentralised administrations, trends towards uniformity of policies still persist. It is brought about by “lesson-drawing”, i.e. in a sequence of regional decisions which follow innovative models. Therefore, German federalism is, despite all regionalist trends, still a unitary federalism. However, this unitarisation is not only driven by a standardised implementation of the law or by cooperation of policy specialists but by the dynamics of regional innovation, competition and policy transfer in intergovernmental relations.

## Bibliographie

- Aberach (Joel D.), Putnam (Robert D.), Rockmann (Bert A.), 1981, *Bureaucrats and Politicians in Western Democracies*, Cambridge/Mass.: Harvard University Press.
- Beer (Samuel), 1978, “Federalism, Nationalism and Democracy in America”, *American Political Science Review*, 72, 9-21.
- Benz (Arthur), 2001, “Interadministrative Relations in the Federal System”, in Klaus König & Heinrich Siedentopf (eds.), *Public Administration in Germany*, Baden-Baden, Nomos, 139-154.
- Benz (Arthur), 1994, *Kooperative Verwaltung. Funktionen, Voraussetzungen und Folgen*, Baden-Baden, Nomos.
- Benz (Arthur) & Fürst (Dietrich), 2002, *Schlussfolgerungen aus dem verwaltungswissenschaftlichen Symposium „Regional governance“*, unpublished manuscript.
- Benz (Arthur)n, Fürst (Dietrich), Kilper (Heiderose) & Rehfeld (Dieter), 2000, *Regionalisation. Theory, Practice and Prospects in Germany*, Stockholm, ritzes.
- Bogumil (Jörg), 2001, *Modernisierung lokaler Politik. Kommunale Entscheidungsprozesse im Spannungsfeld zwischen Parteienwettbewerb, Verhandlungszwängen und Ökonomisierung*, Baden-Baden, nomos.
- Bogumil (Jörg), 2002a, *Zum Verhältnis von Politik- und Verwaltungswissenschaft in Deutschland*, polis Nr. 54 (Arbeitspapiere aus der Politikwissenschaft an der Fern-Universität Hagen), Hagen, FernUniversität.
- Bogumil (Jörg), 2002b, „Die politische Führung öffentlicher Dienste – Möglichkeiten und Grenzen der Reorganisation“, in Peter Conrad, Rainer Koch (eds.), *New Public Service*, München, Gabler Verlag (in print).
- Derlien (Hans-Ulrich), 1984, „Verwaltungssoziologie“, in Albert von Mutius (ed.), *Handbuch für die öffentliche Verwaltung*, Darmstadt, Luchterhand, 793-869.
- Derlien (Hans-Ulrich), 1990, „Wer macht in Bonn Karriere ? Spitzenbeamte und ihr beruflicher Werdegang“, *Die Öffentliche Verwaltung*, 43 : 311-319.
- Derlien (Hans-Ulrich), 2000, *Verwaltungsdienst im Wandel*, unpublished manuscript, University of Bamberg.
- Derlien (Hans-Ulrich), Mayntz (Renate) & al., 1991, *Bundeselite 1970-1987. Rollenverständnis und Werthaltung im Wandel*, Projektbericht.
- Derlien (Hans-Ulrich) & Peters (Guy B.), 1998, *Who works for Government and what do they do ?*, Bamberger verwaltungswissenschaftliche Beiträge 32, Bamberg, Universität Bamberg.

- Dose (Nicolai), 1997, *Die verhandelnde Verwaltung. Eine empirische Untersuchung über den Vollzug des Immissionsschutzgesetzes*, Baden-Baden, Nomos.
- Dyson (Kenneth), 1992, „Regulatory Culture and Regulatory Change: Some Conclusions“, in Kenneth Dyson (ed.), *The Politics of German Regulation*, Aldershot: Dartmouth, 257-271.
- Feick (Jürgen) & Jann (Werner), 1988, „Nations matter“ - Vom Eklektizismus zur Integration in der vergleichenden Policy-Forschung ?, in Manfred G. Schmidt (ed.), *Staatstätigkeit. International und historisch vergleichende Analysen*, Opladen, Westdeutscher Verlag, 196-220.
- Haus (Michael) & Heinelt (Hubert), 2002, „Modernisierungstrends in lokaler Politik und Verwaltung aus der Sicht leitender Kommunalbediensteter. Eine vergleichende Analyse“, in Jörg Bogumil (ed.), *Kommunale Entscheidungsprozesse im Wandel – Theoretische und empirische Analysen*, Opladen, Leske und Budrich.
- Hauschild (Christoph), 2001, „Qualification and Training for the Public Service“, in Klaus König & Heinrich Siedentopf (eds.), *Public Administration in Germany*, Baden-Baden, Nomos, 489-502.
- Hesse (Konrad), 1962, *Der unitarische Bundesstaat*, Karlsruhe: C.F. Müller.
- Jann (Werner), 1983, *Staatliche Programme und "Verwaltungskultur"*, Opladen, Westdeutscher Verlag.
- Jann (Werner), 1998, „Politik und Verwaltung im funktionalen Staat“, in Werner Jann, Klaus König, Christine Landfried & Peter Wordelmann (eds.), *Politik und Verwaltung auf dem Weg in die transindustrielle Gesellschaft*, Baden-Baden, Nomos, 253-282.
- Kroppenstedt (Franz) & Menz (Kai-Uwe), 2001, „Positions of Leadership in Public Administration“, in Klaus König & Heinrich Siedentopf (eds.), *Public Administration in Germany*, Baden-Baden, Nomos, 457-472.
- Kugele (Dieter), 1978, *Der politische Beamte. Entwicklung, Bewährung und Reform einer politischen administrativen Institution*, München, tuduv Verlagsgesellschaft.
- Lehmbruch (Gerhard), 1991, „The Organization of Society, Administrative Strategies, and Policy Networks“, in Roland M. Czada & Adrienne Windhoff-Héritier (eds.), *Political Choice*, Frankfurt/M., New York, Campus, 121-158.
- Lehmbruch (Gerhard), 2000, *Parteienwettbewerb im Bundesstaat. Regelsysteme und Spannungslagen im Institutionengefüge der Bundesrepublik Deutschland*, Wiesbaden, Westdeutscher Verlag (3rd ed.).
- Lehmbruch (Gerhard), 2002, „Der unitarische Bundesstaat in Deutschland: Pfadabhängigkeit und Wandel“, in Arthur Benz & Gerhard Lehmbruch (eds.), *Föderalismus. Analysen in entwicklungs-geschichtlicher und vergleichender Perspektive*, Wiesbaden, Westdeutscher Verlag, 53-110.
- Lorig (Wolfgang H.), 2001, *Modernisierung des öffentlichen Dienstes. Politik- und Verwaltungsmanagement in der bundesdeutschen Parteiendemokratie*, Opladen, Leske und Budrich.
- Mayntz (Renate) & Derlien (Ulrich), 1989, „Party Patronage and Politicization of the West German Administrative Elite 1970-1987. Towards Hybridization ?“, *Governance*, 2, 384-404 .
- Niskanen (William A.), 1971, *Bureaucracy and Representative Government*, Chicago, Aldine-Atherton.

- Nonet (Philip) & Selznick (Philip), 1978, *Law and Society in Transition : Toward Responsive Law*, New York, Harper.
- Putnam (Robert D.), 1976, „Die politischen Einstellungen der Ministerialbeamten in Westeuropa“, *Politische Vierteljahresschrift*, 17: 23-67.
- Rose (Richard R.), 1991, „What is lesson-drawing ?“, *Journal of Public Policy*, 11, 3-30.
- Rose-Ackerman (Susan), 1994, „American Administrative Law Under Siege: Is Germany A Model ?“, *Harvard Law Review*, 107, 1279-1302.
- Scharpf (Fritz W.), 1989, „The Limits of Institutional Reform“, in : *Yearbook on Government and Public Administration*, vol. 1, ed. by Thomas Ellwein & al., Baden-Baden, Nomos, 99-130.
- Scharpf (Fritz W.), 1997, *Games Real Actors Play. Actor-Centered Institutionalism in Policy Research*, Boulder, Col., Westview Press.
- Schmid (Josef) & Blancke (Susanne), 2001, *Arbeitsmarktpolitik der Bundesländer. Chancen und Restriktionen einer aktiven Arbeitsmarkt- und Strukturpolitik im Föderalismus*, Berlin, Ed Sigma.
- Schmid (Josef), 2002, „Sozialpolitik und Wohlfahrtsstaat in Bundesstaaten“, in Arthur Benz & Gerhard Lehmbruch (eds.), *Föderalismus. Analysen in entwicklungsgeschichtlicher und vergleichender Perspektive*, Wiesbaden, Westdeutscher Verlag, 279-305.
- Smeddink (Ulrich) & Tils (Ralf), 2002, *Normgenese und Handlungslogiken in der Ministerialverwaltung. Die Entstehung des Bundes-Bodenschutzgesetzes : eine politik- und rechtswissenschaftliche Analyse*, Baden-Baden, Nomos.
- Steinkemper (Bärbel), 1974, *Klassische und politische Bürokraten in der Ministerialverwaltung der BRD*, Köln, Carl Heymanns.
- Tils (Ralf), 2002, *Politische Logik administrativen Handelns ? Ministerialverwaltung im Gesetzgebungsprozeß am Beispiel des Bundes-Bodenschutzgesetzes*, unpublished manuscript.
- Wagener (Frido), 1975, „System einer integrierten Entwicklungsplanung im Bund, in den Ländern und in den Gemeinden“, in *Politikverflechtung zwischen Bund, Ländern und Gemeinden* (Schriftenreihe der Hochschule Speyer, Bd. 55), Berlin, Duncker & Humblot, 128-165.