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**Essay**

**Germany's migration policy in the context of federalism**

**Which state-level is to be held responsible for the socio-political integration of immigrants?**

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## Introduction

Debates surrounding the social integration of immigrants in Germany have been a topic of great interest in both media and academia. As far as the latter is concerned, a great deal of literature has been produced attempting to bring greater clarity to an issue that has, all too often, been veiled by suspicion and skepticism. The purpose of this paper is to shed light on the role of Germany's complex federal system vis-à-vis immigration and socio-political integration. Given the fact that individual German states (*Länder*) exercise power and jurisdiction over education, which in the author's view, plays a crucial role for an immigrant's adequate social integration into the host society, it follows that the larger debate should also be framed along state-lines, and not exclusively along national lines. As such, the paper has been divided into the following three sections: Section I provides the reader with an overview of the development of Germany's federal system. Section II addresses the so-called "minority issue" in the context of immigration. Section III connects both issues by discussing immigration in the context of the federal system. The central question that underpins all three sections of the paper is: to what extent can we hold individual federal states or the central government responsible for the successes and/or failures of an immigrant's socio-political integration?

### 1 German Federalism- a target-oriented abridgement

The question whether the German federalism was originally designed for the requirements, which will be developed in the course of the article, first it is necessary to give an overview on the nature and shape of the federal system. Therefore, the institutional development in the context of historical as well as cultural aspects shall be outlined.

#### 1.1 The development of the federal system in the context of history and culture

During the weeks commencing from 10<sup>th</sup> to 23<sup>rd</sup> of August 1948, a group of experts was meeting in Herrenchiemsee with the objective of drawing up a constitution for a new state. Based on this Herrenchiemsee Draft<sup>1</sup> on May, 23<sup>rd</sup> 1949 the Federal Republic of Germany emerged when the Basic Law came into force (the Basic Law (BL) is the constitution of Germany). Article 20 of the BL is not only determining the character of the constitutional law, but also the organizational principle (org. structure) of the political system (newly emerged state). Accordingly, it shall correspond to the essential characteristics of a federal state, i.e. to be "composed of two (or more; in this case 16) orders of government operating within a constitutional framework, with one order providing shared rule through common institutions for certain specific purposes and with the other order (or orders) providing regional or local self-rule through the governments of the constituent units for certain specific purposes."<sup>2</sup> But these mere facts are giving no indication to understand the motivation for establishing a federal political system, nor the factors that have shaped it. For the comprehension of the following analysis, however it is vital to have a certain awareness of some of the factors by which its character is affected. To classify the characteristic of federalism, and make it

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<sup>1</sup> More detailed information, see: Bauer-Kirsch, Angela: *Herrenchiemsee*, Der Verfassungskonvent von Herrenchiemsee – Wegbereiter des parlamentarischen Rates, [http://hss.ulb.uni-bonn.de/diss\\_online/phil\\_fak/2005/bauer-kirsch\\_angela/0602.pdf](http://hss.ulb.uni-bonn.de/diss_online/phil_fak/2005/bauer-kirsch_angela/0602.pdf)

<sup>2</sup> Watts, Ronald: Comparative Conclusions- Introduction: A fundamental feature of Federations, online, p. 1. [http://www.forumfed.org/en/libdocs/Global\\_Dialogue/Book\\_2/BK2-C12-cc-Watts-en.htm](http://www.forumfed.org/en/libdocs/Global_Dialogue/Book_2/BK2-C12-cc-Watts-en.htm)

comparable to others, we need some specific framework for analysis. Therefore I suggest to approach following questions in the course of this chapter. First I will bring out in brief (1.1.1) what is the specific motivation for implementing federalism. Second, I will ask (1.2) what is the nature of the German federalism? By which characteristics is it shaped? Of course it is not possible, nor target-oriented, respectively, to pick up every aspect, hence I will concentrate on the most relevant for the following analysis.

### 1.1.1 Reasons and motivation for implementing federalism in Germany

Reaching the decision to structure a political system, in accordance with the idea of federalism, can have a variety of motives. Therefore Roland Sturm and Petra Zimmermann-Steinhart suggest six reasons by which the motives for federalisms can be distinguished and analysed.<sup>3</sup> The reasons can be: ethically shaped, guided by the idea of democracy, geography, history, economically considerations, or by considerations of the ethnic and social configuration of the society.

In the German case some of these reasons are primarily applicable. In a long term perspective federalism can be traced back until the Holy Roman Empire.<sup>4</sup> In our case, however, the matter of particular interest will be the recent perspective, i.e. the post war period, and its political proceeding until now. It is needless to mention that the very basic principles of the German constitution, hence the political system has been originated during that time.

Since the Nazi reign of terror emanated from a highly centralized regime, which has abolished the former federal structure of the Weimar Republic for its purposes, one of the most preferred interests of the Allies has been to “reconstruct democratic governance in the states first.”<sup>5</sup> Since “[t]he Parliamentary Council, which drafted the Basic Law in 1948-1949, was composed of delegates of state parliaments<sup>6</sup>, [...] it was impossible to create anything but a federal state<sup>7</sup> - a condition also set explicitly by the allied military governors.”<sup>8</sup>

From this follows, quite naturally, that aside from the long term federal history of Germany, primarily the WW II experiences in combination with the general endeavour of the US to democratise the world,<sup>9</sup> democracy related considerations indicating the motive for implementing a federal system in post war Germany. As Jutta Kramer puts it, “[t]he main goal of the majority of the founding fathers was to establish a Western style democratic federal

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<sup>3</sup> Sturm, Roland/ Zimmermann-Steinhart, Petra: *Föderalismus- Eine Einführung*, (Nomos, 2005), p. 15 et sq.

<sup>4</sup> Cp. Gunlicks, Arthur: *The Länder and German federalism*, (Manchester University Press, 2003), p. 9 et sq.

<sup>5</sup> Oeter, Stefan: *Federal Republic of Germany*. online, p. 4.

[http://www.forumfed.org/en/libdocs/Global\\_Dialogue/Book\\_3/BK3-C05-de-Oeter-en.htm](http://www.forumfed.org/en/libdocs/Global_Dialogue/Book_3/BK3-C05-de-Oeter-en.htm)

<sup>6</sup> Here it is mentionable to note, that according to Fritz W. Scharpf, the German federalism is affected by the particularity that the German Länder had been established before the federal state and therefore they were in the position to form the design German federalism to some degree in accordance to their interests, cp. Scharpf, Fritz W.: *Optionen des Föderalismus in Deutschland und Europa*, (Campus Verlag, 1994), p.45.

<sup>7</sup> Thereunto cp.: Laufer/ Münch: Actually, all German parties had a positive attitude towards the general idea of federalism, but “Concerning the intensity of the federal orientation, there occurred considerable differences.” Laufer, Heinz/ Münch Ursula: *Das föderative System der Bundesrepublik Deutschland* (Leske + Budrich, 1998), p. 75sq.

<sup>8</sup> *ibid.*

<sup>9</sup> This became manifested by the so called 'Truman Doctrine' implemented in the year 1947.

state that would guarantee freedom, peace, and security and enable a free-marked economy to come into existence.”<sup>10</sup>In this respect the ethic motive, which means to apply the principle of subsidiarity, can also be seen in the context of the attempt of democratisation, as the policy of allied occupation was “guided by a “bottom up” strategy in order to strengthen German self- administration and the autonomy of the German administrative body.<sup>11</sup> This arrangement finding its expression in Art. 30 BL (Basic Law) is essential to mention, as it is characterised by the fact to be a rather weak order. This fact in turn has some crucial implications on German politics between the federal level and the Länder, what will be discussed in the next paragraph.

But what about the other motives- are they irrelative for the matters of German federalism?

Even if each single reason has certain relevance (positive or negative), not all aspects are to be cited as genuine motives for implementing federalism in Germany. This applies for the geographic motive, as well as for the considerations of the ethnic and social configuration of the society. Regarding the geographic motive as it is generally understood, the mere extensiveness of a country suggests the installation of a federal, decentralised system. In consideration of the German territory, size has had little relevance for the decision. The economic motive is mirrored in the aim to achieve equal living conditions in the federal territory. But this aspect will be discussed in the following from a nother point of view.

By observing the documentation on the process of drafting a constitution for Germany attentively, one particularity is striking in regard to the aspect of society configuration. The documentation of the meetings comprises a passage, which indicates demands, formulated by the western allies, for implementation in terms of a constitution. They postulated to “*call a meeting ( Herrenchiemsee Convent) to draft a democratic constitution, federal in nature, most suitable to „re-establish the presently disrupted German unity, protecting the interests of the Länder, and establishing a central authority with adequate influence capability“*<sup>12</sup>

On the basis of this inconspicuous clause, it it can be assumed that “considerations of the ethnic and social configuration of the society” could have been a reason for implementing federalism in Germany after all.

Though for analytical purposes, the following paragraph will be oriented on these findings in order to give answer to the question which particular nature the German federalism has developed over time.

## 1.2 What is the nature of the German federalism?

What is meant when it is said that federalism ‘most suitable to to re-establish the presently *disrupted German unity*’, and in which way is this fact affecting our considerations? In this context it is crucial not to mistake „disruption“ with “fragmented” in an ethnic or cultural sense. The demand is rather related to the disrupted living conditions which had bee a consequence of war. So it would be misleading to assume, federalism was deliberately implemented to deal with potential ethnic conflict situations like in Belgium, Switzerland or

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<sup>10</sup> Kramer Jutta: The Federal Republic of Germany, in: Dialogues on Constitutional Origins, Structure and Change in Federal Countries, R. Blindenbacher and A. Ostien, Eds. (Montreal & Kingston: McGill-Queen’s University Press, 2005, online:

[http://www.forumfed.org/en/libdocs/Global\\_Dialogue/Book\\_1/BK1-C05-de-Kramer-en.htm](http://www.forumfed.org/en/libdocs/Global_Dialogue/Book_1/BK1-C05-de-Kramer-en.htm)

<sup>11</sup> Cp. Laufer, Heinz/ Münch Ursula: p. 70sq.

<sup>12</sup> Parlamentarischer. Rat I, S. 31. quoted form Bauer-Kirsch, Angela: p. 344. (loose translation by the author)

Canada, where cultural and linguistic, hence regional autonomy is requested or at stake. Based on the fact that the ethnicity of Germany's population [...] is largely homogeneous<sup>13</sup> it is to admit that „the composition of the German population is not a pressing reason for federation“.<sup>14</sup>

Despite this conclusion, I state that the social configuration of the society, amongst other circumstances, mattered and had had crucial implications on the mode of Länder-federal state relation. This argument can be substantiated when it is said, that “it is axiomatic for German politics, particularly in the federal polity, to establish equivalent [since 1994, equal] living conditions”<sup>15</sup> throughout the federal territory. In combination with a traditional etatistic orientation, which is ingrained in German political culture, this institutional goal<sup>16</sup> led to a type of federalism which is described by Fritz W. Scharpf as “highly unusual, in some respects even paradox variety of federalism [...]”.<sup>17</sup> What is meant by this statement? “Its constitutional structure and the complementary institutions that have been established have created a much more highly integrated, indeed interlocking set of intergovernmental relations than in most federations.”<sup>18</sup> So, coming from the assumption that, „ [i]n accordance with the founders' intentions, the Basic Law was designed with a strongly noncentralized system of federalism in mind”<sup>19</sup>, the following overview of the German federalism appears quite ambiguous. This is perfectly displayed by the term- *unitarian federal state*-, coined by Konrad Hesse.<sup>20</sup> As already mentioned, the German federalism tends to be unique, actually somewhat paradox, since it “is neither dual nor purely vertical”.<sup>21</sup> But, how to understand this special feature, and the implications for the political process in the federal system, will be developed in the following paragraph.

### 1.2.1 “Neither nor”- but stable.

It is to mention that the political debate<sup>22</sup> is less questioning the federal character of the German Republic as such, but is arguing about the forming of the political reality in regard to the federal system with a variety of shortcomings. This is perfectly described by the term “joined decision making.”<sup>23</sup>

As already indicated, the original intention was a precise division of responsibilities between the Länder and the federal state. But especially since 1969 the trend towards a unitary

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<sup>13</sup> Kramer Jutta: online, p. 1.

<sup>14</sup> Oeter, Stefan: Federal Republic of Germany. p. 2.

[http://www.forumfed.org/en/libdocs/Global\\_Dialogue/Book\\_3/BK3-C05-de-Oeter-en](http://www.forumfed.org/en/libdocs/Global_Dialogue/Book_3/BK3-C05-de-Oeter-en)

<sup>15</sup> Klatt, Hartmut: Reformbedürftiger Föderalismus in Deutschland?- Beteiligungsföderalismus versus Konkurrenzföderalismus, in, Wehling, Hans-Georg (ed.): *Die Deutschen Länder- Geschichte, Politik, Wirtschaft (Leske + Budrich 2nd ed.,2002)*, p.9.

<sup>16</sup> *ibid.*, p.9-10.

<sup>17</sup> Scharpf, Fritz W.: p.45.

<sup>18</sup> Watts, Ronald L.: *Constructive and Co-operative Federalism? A Series of Commentaries on the Council of the Federation - Intergovernmental Councils in Federations*, p. 5.

<http://www.irpp.org/miscpubs/archive/federation/watts.pdf>

<sup>19</sup> Kramer, Jutta: online, p. 4.

<sup>20</sup> Dt.: Hesse, Konrad: *Der Unitarische Bundesstaat (1962)*. A German jurisprudence scientist and judge at the Federal Constitutional Court of Germany (1975 to 1987).

<sup>21</sup> Schneider, Hans-Peter: online p. 14.

<sup>22</sup> Also, a commission on the issue of reforming the federal system has been established since 2003.

<sup>23</sup> Große Hüttmann, Martin: *Der föderale Staat in der Krise?- Die öffentliche Debatte um Cheques and balances im deutsche Föderalismus*, in *Die Deutschen Länder- Geschichte, Politik, Wirtschaft (Leske + Budrich 2nd ed.,2002)*, p.289.

federalism state has been considerably increased.<sup>24</sup> That is not to understand in the original sense of a centralized state, but in terms of a political system which is focusing less on territorial diversity but rather on unification of living conditions. Further more it is to emphasize, that “this trend [however] has by no means occurred contrary to the will of the Länder; rather it has had their express consent in the Bundesrat.”<sup>25</sup> Officially the type of German federalism is described as “cooperative federalism”, but because of its high degree of centralisation also described by its critics as “disguised centralized state” (Abromeit, Heidrun, 1992), “unitary federalism” (Lehmbruch, Gerhard, 2002)<sup>26</sup> or as trapped by the “joined decision making” mode (Fritz Scharpf, 1988)<sup>27</sup>. The concept of “cooperative federalism” refers to the issue of the constitutional distribution of power. The characteristic feature of that type of federalism is the interaction between the full-fledged member states and the federal level, hence a vertical administrative interconnection<sup>28</sup>. The underlying idea is an increase in efficiency in terms of political understanding and negotiation.<sup>29</sup> The concept of “[c]ooperative federalism’ contributes to the reduction of conflict and enables coordination, but when it becomes ‘interlocking federalism’ [...] [it] reduces the autonomy and freedom of action of governments at both levels.”<sup>30</sup>

The causes for the joint decision making mode can be summed up as following. Primarily traditional reasons spoke in favour of a legal equality of the Länder<sup>31</sup>, but the most important aspect is to be found in the fact that, “excepting Bavaria and Hamburg, non of the new Länder had a distinctive historical identity, and the war-torn German people had have no appreciation for a policy which would divide the society in terms of territory further more.”<sup>32</sup> Even though comprehensible,

“This system has to be proven to be not only crippling, but also problematic from democratic point of view because everybody can be made responsible for everything, and therefore nobody is responsible for anything.”<sup>33</sup>

Based on the above said, and the fact that the “Basic Law has created a symmetrical type of federalism”<sup>34</sup> at least in terms of the institutional arrangement it is to conclude that that the living conditions of the citizens of the Federal Republic of Germany had always played a central role with a crucial effect on the political system itself. So, in order to give an answer to the question, to what extend the constitution and the political system has been deliberately created for a particular purpose, it can be said that the motive was actually to respond the social challenges of the time. Further more the approach was in accordance with the German

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<sup>24</sup> Kramer, Jutta: online, p. 4.

<sup>25</sup> Schneider, Hans-Peter: The Federal Republic of Germany, online, p. 16.

[http://www.forumfed.org/en/libdocs/Global\\_Dialogue/Book\\_2/BK2-C05-de-Schneider-en.htm](http://www.forumfed.org/en/libdocs/Global_Dialogue/Book_2/BK2-C05-de-Schneider-en.htm)

<sup>26</sup> Lehmbruch, Gerhard: Der unitarische Bundesstaat in Deutschland- Pfadabhängigkeit und Wandel, MPIfG Discussion Paper 02/2. [http://www.mpi-fg-koeln.mpg.de/pu/mpifg\\_dp/dp02-2.pdf](http://www.mpi-fg-koeln.mpg.de/pu/mpifg_dp/dp02-2.pdf)

<sup>27</sup> Scharpf, Fritz W.: The Joint Decision Trap: Lessons from German Federalism and European Integration, Public Administration, Vol. 66 (4), 1988, pp. 239-78.

<sup>28</sup> Cp. Gunlicks, Arthur: p.65.

<sup>29</sup> Cp. Sturm, Roland/ Zimmermann-Steinhart, Petra: p.23

<sup>30</sup> Watts, Ronald L.: Comparing Federal Systems McGill-Queens's Univ. Press, 2<sup>nd</sup> ed. 1999), p.60 et seq.

<sup>31</sup> Cp. Kramer, Jutta online page 5.

<sup>32</sup> Scharpf, Fritz W.: Föderale Politikverflechtung: Was muß man ertragen - was kann man ändern?, MPIfG Working Paper Vol. 99 (3), April 1999. <http://www.mpi-fg-koeln.mpg.de/pu/workpap/wp99-3/wp99-3.html>

<sup>33</sup> Kramer, Jutta online, page 5.

<sup>34</sup> Schneider, Hans Peter: online, p. 13.

political culture and tradition. But social systems are not static but continually challenged by external factors and therefore constantly in motion. So are “[f]ederations not static structures”, as well;” rather, they are dynamic and evolving systems.”<sup>35</sup>

Correspondingly, the following chapter seeks to analyse whether the political system with its features to deal with the demands at that time, has developed in accordance with its new challenges of the dynamic social system.

## 2 The Minority issue in Germany- Migration and Integration

Before proceeding any further, it is crucial to specify the existing social cleavages in Germany. In other words, can one talk about significant ethnic, cultural or regional differences within the population of Germany? These findings have to be conceptualised by the question, if these differences are politically relevant, i.e. in our context. Furthermore, whether it is a matter of the federal structure, at all or if the federal structure is even part and/or cause of the problem. These issues will be discussed in the following paragraphs

### 2.1 Of equal and more equal humans-

The issue of being a citizen and just an individual

To develop the issue, first it is to challenge whether the constitutional goal of “the establishment of equivalent [until 1994, equal] living conditions” (see Article 72, para. 2; Article 106, para. 3, sent. 4, no. 2, BL) proves to be a promise for all residents or just for citizens, i.e. for all people living rightful in Germany, including (working) migrants, or just available for Germans in terms of Article 116 BL which defines who is a German citizen, and who is not.

The question is raised to identify whether the federal system proves to be “symmetric”<sup>36</sup> for all people, or if there are asymmetric elements as well. And if so, which are they, why are they occurring and which state level is responsible for potential asymmetries to the disadvantage of the weaker sections of society.

### 2.2 Ethnic minorities in Germany

As already noted, Germany’s population is relatively homogeneous. The “relativity” has to be related to the issue of minorities. In general, there are two types of minorities from which to distinguish. First, there are *autochthonous* minorities. This term refers to national minorities, i.e. indigenous ethnic groups which are historically embedded into the society, but with a distinct culture and language. Due to the fact that these minorities are well imbedded into the social as well as the political system in Germany and are not faced with severe socio-political

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<sup>35</sup> Watts, Ronald L.: Comparative Conclusions- Introduction: A fundamental feature of Federations, online, p. 18.

<sup>36</sup> In terms of an institutional approach, a federal organisation is to be referred as *symmetric*, if the authority between the member states is equally distributed. Otherwise it is an asymmetric federal system. Coming from a sociological approach, a federation can be described as asymmetric if member states can significantly distinguished by differing ideals, political culture or by a decline of serious socio-economic measures. Cp. Sturm/ Zimmermann-Steinhart: p. 21.

challenges, they are factored out of the considerations of this article.<sup>37</sup> That is not the case with the other type of minority. The so-called *allochtoon* minorities are referring especially to people of foreign nationality. But as the single term 'allochthoon' pretends to refer to a homogeneous group, it is to prefer to use "new minorities", as with that term the heterogeneity of these groups of people is better emphasized.<sup>38</sup> According to an estimation based on the micro census of 2005, there are 15.3 million people with a migration background living in Germany, corresponding to 19% of the population.<sup>39</sup>

### 2.3 Migration - of foreigners, immigrant population and persons with a migration background

Since the 19<sup>th</sup> until into the first half of the 20<sup>th</sup> century, Germany has to be characterised by a long tradition of emigration.<sup>40</sup> Only since the mid-1950s, however, Germany has become one of the most important European destinations for migrants.<sup>41</sup> This leads to the conclusion that the demography has transformed over time towards a more heterogeneous character. As developed in the previous chapter, federalism can also be reasoned by considerations of the ethnic and social configuration of the society, i.e. in terms of its potential of conflict management in multicultural societies. And it was elaborated that the BL was originally designed for providing equivalent living conditions throughout the federal territory. For analytical purposes it shall be assumed that these are ideal conditions in order to respond to the issue of migration appropriately. Further more, out of this assumption it shall be derived that the challenging process of integration of the immigrated population has been successfully adopted by the German political system. But there are significant indications, suggesting that this is evidently not the case.

#### 2.3.1 A glance on German immigration policy

Only since 2005 there is an appropriate legal basis for the issue of migration. Before the Immigration Act came into force, the German immigration policy was marked by disorientation.<sup>42</sup> The fact that the German policy as well as polity has an ambiguous nature can be easily understood through the fact that there is a dispute over the terminology on the issue, i.e. until now and despite the share of 19% immigrants (i.e. Germany is de facto a immigration country), the official position of Germany is, that it is not an "immigration country"!

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<sup>37</sup> These minorities have only relevance for political philosophy, i.e. in regard of the question in how far it is in order or even possible to grant ethnic groups distinctive group rights within a liberal democracy.

<sup>38</sup> Cp. Gärtner, Reinhold 2006: Ethnos oder Demos? Individuum oder Kollektiv? - Zur Frage des Subjekts in der Minderheitenpolitik, in Salzborn, Samuel (Hrsg.), Minderheitenkonflikte in Europa-Fallbeispiele und Lösungsansätze (Studien Verlag). p.19.

<sup>39</sup> Source: Germans Statistical Office. Quoted from focus Migration: Country Profile- Germany No.1, May 2007 (fact sheet), [http://www.focus-migration.de/typo3\\_upload/groups/3/focus\\_Migration\\_Publikationen/Laenderprofile/CP01\\_Germany\\_v2.pdf](http://www.focus-migration.de/typo3_upload/groups/3/focus_Migration_Publikationen/Laenderprofile/CP01_Germany_v2.pdf)

<sup>40</sup> Bade, Klaus J.: Transnationale Migration, ethnonationale Diskussion und staatliche Migrationspolitik im Deutschland des 19. und 20. Jahrhunderts, in: Bade, Klaus J. (Hg.) Migration – Ethnizität – Konflikt: Systemfragen und Fallstudien. IMIS-Schriften, 1. (Universitätsverl. Rasch, 1996), p. 403.

<sup>41</sup> Focus Migration: Country Profile- Germany No.1.

<sup>42</sup> Bade, Klaus J.: p. 423.

Nevertheless, and for the first time of German migration policy the focus is on promoting the integration of immigrants since the introduction of the national integration plan.<sup>43</sup>

But how to measure whether a political system has dealt and is dealing with the challenge posed by the migration issue properly? And how is the issue of migration related to the federal structure of Germany, since in legal terms the authority is assigned exclusively to the federal state?

## 2.4 Migration in the context of federalism in Germany

Two central elements of the German federal system are attracting notice to the issue of migration.

To conceptualise federalism and the German migration policy it is necessary to focus on two central elements of the German federal system. As elaborated above the German cooperative federalism is to characterize by its high interconnectivity. In this regard another feature is to mention, as in this system the distribution of power is regulated by the provision of legislative competence which differentiates not by policy but according to functional criteria.<sup>44</sup> That in consequence means that the immigration Act is a federal law, but has to be implemented by the Länder. That means for instance, that the naturalization is a matter of the Länder eventually of the local authority.<sup>45</sup>

The second aspect is also closely related to the question of how to quantify the success or failure of integration. Since “The education system plays a major role in the debate on integration”<sup>46</sup>, the approach will be to assume a causal effect between education (which was quantified by the PISA study) and integration (which is in terms of controversial measurement hardly quantifiable). This approach can be substantiated due to the fact that literacy has a major effect on the chances of successful integration.<sup>47</sup> But the findings of the OECD Programme for International Student Assessment (PISA), first published in 2000, has discovered that there are significant differences between German pupils and their fellow pupils with a migration background in all tested school subjects.<sup>48</sup> These findings are also reflected in the ‘*Nationaler Integrationsplan* (national plan for integration) which was introduced in 2005. The findings of the PISA study, i.e. children with a migrant background are less literate; hence have less chance for a successful integration, in combination with the acknowledgement that “problems with integration have been increased over the last years”<sup>49</sup> by the federal government allows the conclusion that the migration as well as the integration situation might be problematic in Germany. This is an alarming diagnosis since it

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<sup>43</sup> Focus Migration: Country Profile- Germany No.1. p.6.

<sup>44</sup> Cp.: Article 30 BL, Article 72 BL;

[http://www.bundestag.de/htdocs\\_e/parliament/function/legal/germanbasiclaw.pdf](http://www.bundestag.de/htdocs_e/parliament/function/legal/germanbasiclaw.pdf)

<sup>45</sup> The BL distinguishes just two state levels, i.e. the Länder and the federation. Hence the local level is an integral part of the Länder, see Art. 28, para. 2 BL

<sup>46</sup> Focus Migration: Country Profile- Germany No.1, p.6.

<sup>47</sup> Nationaler Integrationsplan (NIP)

[http://www.bundesregierung.de/nsc\\_true/Content/DE/Artikel/2007/07/Anlage/2007-07-12-nationaler-integrationsplan,templatelId=raw,property=publicationFile.pdf/2007-07-12-nationaler-integrationsplan](http://www.bundesregierung.de/nsc_true/Content/DE/Artikel/2007/07/Anlage/2007-07-12-nationaler-integrationsplan,templatelId=raw,property=publicationFile.pdf/2007-07-12-nationaler-integrationsplan)

<sup>48</sup> Deutsches PISA-Konsortium (ed.): PISA 2000 Basiskompetenzen von Schülerinnen und Schülern im internationalen Vergleich (Leske + Budrich, 2001), p. 44 sqq.

<sup>49</sup> Nationaler Integrationsplan- Kurzfassung für die Presse, p.1.

<http://www.bundesregierung.de/Content/DE/Artikel/2007/07/Anlage/2007-07-12-nationaler-integrationsplan-kurzfassung,property=publicationFile.pdf>

makes one question what has happened in the years when the first (working) migrants arrived in Germany until now.

Is the federal structure in Germany perhaps not the right approach for providing equal living conditions for all the people living in the federal territory after all- i.e. for migrants as well? This question is especially relevant in respect to the migrants who are living in the 2<sup>nd</sup> and 3<sup>rd</sup> generation in Germany. In essence, what went wrong? Which state level is responsible for the current situation? These questions shall be tested and analysed on the basis of two hypotheses in the following section

### **3 Accountability in the federal system- a controversial issue**

If one assumes that the situation of immigrants in Germany is comparatively worse than of other OECD countries, especially then of traditional migration countries, it shall be tested which state level in the federal system of Germany can be held responsible.<sup>50</sup> For this purpose, two hypotheses have to be formulated.

#### **3.1 Formulation the working hypotheses**

Before formulating the first hypothesis, a comment on the German educational system is necessary. As elaborated above, German federalism is marked by its high interconnectivity. But from the outset, education is one of the very own spheres of authority in the German federalism. In accordance with Article 70, para. 1. BL and under the designation the 'cultural sovereignty' the legislative competence in the area of education is only reserved for the Länder.

With this in mind and the findings of the first report on the quality of education, published in 2003, that "participation in education and academic achievements are key prerequisite for the integration of immigrants and for the coherence of any modern society" the following hypothesis shall be formulated:

Hypothesis 1:

Since education and literacy is a prerequisite for a successful integration, the quality and performance of the educational system is imperative for successful integration. As the Länder are in authority of the educational system, successful integration, in dependence of successful education, is in their responsibility. Hence the Länder are to be held responsible in case of a failed integration.

Unlike the issue of education, which is a matter under the jurisdiction of German federal Länder, the federal state has the legislative competence in issues related to immigration and right of asylum<sup>51</sup> Therefore, the second hypothesis shall be formulated in the following way:

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<sup>50</sup> The following analysis shall be undertaken in the awareness of the complexity of the whole issue and the boundaries set by narrowness of space, and therefore makes no claim to be complete. Even though issue related aspects have to be ignored, the conclusion I am aiming for shall not be affected negatively. [note from the author]

<sup>51</sup> Basic Law Article 73 [Subjects of exclusive legislative power], The Federation shall have exclusive power to legislate with respect to: (2) citizenship in the Federation; (3) freedom of movement, passports, immigration, emigration, and extradition;

## Hypothesis 2:

The quality of the legal basis for migrants determines the way foreigners shall and will be treated. Hence, it has an effect on the way immigrants will be integrated in and by the host society. Moreover, the integration behaviour of the immigrant is affected, as well. From this it follows that in case of a failed integration the Federal state is to be held responsible.

### 3.2 Possible interpretations- which state level is to blame?

Based on the PISA study it can be argued that the Länder can be held accountable for the inappropriate social environment, which makes the integration difficult for the host society as well as for the immigrant. On the other hand, one could argue that the determining effect is to be found rather in the legal basis, forming the background of the issue. Which arguments are in favour of the respective approach, and which arguments are against?

Against the backdrop of the highly interconnected federal system, the following analysis will examine that both issues can not be discussed separately without risking an improper reductionism.

Owing to that, a short overview of the coherences of the respective issues has to be developed.

For practical reasons, and to develop the migration issue in general, the issue of the German migration policy will be examined at first. Building on this, migration will be discussed in the context of literacy and the education system. Subsequently and based on the respective findings a conclusion will follow.

#### 3.2.1 The German migration Policy- a contextualised perspective

“Germany a migration country?” If, or if not, in Germany it is a matter of ideology.<sup>52</sup> In fact it is a migration country, already since the recruitment of guest workers in the mid-1950s.<sup>53</sup> But first of all, what does migration actually mean in Germany? Since the mid 1990s there are three major groups to distinguish.<sup>54</sup> The resident foreign population refers to all persons who do not hold a German passport- regardless of duration of stay. Therefore, even persons living in the 2<sup>nd</sup> or 3<sup>rd</sup> generation in Germany are in legal terms foreigner. “Recruitment during the “guest worker” era has left clear marks on the composition of the foreign population: 57%

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Basic Law Article 72 [Concurrent legislative power of the Federation definition] (2) “The Federation shall have the right to legislate on these matters if and to the extent that the establishment of equal living conditions throughout the federal territory or the maintenance of legal or economic unity renders federal regulation necessary in the national interest.” Accordingly, Article 74, para. 1, no. 4, BL defines “the law relating to residence and establishment of aliens”, as a matter of federal legislation. The matter of “right of asylum” is basically regulated in accordance with Article 116 BL [Definition of “German”; restoration of citizenship].

<sup>52</sup> The ambiguous character of the issue becomes evident in the fact that both parties of the grand coalition, currently ruling in Germany since 2005, have a different terminology. The Christian Democratic Union, (CDU) is still avoiding the term immigration country- replacing it by a term with no equivalent at least in English, whereas the Social Democrats, (SPD) has officially included the term into the new policy programmes they agreed on in 2007. Until then Only the Alliance '90/The Greens (Grüne) had incorporated the term into their policy programmes of 2002.

<sup>53</sup> In order to meet the demands in terms of the German economic miracle, foreigners had been recruited to fill the gap of manpower.

<sup>54</sup> Before the 1990s there were only two. Since the Sowjet Union still existed, no noteworthy group of migrants arrived in Germany from there.

of the foreigners living in Germany are citizens of a former recruitment state.”<sup>55</sup> Another major source of immigration is the, (Spät-) Aussiedler. They are ethnic Germans, so-called repatriates, from central and eastern Europe as well as former Soviet Union.<sup>56</sup> The third group are refugees and asylum-seekers. All three groups are distinct in terms of their legal status. Politically and legally the (Spät-) Aussiedler are the most advantaged group (see Article 116). But in terms of their social status they are hardly to distinguish from the group of working migrants- as both are still barely integrated. Same with the group of refugees and asylum-seekers. But this group is in terms of the legal status the most disadvantaged as their resident permit is only temporary. The second basic question is why migration and integration are obviously strictly separated issues? In order to answer the problematic situation for immigrants in terms of the legal basis, it may be advisable to take the concepts and terminologies into consideration in which the issue is historically and legally handled.

### 3.3 The nation building process as the foundation of policy-making

The question on how the issue of migration is handled is dependent on the way the model of the nation state is legitimised. Basically there are two differing ways which are both built on the basic idea that state and nation shall be congruent. “The assumption [...] is that state and nation are potentially one and the same kind of thing. [...] Every separate national culture, must, on this theory, be a state in embryo, and the ideal of every state should be to embody a single culture-nation.”<sup>57</sup> Consequently, (1) every state (i.e. its political institutions) is aiming for the creation of a distinctive national-culture on its territory, whereas (2) every nation aspires for the aim of statehood. For analytical purposes, both concepts can be distinguished in two concepts (1) Demos<sup>58</sup>, and (2) Ethnos. Nation- states based on the Ethnos model, i.e. the nation building process took place without statehood and is based on the idea of *jus sanguinis* (law of blood). As a consequence it is virtually impossible to become naturalized without having ancestors in the respective country. Most countries are based more or less on both concepts. Which concept is more accentuated can inter alia be indicated by the political culture of the country.<sup>59</sup> With regards to the issue of migration and the acknowledgement of aliens, one can conclude that Germany has an explicit continuity in terms of a tradition of an ethno-cultural and ethno-national self-conception in the tradition of *jus sanguinis*.<sup>60</sup> In legal terms, this is to derive from Article 116 (1) BL, which is “suggesting and strengthening the idea, that the German ancestry (in ethnic terms, note from the author) is a particular important prerequisite for German citizenship.”<sup>61</sup>

Two conflicting aspects are related to this kind of tradition in terms of its effects on the political culture and national identity. First, the described explicit continuity in terms of an

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<sup>55</sup> focus Migration: Country Profile- Germany No.1, p.3

<sup>56</sup> ibidem, p. 2.

<sup>57</sup> Cobban, Alfred: The National State and National Self-Determination (London, 1969: 110-111) cited from: Schneckener, Ulrich: *Ausweg aus dem Bürgerkrieg* (Suhrkamp Verlag, 2002), S. 29.

<sup>58</sup> This concept is basically developed the other way round. France can be given as most prominent example in this context.

<sup>59</sup> Cp. Schneckener, Ulrich: p.29.

<sup>60</sup> Bade, Klaus J.: p. 420.

<sup>61</sup> Obernförfer, Dieter: *Assimilation, Multikulturalismus oder kultureller Pluralismus- zum Gegensatz zwischen kollektiver Nationalkultur und kultureller Freiheit der Republik*, in: Bade, Klaus J. (Hg.) *Migration – Ethnizität – Konflikt: Systemfragen und Fallstudien*. IMIS-Schriften, 1. (Universitätsverl. Rasch, 1996), p. 139.

ethno-cultural and ethno-national self-conception has led to a similar continuity in terms of a defensive demeanour of the immigration legislation as well as immigration policy.<sup>62</sup>This, in consequence has led to the fact that the German immigration policy was marked by disorientation.<sup>63</sup> The immigration policy can be abstracted as one which has never intended to integrate the migrant workers. The fact that since the late 1970s the situation of the immigrant was legally vacant had a major implication on the social situation in two ways. First, the German society never developed an inclusive identity. As a result the immigrants hesitated to integrate themselves and to feel native. Secondly, because of this kind of migration policy for example the 1980s in terms of that policy are called the “lost decade.”<sup>64</sup>Only since 1993, when the Naturality Act was reformed to establish a right to naturalisation it is legally possible to become a German citizen and with that politically integrated. But in respect to social integration another decade was necessary since only through the National Integration plan of 2005 the focus lied on promoting social integration.

In the next paragraph the spotlight is on the question of whether the situation for immigrants in the German education system might be the origin of the problem of a barely integrated population of immigrants.

### 3.4 The German school system and its implications on the issue of integration

This shall not be the place to discuss the education system as such<sup>65</sup>, but the following context is to be analysed.

If the Länder have the legislative competence and jurisdiction for the education system, and it is common sense, that literacy, especially language skills, are necessary preconditions for integration, why have the pupils with a migration background achieved a lower score in the PISA study in comparison to the native pupils?. The question is legitimate, as because of the federal organisation of the education system, one should suppose that the Länder have an interest in an equal quality irrespective of the origin. With this in mind, there should be regions with a better integration chance (because of a higher education level of the pupils with migration background) and regions with less advantageous conditions in terms of the level of education.<sup>66</sup> Obviously, and according to the cited sources such as the PISA study and the National Integration Plan, this is not the case. The prospects are throughout the federal country, except for minor variations,<sup>67</sup> relatively disadvantageous. Why is that phenomenon occurring in all the Länder? The answer is as simple<sup>68</sup> as disillusioning. As mentioned above, the federal system is highly interconnected. This is not just correct in

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<sup>62</sup> Bade, Klaus J.: p. 420.

<sup>63</sup> L.c.

<sup>64</sup> Bade, Klaus J.: p. 424.

<sup>65</sup> In Germany, there is a debate on the question whether an integrated school system would be better as the three-tiered system.

<sup>66</sup> A discussion of the socio-economic situation of the parents can be neglected as the factor as well as the education level of the parents is already integrated in the scoring system of the PISA study.

<sup>67</sup> There are inter-state variations between the Länder. But the bottom-line is that the relative distance to the pupils without a migration background, in terms of the PISA score is relative stable in all Länder. Therefore it shall not be discussed in detail.

<sup>68</sup> Admittedly, to characterize a political issue of this complex dimension might appear somewhat unscientific, but for the purpose of this consideration the issue have to be kept as simple as possible. Beside, it is not false and absolutely in accordance with the common scientific of education as well as federal system.

respect of the vertical dimension, but also regarding the horizontal. “The Land governments [are] also engaged increasingly in numerous cooperative arrangements with other Länder through a wide variety of conferences [...] e.g., the Conference of Education and Culture Ministers (KMK)<sup>69</sup>-[...]”<sup>70</sup> As a result, concerning the education system, the degree of unitary, is in some aspect higher than in centralized states.<sup>71</sup> That the Länderpolitics are highly concerted is particularly owed to the aim of achieving equivalent/ equal living conditions.

But apart from that, are the Länder responsible for the task of integration in terms of a special approach for pupils with a migration background in order to increase their integration prospects? This, in combination with the issue of the migration policy of the Federal state is discussed in the conclusion.

### **Conclusion**

The outcome of the analysis above could be summarized as follows: The fact that the Federal state pursued a policy according to the credo “Germany is not a migration country” is perfectly reflected in the education policy of the Länder. That can be interpreted in the following way. Basically, the Länder are to be held responsible for the education of all children, irrespective of origin. But as children with a migrant background need a special education concept in order to overcome their disadvantages resulting from their migrant background. In this context, one can conclude that the unfavourable situation of the migrants is a result of the federal migration policy. That finding should not make oneblame the Länder for a failed integration of people with a migrant background. The education policy of the Länder, irrespectively of their legislation competence, has to meet the legal conditions created by the federal state. This means, that if the Federal migration policy is designed for the purpose not to integrate the immigrant but instead for an expected return to their home countries, the Länder will not design their education systems that accommodate the special requirements of immigrants. This is just the explanation of the problem, not a justification, since both the Federal state for its reasons, and the Länder for other reasons, ignored the fact that Germany is a migration country. Therefore, one could safely conclude that both levels neglected to design an appropriate approach vis-à-vis immigration.

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<sup>69</sup> The KMK exists since the very beginning of the state building process and was established 1948, before the state came into existence!

<sup>70</sup> Gunlicks, Arthur: p.219.

<sup>71</sup> Wolf, Frieder: Bildungspolitik: Föderale Vielfalt und gesamtstaatliche Vermittlung, in, Schmidt, Manfred G./Zohlnhöfer, Reimut (Hrsg.): Regieren in der Bundesrepublik Deutschland. Innen- und Außenpolitik seit 1949, (VS Verlag, 2006b). p.225.

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