

COMPARATIVE POLITICAL DECENTRALISATION IN EUROPE

CHRISTINE STUART

This paper provides a comparative analysis of the degree of political decentralisation in five European countries. It is organised on a country by country basis beginning with the power-sharing arrangements between Scotland and the UK, followed by an analysis of political decentralisation in Spain, Italy, Belgium and Germany.

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Murray Earle on extension 85370 or email murray.earle@scottish.parliament.uk. Members of the public or external organisations may comment on this briefing by emailing us at spice@scottish.parliament.uk. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at sp.info@scottish.parliament.uk.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

www.scottish.parliament.uk



CONTENTS

INTRODUCTION	4
SCOTLAND	5
HISTORICAL BACKGROUND	5
DISTRIBUTION OF RESPONSIBILITIES	5
TRANSFERRING AND DELEGATING POWERS	6
<i>Table 1: Reserved Powers of the UK Parliament</i>	8
SPAIN	13
HISTORICAL BACKGROUND	13
DISTRIBUTION OF POWERS	13
TRANSFERRING AND DELEGATING POWERS	15
<i>Table 2: Reserved, Devolved, Shared and Executive Powers in Spain</i>	16
ITALY	23
HISTORICAL BACKGROUND	23
DISTRIBUTION OF POWERS	23
TRANSFERRING AND DELEGATING POWERS	24
<i>Table 3: Exclusive and Concurrent Powers of the Italian Parliament</i>	26
BELGIUM	28
HISTORICAL BACKGROUND	28
DISTRIBUTION OF POWERS	29
TRANSFERRING AND DELEGATING POWERS	30
<i>Table 4: Powers of the Federal, Regional and Community Parliaments in Belgium</i>	32
GERMANY	34
HISTORICAL BACKGROUND	34
DISTRIBUTION OF RESPONSIBILITIES	35
TRANSFERRING AND DELEGATING POWERS	36
<i>Table 5: Distribution of Legislative Competencies in Germany</i>	38
COMPARATIVE OUTLOOK	41
SOURCES	44

KEY POINTS

- The UK has a devolved structure with legislative powers for Scotland divided between the Scottish Parliament and Westminster
- The exclusive legislative competencies of the Westminster Parliament in relation to Scottish devolution are enshrined in the Scotland Act. All powers not protected under Schedule 4 or reserved to Westminster under Schedule 5 fall within the competence of the Scottish Parliament
- Spain also has a politically devolved structure with legislative powers divided between the national parliament of Spain and the parliaments of the 17 autonomous communities
- The Spanish constitution provides for both reserved and devolved powers and the community statutes of autonomy detail concurrent and executive powers
- In Italy there is a federal arrangement with legislative competencies shared between the central parliament and the 20 regional parliaments
- The Italian constitution lists the powers reserved to the national parliament as well as concurrent powers to be shared between the centre and the regions. All other matters fall within the competence of the regions
- Belgium is a three-tiered federation with legislative powers shared between the national, regional and community parliaments
- The Belgian constitution details the legislative competence of the community parliaments, but the division of powers between the regions and the national parliament is less clear
- Germany has a federal structure with legislative powers divided between the national parliament and the parliaments of the 16 länder
- The German constitution contains the reserved competencies of the national parliament as well as three different categories of concurrent powers which are shared between the centre and the länder. All other matters fall within the remit of the parliaments of the länder

INTRODUCTION

This briefing provides a comparative study of political and legislative decentralisation and regional self-governance in several European countries. It considers the constitutional arrangements in place in Spain, Italy, Belgium and Germany and compares these with the devolution settlement for Scotland under the Scotland Act 1998.

The aim of this briefing is to provide a comparative analysis of the powers that are reserved to the national parliaments of the countries in question and those which are devolved (under devolution or federalism) to the regions of those countries.

Included is a brief history of each of the countries to provide background information to political decentralisation. Structural arrangements are then discussed, presenting an overview of how decentralisation has been implemented and how responsibilities have been divided. The reserved and devolved subject matters are presented in table format, organised under the subject headings found in Schedule 5 to the Scotland Act, for easy comparison. The mechanisms for transferring powers between national and sub-national levels are also discussed to demonstrate that devolved and reserved matters are not necessarily fixed.

SCOTLAND

HISTORICAL BACKGROUND

With the passing of the 1707 Act of Union, the Scots Parliament gave up its sovereign status and powers of primary legislation in order to enter into a parliamentary union with England. As a precondition of the union, Scotland negotiated the retention of a high degree of control in the areas of religion, law, education and local government (McGarvey and Cairney 2008). While final decision making authority over policies affecting Scotland became vested in the UK parliament at Westminster, this authority was subject to certain constitutional guarantees in these areas, which laid the foundations for a number of the future areas of jurisdiction of the Scottish Office and later the wide powers of the Scottish Parliament.

In 1885 the Government department of the Scottish Office was created to accommodate independence calls from Scottish separatist movements. The Scottish Office was granted responsibility for a number of Scotland's administrative bodies, in particular those relating to areas in which Scotland had been given guarantees at the time of union. This set the precedent that, in situations where Scotland's policy circumstances differed from the rest of the UK, it would be necessary for Scotland's policy response, and hence administrative arrangements, to be specifically tailored in order to meet Scotland's individual requirements (McGarvey and Cairney 2008). Incremental development of the Scottish Office led to extensive growth of its administrative responsibilities.

Administrative devolution and the failed referendum of 1979 were unsuccessful in extinguishing calls for Scottish independence. In 1997 a second referendum was held in which the Scottish electorate was asked if they favoured the creation of a Scottish Parliament. The referendum had a turnout of 60.4%, with 74.3% voting in support of its creation (BBC 1997). The Scotland Act 1998 was then passed detailing the provisions for the establishment of a devolved Scottish Parliament and Administration. When the Scottish Parliament was officially opened in 1999 it inherited a range functions from the Scottish Office. The administrative duties of the Scottish Office provided a framework for establishing the policy responsibilities of the new Scottish Parliament (McGarvey and Cairney 2008).

DISTRIBUTION OF RESPONSIBILITIES

There is no legislation providing precise details of the areas of legislative competence of the Scottish Parliament. Instead, Schedule 5 of the Scotland Act 1998 lists a set of general areas of law that are reserved to Westminster. While the UK Parliament retains ultimate authority in all matters, reserved matters are the areas in which the UK parliament retains exclusive authority and in which the Scottish Parliament does not have legislative competence. Matters not falling within these areas are devolved and therefore areas in which the Scottish Parliament has legislative competence.

The division between reserved and devolved matters is complicated by a number of exceptions. Schedule 4 of the Scotland Act includes a number of protected

provisions. These are enactments, laws and acts that are protected from modification by the Scottish Parliament, regardless of whether they relate to devolved matters. In addition, Schedule 5 includes a number of exceptions to powers reserved to Westminster. This requirement for such exceptions illustrates the complexity of dividing responsibilities between parliaments. Determining whether an issue can be categorised as reserved or devolved is often less than straight forward, as can be highlighted by the example of nuclear power. According to Section D4 of Sch. 5 of the Scotland Act 1998, nuclear energy is a reserved matter, yet Scottish ministers have used veto powers to prevent the building of new nuclear power stations planned for Scotland. This veto power has been justified by reasoning that planning law is a devolved matter (Cairney 2006). In areas where the boundaries between reserved and devolved matters are blurred it is necessary to have in place mechanisms for cooperation between the Scottish and the UK Parliament and for the transferral of powers between the two parliaments.

TRANSFERRING AND DELEGATING POWERS

Whilst the Scotland Act provides a detailed list of reserved areas, the competencies of the Scottish Parliament are not set in stone. The UK does not have a formal constitution guaranteeing a level of autonomy for devolved governments, thus Westminster does not require formal permission from the Scottish Parliament to legislate in devolved areas (Cairney 2006). In spite of this, a general principle known as the Sewel Convention was developed under which the UK Parliament obtains consent from the Scottish Parliament before passing a bill containing provisions either to change the law on devolved matters in Scotland or to alter the legislative competence of the Scottish Parliament. Consent is provided when the Scottish Government lodges a Legislative Consent Memorandum in the Scottish Parliament and it is passed by Parliament as a Legislative Consent Motion.

Although it is competent for any MSP to lodge such a motion, as the Sewel Convention does not require a motion to be lodged by the Scottish Government, it has been the practice for the Scottish Government to do so. The Convention now also covers changes to the executive competence of Scottish Ministers as well as changes to the law on devolved matters and changes to the Parliament's legislative competence.

Legislative Consent Motions are used for a variety of reasons. The Scottish Government may decide to adopt the same policy as Westminster for reasons of convenience (Cairney and Keating 2004). Alternatively, motions can be passed in situations where blurred boundaries exist between reserved and devolved matters, or in order to avoid legislative 'gaps' in which one area of the UK is covered by a law but others are not. An example of this occurred when the UK government wished to pass a bill relating to the International Criminal Court but certain aspects of that bill dealt with matters devolved to the Scottish Parliament. While extradition is reserved, powers of arrest are devolved (Cairney and Keating 2004). The International Criminal Court Bill Legislative Consent Motion was therefore passed to provide the UK government with Scottish consent to legislate in regards to powers of arrest. This allowed the resulting UK Act, the International Criminal Court Act 2001, to be passed

in Westminster. At around the same time, the Scottish Parliament passed the International Criminal Court (Scotland) Act 2001 asp 13. A report of the relevant debate on the Sewel motion, the former term for Legislative Consent Motions, can be found on the Scottish Parliament web site. (Scottish Parliament 2001)

The Scotland Act also provides for additional powers to be transferred to the Scottish Parliament. Under Section 30(2), by order in council subordinate legislation can be passed which modifies Schedule 4 or 5. This can be implemented to increase the legislative competencies of the Scottish Parliament and allow it to legislate in areas previously reserved to Westminster. On the other hand, Section 30(2) also provides for the modification of Schedule 5 for the purpose of increasing the number of reserved matters.

Additionally, the Scotland Act includes provisions for certain reserved functions to be transferred to Scottish Ministers. Section 63 provides for executive functions to be transferred from Ministers of the Crown to Scottish Ministers or for functions to be exercised jointly between the Scottish and UK Ministers. The example of the Scottish rail network can be used to illustrate this. Under Schedule 5 of the Scotland Act, rail transport is a reserved matter. With the passing in Westminster of the Railways Act 2005 responsibility for the Scottish rail network and subsequent funding of over £300 million was granted to the Scottish Ministers (Cairney 2006).

Table 1: Reserved Powers of the UK Parliament

Area	Reserved	Exceptions
<p><u>General Reservations</u></p>	<p>The following aspects of the Constitution: a) the Crown, including succession to the Crown and a regency b) the Union of the Kingdoms of Scotland and England c) the Parliament of the United Kingdom d) the continued existence of the High Court of Justiciary as a criminal court of first instance and of appeal e) the continued existence of the Court of Session as a civil court of first instance and of appeal</p>	<ul style="list-style-type: none"> • Her Majesty's prerogative and other executive functions, • Functions exercisable by any person acting on behalf of the Crown • Functions exercisable by any office in the Scottish Administration • Property belonging to Her Majesty in right of the Crown or belonging to any person acting on behalf of the Crown or held in trust for Her Majesty for the purposes of any person acting on behalf of the Crown • Ultimate superiority of the Crown or the superiority of the Prince and Steward of Scotland. • Property held by Her Majesty in Her private capacity • The use of the Scottish Seal
	<p>Political parties – registration and funding</p>	
	<p>Foreign Affairs - International relations, regulation of international trade, international development assistance and co-operation are reserved matters</p>	<ul style="list-style-type: none"> • Observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community law • Assisting Ministers of the Crown in relation to any matter to which that sub-paragraph applies.
	<p>Public Service - ie the Civil Service</p>	<ul style="list-style-type: none"> • Appointment of sheriff clerks and procurators fiscal etc. • Officers of the High Court of Justiciary and of the Court of Session
	<p>Defence – including the armed forces</p>	<ul style="list-style-type: none"> • The exercise of civil defence functions by any person not a member of the armed forces or of a defence organisation • The conferral of enforcement powers in relation to sea fishing
<p><u>Financial and Economic Matters</u></p>	<p>Treason – including treason felony and misprision of treason</p>	
	<p>Fiscal, economic and monetary policy</p>	<p>Local taxes to fund local authority expenditure</p>
	<p>The currency</p>	
	<p>Financial Services</p>	<p>The subject-matter of section 1 of the Banking and Financial Dealings Act 1971 (bank holidays). Although bank holidays is listed as reserved in the explanatory notes for the Scotland Act, the Scottish Parliament can amend the 1971 act to include further bank holidays</p>
	<p>Financial markets</p>	
<p>Money laundering</p>		

<p>Home Affairs</p>	<ul style="list-style-type: none"> • Misuse of drugs • Data protection • Elections – elections for membership of the House of Commons, the European Parliament and the Parliament/the franchise at local government elections • Firearms • Entertainment – eg classification of films • Immigration and nationality • Scientific procedures on live animals • National security, interception of communications, official secrets and terrorism • Betting, gaming and lotteries • Emergency powers • Lieutenancies 	
<p>Trade and Industry</p>	<p>Business Associations</p> <p>Insolvency in relation to business association</p> <p>Competition – eg regulation of anti-competitive practices & agreements</p> <p>Intellectual property</p> <p>Import and Export Control</p> <p>Sea fishing – regulation of sea fishing outside the Scottish zone</p> <p>Consumer protection</p> <p>Product standards, safety and liability – incl. product labelling</p> <p>Weights and measures - units and standards of weight and measurement</p> <p>Telecommunications and wireless telegraphy – incl. internet</p> <p>Post Office, posts and postal services</p> <p>Research Councils – including funding of scientific research</p> <p>Designation of assisted areas (Industrial Development Act)</p> <p>Industrial Development Advisory Board</p> <p>Protection of trading and economic interests</p>	<p>The creation, operation, regulation and dissolution of charities and certain public bodies</p> <p>The process and effects of the winding up of business associations</p> <p>Regulation of particular practices in the legal profession</p> <p>Prohibition and regulation of movement into and out of Scotland of food, animals, plants, plant products etc for the purposes of protecting the environment or human, animal or plant health</p> <p>Sea fishing in relation to Scottish fishing boats</p> <p>food safety</p> <ul style="list-style-type: none"> • food, agricultural and horticultural produce, fish and fish products, seeds, animal feeding stuffs, fertilisers and pesticides • Re food safety: materials which come into contact with food <p>Authorisation of action in respect of property</p>

<u>Energy</u>	Electricity - Generation, transmission, distribution and supply	Integrated pollution control and air pollution control by local authorities
	Oil and gas	<ul style="list-style-type: none"> • The manufacture of gas • The conveyance, shipping and supply of gas other than through pipes • Credits and grants for construction of ships and offshore installations • Offshore petroleum development with the exception of designated sea areas • Integrated pollution control and air pollution control by local authorities
	Coal - ownership and exploitation, deep and opencast coal mining and coal mining subsidence	<ul style="list-style-type: none"> • Integrated pollution control and air pollution control by local authorities • Environmental duties in connection with planning • Obligation to restore land affected by coal-mining operations
	Nuclear energy	<ul style="list-style-type: none"> • Integrated pollution control and air pollution control by local authorities • Radioactive substances
	Energy conservation	The encouragement of energy efficiency other than by prohibition or regulation
<u>Transport</u>	Road Transport	<ul style="list-style-type: none"> • Road safety information and training • Payments for treatment of traffic casualties
	Rail transport	Grants relating to railway services and further executive devolution as discussed above
	Marine transport –including navigational rights and freedoms	<ul style="list-style-type: none"> • Ports, harbours, piers and boatslips • Regulation of works which may obstruct or endanger navigation • Financial assistance for bulk freight services
	Air transport - regulation of aviation and air transport and arrangements to compensate or repatriate passengers in the event of an air transport operator's insolvency	<ul style="list-style-type: none"> • Aerodromes as mentioned in sections 25, 30, 31, 34, 35, 36, 41, 43 and 50 of the Civil Aviation Act 1982 • Transfer of airport undertakings of local authorities • Airport byelaws • Functions of operators of designated airports as respects abandoned vehicles • Acquisition of land and rights over land • Disposal of compulsorily acquired land
	Other matters – transport of radioactive materials, technical specifications for public passenger transport for disabled persons, regulation of the carriage of dangerous goods	

<u>Social Security</u>	Social security schemes	<ul style="list-style-type: none"> • Social welfare services • Provision of welfare services • Payments towards maintenance of children • Industrial injuries benefit • Promotion of welfare of children in need • Advice and assistance for young persons formerly looked after by local authorities) of the Children (Scotland) Act 1995.
	Child support	Aliment
	Occupational and personal pensions - including gratuities and allowances	Pensions payable to former members of the Scottish Parliament or Scottish Executive or to former members of staff of Scottish public authorities with a mixed function or no reserved functions
	War pensions - including grants, allowances, supplements and gratuities	
<u>Regulation of the Professions</u>	Architects	
	Health professions	<ul style="list-style-type: none"> • Requirement of suitable experience for medical practitioners • Arrangements for the provision of general dental services
	Auditors	
<u>Employment</u>	Employment and industrial relations – eg compulsory insurance and workers' compensation	Agricultural wages
	Health and Safety – ie health, safety and welfare in connection with work, and control of dangerous substances	Public safety in relation to matters which are not reserved
	Job search and support	<ul style="list-style-type: none"> • Career services • Arrangements for the purpose of assisting persons to establish themselves as self-employed persons • Disclosure of information
<u>Health and Medical Sciences</u>	Abortion	
	Xenotransplantation	
	Embryology, surrogacy and genetics	
	Medicines, medical supplies and poisons	
	Welfare Foods	
<u>Media and Culture</u>	Broadcasting – including the BBC	
	Public Lending Right	
	Government Indemnity Scheme	
	Property accepted in satisfaction of tax	

<u>Misc.</u>	Judicial remuneration	
	Equal opportunities – including equality of pay, sexual and racial discrimination and disability discrimination	<ul style="list-style-type: none"> • Encouragement of equal opportunities (other than by prohibition or regulation) and the observance of equal opportunity requirements • Imposing duties on Scottish Administration or Scottish public authority office holders with mixed functions or no reserved functions, to make efforts to ensure that their functions are carried out with due regard to meeting equal opportunity requirements • Imposing duties on cross-border public authorities to make arrangements with a view to securing that its Scottish functions are carried out with due regard to the need to meet the equal opportunity requirements.
	Control of weapons – nuclear, biological and chemical weapons and other weapons of mass destruction	
	Ordnance survey	
	Time – eg timescales, time zones, the calendar and units of time	<ul style="list-style-type: none"> • The computation of periods of time • Bank holidays • The dates of Whitsunday, Martinmas, Candlemas and Lammas
Outer space		

(Source: Scotland Act 1998)

SPAIN

HISTORICAL BACKGROUND

Following the end of the Spanish Civil War in 1939, Spain became a republic under the rule of General Franco. With the death of General Franco in 1975, Spain's monarchy was restored and a new constitution was adopted and ratified in 1978. The new constitution devolved power to the 17 autonomous communities across Spain.

A variety of factors influenced the decision to establish a devolved political system. Firstly, political and economic decentralisation acted as a safeguard against authoritarian governance (Colino 2008), preventing the concentration of power in the hands of the few and the return to a dictatorship. Spain's political history prior to Franco's rule was also a major influencing factor. The republican Constitution of 1931 provided for the establishment of a number of autonomous territories. Catalonia, the Basque Country and Galicia all drafted statutes of autonomy which were passed by referendum within each territory, granting each of the three regions a degree of political autonomy (Colino 2008).

In the aftermath of General Franco's death, the framers of the new constitution took into account the historical claims of self-government from previously autonomous regions. In several regions self-governance was perceived as the recovery of historical experiences (Colino 2008). It was a means of recovering powers that had been lost or resigned in the past. Catalonia for example, was a sovereign nation in its own right during medieval times. It had its own language and political and legislative culture which survived until 1716 when Catalonia became a part of Spain (Generalitat de Catalunya). Comparisons can be drawn here with Scotland, a sovereign nation during the same period until its union with England in 1707. Self-governance in Catalonia, as in Scotland, was considered a partial recovery of its loss of independence.

The existence of a wide variety languages, political traditions and distinct civil law traditions across the regions of Spain were additional influencing factors in regards to the establishment of a devolutionary system. The constitution of 1978 protects by law linguistic differences and political and civil law traditions (Colino 2008).

DISTRIBUTION OF POWERS

Each of the 17 autonomous communities across Spain has its own parliament, president, government, administration and Supreme Court. Section 148 of the [Spanish constitution](#) provides a list of powers which are devolved and therefore within the exclusive legislative competence of the parliaments of the self-governing communities. The constitution also provides a list of exclusive competencies to be retained by the central parliament of Spain, similar to Schedule 5 of the Scotland Act. These are set out in Section 149 of the Spanish constitution. Many of the exclusive powers of the state are accompanied by safeguards for the self-governing communities to prevent infringement into a number of their functions and laws.

The constitutional entrenchment of state and regional responsibilities does not provide for a fixed and conclusive division of responsibilities. Section 149(3) states that matters not expressly assigned to the state by the constitution may fall under the jurisdiction of the self-governing communities by virtue of their statutes of autonomy. The constitution thus allows regions to assume responsibility for particular areas of their own choosing. This creates the possibility of a system of asymmetrical devolution with a variation in the scope of powers enjoyed by each autonomous community. While initially this asymmetry was visible, it is now the case that with a few minor exceptions, all 17 autonomous communities share the same legislative competencies, having taken on as many powers as the constitution allowed (Colino 2008).

Each statute of autonomy sets out its own framework for dividing responsibilities between the Spanish parliament and the regional parliament in question. The [Catalonian Statute of Autonomy](#) for example, distinguishes between the exclusive powers of the Catalan parliament ([article 110](#)); powers that are shared between central Spanish parliament and the Catalan parliament ([article 111](#)); and executive powers in which the Catalan parliament has regulatory and administrative powers only ([article 112](#)). Shared powers are not mentioned in the Spanish constitution but are referred to in the Catalonian statute to refer to areas in which the central parliament sets a framework for legislation and the Catalan Parliament may then legislate further on the issue within that framework (Earle 2008).

As with Catalonia, the [Statute of Autonomy of the Basque Country](#) recognises matters in which the Basque parliament has exclusive legislative competence (article 10). This is followed by a list of areas in which the Basque parliament can provide further legislative development for, and put into effect, basic state legislation (article 11). This is similar to the concept of shared powers in Catalonia. The next section lists the areas over which the central Spanish Parliament has exclusive legislative authority and therefore in which the Basque Country has powers only to execute state legislation (article 12). This can be compared to the matters in which the Catalan parliament has regulatory and administrative powers. While terminology differs between the statutes of autonomy, the approach of dividing matters into the three categories of exclusive powers, shared powers and implementation powers, is common to both.

With regard to matters that are not claimed by statutes of autonomy, Section 149(3) of the Spanish constitution includes a residual clause in favour of the central state, allowing it to assume responsibility for all such matters (Solozabal 1996). The same section also declares that state laws shall prevail in any case of conflict where self-governing communities do not have exclusive legislative competence. This grants the national Spanish parliament ultimate authority over shared matters, reinforcing the superiority of the centre within a devolutionary arrangement, as is also demonstrated by the UK.

TRANSFERRING AND DELEGATING POWERS

As well as allowing for self-governing communities to dictate, to a certain extent, the areas within their legislative competence, the constitution provides further possibility for the widening of their scope of powers. Section 150 of the constitution details the means by which the Spanish state can transfer powers to autonomous communities. The legislative branch of the state may confer upon communities the power to pass legislation within a framework laid down by a state act. The state may also delegate some of its powers, plus the appropriate financial means, to self-governing communities, through an Organic Act. This is an act provided for in the constitution which has gained the approval of the overall majority of the members of congress.

The self-governing communities also have the ability to extend their legislative powers of their own accord by making amendments to their autonomy statutes. Section 151(1) of the constitution details the process by which a region can modify its statute of autonomy in order to increase the areas in which it has legislative competence. This is a bottom-up process whereby a new statute of autonomy is negotiated within a region before being taken to the national parliament for approval. The ability of regions to increase their legislative competence has led to continual competition as regions try to catch up or stay ahead of the others in terms of the extent of their authority. For this reason the division of powers between the central and regional parliaments has experienced many changes since the constitution was ratified in 1976 (Keating 2007). It is now the case however that competition and change have come to a near halt. At present all 17 regions share the same powers with the exception of a few minor differences such as the police service, which not all regions have chosen to take on as a competency (Colino 2008).

Table 2: Reserved, Devolved, Shared and Executive Powers in Spain

<u>Area</u>	<u>Reserved Matters</u>	<u>Exceptions</u>	<u>Devolved Matters</u>	<u>Shared Powers (Catalonian Example)</u>	<u>Executive Powers (Catalonia)</u>
General Reservations	International relations				
	Basic rules of the legal system of public administrations and the status of their officials; the common administrative procedure; legislation on compulsory expropriation; basic legislation on contracts and administrative concessions and the system of liability of all public administrations	Without prejudice to the special features of the self-governing communities' own organizations	<ul style="list-style-type: none"> • Organization of institutions of self-government • Changes in municipal boundaries within their territory and functions appertaining to the State Administration regarding local corporations 	<ul style="list-style-type: none"> • Development of organising principles of public employment, over the acquisition and loss of civil service status, administrative situation and rights, obligations and incompatibilities of staff in the employ of the public administration bodies. • The right of escheat in urban expropriations within the framework of state legislation. 	Compulsory expropriation
	Defence and the armed forces				Security
	Commercial, criminal, penitentiary and procedural legislation	Without prejudice to the necessary specialities in these fields arising from the peculiar features of the substantive law of the Self-governing Communities			Prison affairs
	Civil legislation			In matters of patrimonial responsibility, powers to establish the causes that may give rise to liability, in relation to claims brought against the <i>Generalitat</i> , in accordance with the general system of responsibility of all Public Administration bodies, are shared	
	Administration of justice				

<p>Financial and Economic Matters</p>	<p>Monetary system: foreign currency, exchange and convertibility; bases for the regulations concerning credit, banking and insurance</p>			<ul style="list-style-type: none"> • In matters concerning savings banks whose headquarters are in Catalonia, the discipline, inspection and sanctioning and their financial activity, in accordance with the principles, rules and minimum standards established by the state basic law. Monitoring the process of issuing and distributing owner share titles, with the exception of those aspects relating to the system for public offerings, purchase of securities and admission to negotiation, to financial stability and to solvency. • The structure, organisation and function of credit entities which are not savings banks, of credit cooperatives and pension plan and fund management entities and of physical and legal entities operating in the insurance market other than mutual pension societies not included in the social security system, in accordance with the principles, rules and minimum standards established by the state basic law. • The activity of mutual pension societies not included in the social security system, credit entities which are not savings banks, credit cooperatives, pension plan and fund management entities and physical and legal entities operating in the insurance market. • The discipline, inspection and sanction of credit entities which 	
----------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------	--	--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

				are not savings banks, of credit cooperatives, pension plan and fund management entities and of physical and legal entities operating in the insurance market other than mutual pension societies not included in the social security system	
	Basic rules and coordination of general economic planning		<ul style="list-style-type: none"> • Agriculture and livestock raising, in accordance with general economic planning • Promotion of economic development of the Self-governing Community within the objectives set by national economic policy • Town and country planning and housing 	<ul style="list-style-type: none"> • The planning of agriculture and livestock farming and the food sector • Planning of industry, in the framework of general planning of the economy. • Organisation of economic activity in Catalonia. • Stock exchanges and contracting centres located in Catalonia 	Defence of competition in the exercise of economic activities that alter or may alter free market competition within Catalonia
	General financial affairs and state debt				
Home Affairs	Statistics for state purposes				<ul style="list-style-type: none"> • protection of personal data • Notarial affairs and public property, mercantile and movable assets registries • Civil registry
	Authorization of popular consultations through the				

	holding of referendums				
	Manufacturing, sale, possession and use of arms and explosives				
	Nationality, immigration, emigration, status of aliens, rights of asylum				Authorising work to foreigners whose employment is in Catalonia
	Public safety	Without prejudice to the possibility of Self-governing Communities creating police forces, as provided for in their respective Statutes of Autonomy and within the framework to be laid down by an organic act.	Co-ordination and other powers relating to local police forces under the terms to be laid down by an organic act		

Trade and Industry	Legislation on copyright and industrial property				<ul style="list-style-type: none"> • Intellectual property • Industrial property
	Customs and tariff regulations; foreign trade				Evaluation of metals
	Sea fishing	Without prejudice to the powers which, in regulations governing this sector, may be vested to the self-governing communities	Inland water fishing, shellfish industry and fish-farming, hunting and river fishing	Planning of the fishing sector.	
	Legislation on weights and measures and determination of the official time				Metrological control
	Post Office services and telecommunications; air and underwater cables and radio communications				Electronic communications
	Promotion and general coordination of scientific and technical research			Coordination of the research centres and structures of Catalonia.	
Energy	Legislation, regulation and concession of hydraulic resources and development where the water-streams flow through more than one self-governing community; authorization for hydro-electrical power plants whenever their operation affects other communities or the lines of energy transportation are extended over other communities.		Planning, construction and exploitation of hydraulic projects, canals and irrigation; mineral and thermal waters		
	Basic regulation of mining and energy			<ul style="list-style-type: none"> • Energy • The mining system 	

Transport	Railways and land transport crossing through the territory of more than one self-governing community; general system of communications; motor vehicle traffic;		Railways and roads whose routes lie exclusively within the territory of the Self-governing Community and transport by the above means or by cable fulfilling the same conditions		
	Merchant navy and registering of ships; lighting of coasts and signals at sea; general-interest ports; general-interest airports; control of the air space, air traffic and transport; meteorological services and aircraft registration		Ports of haven, recreational ports and airports and those which are not engaged in commercial activities		Maritime rescue operations
Social Security	Basic legislation and financial system of social security	Without prejudice to implementation of its services by the self-governing communities	Social assistance	Social security matters, while respecting the principles of the unity of economic patrimony and the financial solidarity of social security	
Employment	Labour legislation	Without prejudice to its execution by bodies of the Self-governing Communities			Work and labour relations and the public inspection of work and labour relations
Health and Medical Sciences	External health measures; basic conditions and general coordination of health matters; legislation on pharmaceutical products		Health and hygiene		Pharmaceutical products

Media and Culture	Basic rules relating to organization of the press, radio and television and, in general, all mass-communications media	Without prejudice to powers vested in the self-governing communities for their development and implementation		<ul style="list-style-type: none"> • Regulation and control of broadcasting services that use any of the available formats and technologies aimed at the audience in Catalonia, and the supply of broadcasting services if distributed in the territory of Catalonia. • Matters of the media 	
	Protection of Spain's cultural and artistic heritage and national monuments against exportation and spoliation; museums, libraries, and archives belonging to the state	Without prejudice to their management by the self-governing communities.	<ul style="list-style-type: none"> • Local fairs • Handicrafts • Museums, libraries and music conservatories • Monuments 		Archives, libraries, museums and cultural heritage centres owned by the State and located in Catalonia and whose management the State does not reserve for itself
	The promotion of culture and facilitation of cultural communication among self-governing communities, in cooperation with them	Without prejudice to the competences that may be assumed by the self-governing communities	<ul style="list-style-type: none"> • Promotion of culture and research and, where applicable, the teaching of the language of the Self-governing Community • Promotion and planning of tourism • Promotion of sports and the proper use of leisure 		

Sources: Spanish Constitution 1978 and Parlament de Catalunya (2006)

ITALY

HISTORICAL BACKGROUND

When national unity was achieved in Italy in the second half of the nineteenth century, the constitution and administrative system of the new unified state were modelled on the French tradition of unitary, centralised governance. This highly centralised form of governance persisted into the 20th century and culminated in Mussolini's fascist regime (Palermo 2005). The idea of territorial autonomy was regarded as a potential threat to the survival of the state.

Following the Second World War and the end of Mussolini's government a commitment was made to decentralization in Italy. Decentralization was considered a preventative measure against the recurrence of fascism and the possibility of any one leader becoming too powerful. It was also implemented with the purpose of preventing the secession of certain parts of Italian territory (Keating 2007). The regions of Sicilia, Sardegna, Trentino-Alto Adige, Friuli-Venezia Giulia and Valle d'Aosta were all considered to be potentially secessionist for reasons of geographic isolation, prior legislative and administrative self-sufficiency, and because of the presence of linguistic minorities (Del Duca and Del Decu 2007).

In 1948 a new constitution was adopted and ratified and Italy became a republic. The new constitution afforded the five potentially secessionist regions a degree of autonomy in the form of their own basic law, or special statute, approved as a constitutional law of the state. Each was also granted its own regional government with enumerated powers. The constitution mandated enumerated powers for regional governments across Italy as a whole but initially these provisions were only put into practice for those regions with special statutes. It was not until a constitutional revision in 1970 that governments were established in the fifteen ordinary-statute regions, after which it took several years for effective powers to be transferred to them (Hooghe et al 2008). This brought the total number of autonomous regions to 20.

Whilst the regions of Italy have over 2000 years of history as distinct cultural and political entities, the constitution drew on this history in a very limited fashion. The territorial boundaries of the present regions date back only to the 1930s when regions were invented for statistical purposes. They have no precise correspondence to distinct historical entities (Palermo 2005).

DISTRIBUTION OF POWERS

The original [1948 constitution of Italy](#) defined regions, in Article 115, as autonomous territorial units with their own powers and functions. Article 117 determined the matters in which regional parliaments had the capacity to issue legislative norms, provided that such legislation did not conflict with the interests of the nation or of other regions. It was also a requirement that such legislation be within the limits of the fundamental principles established by state law. State law was recognised as superior to regional legislation, establishing a hierarchical political structure with the central state at the top and regional

bodies below (Del Duca and Del Duca 2007). This hierarchy was complicated by the constitutional provision for the special status regions to each have their own statute adopted by constitutional law. This granted them additional autonomy and legislative competency in relation to the fifteen ordinary regions (Palermo 2005), creating an asymmetry of power at regional level.

These constitutional arrangements remained in place until constitutional law no. 3/2001 was approved in 2001. This amended the part of the constitution dealing with the relationship between national and sub-national levels of government (Palermo 2005). It also created a new title V in part II of the constitution named “Regions, Provinces and Municipalities”. This new section in the [reformed constitution](#) describes regions – and also provinces and municipalities – as having equal dignity with the state, within their own spheres of influence (Del Duca and Del Duca 2007). In other words legislation passed by regional parliaments now has the same force of law as that passed by the central parliament. This abolishes the hierarchical structure and indicates a shift from a devolved to a federal arrangement. The new constitutional law also entitles ordinary regions to approve their own statutes while respecting the limits imposed by the constitution (Palermo 2005). As a result the competencies of the ordinary regions no longer differ significantly from those with special statutes (Hooghe et al 2008). After an initial period of asymmetry, all autonomous regions now share the same legislative competencies, a similar evolutionary process to that which took place across the Spanish communities.

The 2001 constitutional reform removed from article 117 the list of matters in which regions may legislate, putting in its place a list of exclusive legislative powers of the state as well as a list of matters subject to concurrent legislation of both the state and regional parliaments. Concurrent powers, comparable to the concept of shared powers in Spain, are matters in which regional parliaments have full legislative competence, except in respect of fundamental principles which are reserved to state law. Those matters which are neither concurrent nor expressly reserved to the state in article 117 fall within the exclusive legislative competence of the regions. This structure is similar to that found in the UK where the Scottish Parliament has legislative authority for all matters not reserved to Westminster by the Scotland Act. The new constitutional arrangements in Italy limit considerably the legislative powers of the national parliament and abolish state control over regional legislation (Palermo 2005).

In 2005 the Berlusconi government attempted to introduce a new set of constitutional reforms under the heading of devolution. If successful the reforms would have furthered decentralization, increasing the legislative competence of the regions by granting them exclusive legislative powers in various key sectors such as health, education and the police. The reform bill was passed by the national parliament but was defeated when put to a public referendum. The reforms were never implemented. (Hooghe et al 2008)

TRANSFERRING AND DELEGATING POWERS

While the reformed constitution lists the areas in which the state has exclusive authority, upon the initiative of a region, under article 116(3), state law may assign to that region specific additional forms and conditions of autonomy. This allows for the possibility of regions being granted exclusive authority over concurrent matters. It also provides for

regions to be given a degree of legislative authority in education matters, the organisation of offices of the justices of the peace, and in the protection of the environment, the ecosystem and of cultural heritage.

Regions may also include in their statutes additional measures for transferring powers. The [special statute for Trentino-Alto Adige/Südtirol](#) provides an example of this. Article 16(3) of the statute declares that the state may delegate by law its administrative functions to the region. Under Article 17, by state law the region may be given powers to issue laws outside of the matters within its legislative competence. The special statute of Trentino-Alto Adige/Südtirol also provides, in article 35, for the regional parliament to have influence in areas not within its competence by voting on draft proposals and laws which are then sent to the national parliament for consideration where they can be either passed as laws or vetoed.

Table 3: Exclusive and Concurrent Powers of the Italian Parliament

Area	Exclusive State Powers	Concurrent Powers
General Reservations	<ul style="list-style-type: none"> • foreign policy and international relations of the state; relations of the state with the European union • organization and administration of the state and of national public bodies • defence and armed forces; state security • law, order and security, aside from the local administrative police • jurisdiction and procedural laws; civil and criminal law; administrative tribunals 	International and European union relations of the regions
Financial and Economic Matters	<ul style="list-style-type: none"> • money; state taxation system and accounting; equalization of regional financial resources • currency system • protection of savings • financial markets 	<ul style="list-style-type: none"> • harmonisation of the budgetary rules of the public sector and coordination of the public finance and the taxation system • savings banks, rural co-operative banks, regional banks • regional institutions for credit to agriculture and land development
Home Affairs	<ul style="list-style-type: none"> • coordination of the informative, statistical and information-technology aspects of the data of the state • state organs and their electoral laws; state referenda; election of the European parliament; • weapons, ammunitions and explosives • immigration • citizenship, registry of personal status and registry of residence • right of asylum and legal status of the citizens of states not belonging to the European union 	
Trade and Industry	<ul style="list-style-type: none"> • protection of competition • intellectual property • customs, protection of national boundaries and international prophylactic measures • weights, units of measurement 	<ul style="list-style-type: none"> • foreign trade • scientific and technological research and support for innovation in the productive sectors • regulation of communication • food

Energy		Production, transportation and national distribution of energy
Transport		<ul style="list-style-type: none"> • harbours and civil airports • major transportation and navigation networks
Social Security	<ul style="list-style-type: none"> • social security • determination of the basic standards of welfare related to those civil and social rights that must be guaranteed in the entire national territory 	Complementary and integrative pensions systems
Regulation of the Professions		All professions
Employment		Protection and safety of labour
Health and Medical Sciences		Health protection
Media and Culture	Cultural heritage	<ul style="list-style-type: none"> • sports regulations • regulation of the media • promotion of the environmental and cultural heritage, and promotion and organization of cultural activities
Misc.	<ul style="list-style-type: none"> • relations between the republic and religious denominations • general rules on education • time standards • protection of the environment and the ecosystem 	<ul style="list-style-type: none"> • disaster relief service • education, without infringement of the autonomy of schools and other institutions, and with the exception of vocational training • land-use regulation and planning • regional and local administrations • electoral legislation, local government and fundamental functions of municipalities, provinces and metropolitan cities

(Sources: Italian Constitution (including 2001 amendments))

BELGIUM

HISTORICAL BACKGROUND

In 1830 Belgium achieved independence and became an autonomous unitary state, comprising both French and Dutch speaking municipalities. As a result of French imperialism and the attempted banning of the Dutch language during the late 18th century, language had become associated with social class. The majority population of Dutch speakers were largely working class and French had become the language of the upper classes and the political elite (Senelle 1996). Struggles for the emancipation of Dutch-speakers followed, prompting the passing of a set of language laws at the end of the First World War which introduced monolingual regions to Belgium. The specified language of a particular region became the language used for all administration, justice and education within that region (Senelle 1996).

With the presence of both Dutch and French-speaking regions, as well as a minority German-speaking region, Belgium became structured as a *consociation*. This was a power-sharing arrangement whereby the three linguistic groups shared political powers at the centre. This was intended as a strategy to prevent conflict between language groups but was largely unsuccessful and it became necessary to take an alternative approach. A number of federal reforms were later introduced in an attempt to hold the Belgian state together by allowing the different linguistic communities to manage their affairs independently (Keating 2007).

Prior to the federal reforms, Belgium had in place several policy making levels (state, province, municipality). Provincial and municipal institutions were considered subordinate to the state and it was only at state level that legal rules with the force of law could be made (OECD 1997a). The constitutional reforms in 1970 recognised the existence of three Belgian communities divided along linguistic lines. These were French, Dutch and German-speaking communities. Initially political institutions were established only in the French and Dutch speaking communities (Hooghe 2008). It was not until a second set of constitutional reforms took place 1980, that the German-speaking community was granted with its own political institutions.

In addition to these linguistic communities, the 1970 reforms also recognised the existence of three geographic regions: Flanders in the North, the Walloon region in the South and the central Brussels-capital region. It was not until the 1980 reforms however, that political institutions in the regions of Flanders and Wallonia were established, and it took until 1989 and a further set of reforms for political institutions to finally be created in the Brussels-capital region (OECD 1997a).

In 1993 an additional constitutional reform declared Belgium a federation and granted constitutional autonomy to the political institutions of each region and community, with respect to their assigned fields of responsibility. Regional and community institutions were granted exclusive legislative competencies and are no longer subordinate to state institutions (Hooghe 2008).

DISTRIBUTION OF POWERS

According to Article 1 of the Belgian constitution, Belgium is a federal state. As well as a central political authority with jurisdiction over the whole country, there are autonomous political institutions in Belgium's three communities and three regions. All Belgian citizens are under the jurisdiction of both one region and one community, each of which has its own government and parliament. The residents of the Flemish region automatically belong to the Flemish community. A decision was made to merge the community and regional institutions in Flanders, leaving only one parliament with legislative powers for both community and regional competencies (Senelle 1996). In the Walloon region, all but the German-speaking residents belong to the French-speaking community. The German speaking residents constitute the separate German-speaking community. The Brussels-capital region has bilingual status and therefore its residents have the choice of belonging to either the French-speaking or the Dutch-speaking community (OECD 1997a).

Legislative competence over political affairs is divided among the federal, regional and community parliaments. Comparable to the arrangements in Italy, there is no hierarchy of powers among institutional levels. Community and regional parliaments enjoy the same level of autonomy as each other and as the central parliament of Belgium, in the exercise of their specifically assigned powers. The measures they enact have the same force of law as those enacted by the federal parliament (OECD 1997a), although applicable only to their own region.

Article 35 of the Belgian constitution reads:

“The federal authority only has power in the matters that are formally attributed to it by the Constitution [while] the communities and the regions ... have power for the other matters.”

This suggests that the authority of the federal government is limited to constitutionally defined competencies and that there is a residual clause in favour of the regional and community parliaments. In other words, regional and community parliaments have authority for all matters not defined in the constitution as federal government competencies. In practice this would be difficult to implement, more so than in other federal or devolved states, since it would then become necessary to determine whether a matter falls within the legislative competence of the regional or community parliaments (Keating 2007).

In apparent contradiction to Article 35, the constitution fails to include an article enumerating the exclusive powers of the federal parliament. It has therefore been established that it is the jurisdiction of the community and the regional parliaments that is delimited by the constitution, while legislative competence over all other matters falls to the federal parliament (OECD 1997a).

The powers of the community parliaments are constitutionally entrenched. Articles 127-130 of Belgium's constitution clearly determine the areas in which the communities have legislative autonomy. The legislative competence of the regions, on the other hand, lacks such constitutional clarity. The only reference to regional powers can be found in article 39:

“The law assigns to the regional bodies ... the power to manage the matters that it determines ... within the scope and according to the manner laid down by a law.”

There is no exhaustive list of the legislative competencies of the regions. It is simply understood that regional parliaments have powers in the fields that are connected with their region or territory, in the widest meaning of the term. (Belgian Federal Government 2008a) The scope of legislative competence of the federal parliament also lacks constitutional entrenchment. In practice the federal parliament assumes exclusive legislative authority over all areas considered to be within the general public interest as well as everything that does not expressly fall under the purview of communities and regions. (Belgian Federal Government 2008b)

The lack of clarity of the competencies of the regional and federal parliaments made it necessary to include a chapter in the constitution devoted to the prevention and resolution of conflict between different law-making authorities. Chapter V provides for the establishment of a Constitutional Court to pass judgement on all conflicting laws arising as a result of uncertainty over which parliamentary institution holds exclusive legislative authority.

TRANSFERRING AND DELEGATING POWERS

The constitutional reforms in 1980 introduced to the regional parliaments the ability to devolve legislative competencies of their choosing to their counterpart community parliament. The revised article 137 states:

“... the Parliaments of the Flemish and French Communities, as well as their respective Governments, may exercise the competences, respectively, of the Flemish Region and of the Walloon Region, under the conditions and according to the terms set by the law.”

This makes it possible for the Flemish region to transfer powers to the Dutch-speaking community and the Walloon region to transfer powers to the French-speaking community. The regional authorities in Flanders immediately chose to transfer a number of powers to the Flemish community parliament. When the Flemish community and regional parliaments merged however, the provision for devolving powers became irrelevant. It remains possible for the Walloon region to transfer powers to the French-speaking community but for the most part the Walloon region has opted out of doing so, choosing to retain all of its assigned powers (Senelle 1996).

With regard to matters in which more than one level of authority has assigned powers – for example foreign trade which is within the legislative competence of both the federal and regional parliaments – a cooperative approach has been adopted. The constitutional reforms during the 1980s introduced the principle of “federal loyalty” to article 143(1) of the constitution:

“In the exercise of their respective responsibilities, the Federal Government, the Communities, the Regions, and the common Community Commission act in the interests of federal loyalty, in order to prevent conflicts of interest.”

This commits the federal, community and regional authorities to taking all necessary steps to avoid conflict and to cooperate in respect of legislation that is of shared interest. This is an alternative approach to transferring powers between parliaments so that one institutional level can take control of an issue in its entirety, as happens for example between the Scottish and UK parliaments (OECD 1997a) by the passing of a legislative consent motion.

Table 4: Powers of the Federal, Regional and Community Parliaments in Belgium

Area	Federal	Regional	Community
General Reservations	<ul style="list-style-type: none"> • Foreign affairs • National defence • Justice • Public service • Law and order • The army and federal police 	International relations connected to the region or territory concerned	International cooperation, including the concluding of treaties concerning education and cultural matters
Financial and Economic Matters	<ul style="list-style-type: none"> • Economic union and monetary unity • Taxation • Public debt • Protection of savings 	Regional economic development	
Home Affairs	Citizenship and immigration		
Trade and Industry	<ul style="list-style-type: none"> • Federal scientific institutions • Scientific policy • Foreign trade • State-owned companies such as Belgian Railways and the Post Office 	<ul style="list-style-type: none"> • Agricultural policy • Foreign trade connected to the region or territory concerned 	
Energy	Nuclear energy	Energy policy	
Transport	Belgian Railways	<ul style="list-style-type: none"> • Public transport • Roads and waterways • Regional airports 	
Social Security	<ul style="list-style-type: none"> • Social security • Pensions 		Assistance to individuals including protection of youth, social welfare, aid to families, immigrant assistance services
Employment		Employment policy	Occupational training and redeployment

Health and Medical Sciences	Public health		Curative and preventative medicine
Media and Culture	Federal cultural institutions		<ul style="list-style-type: none"> • Cultural matters – i.e. safeguarding and promoting the language; fine arts; museums; radio and television; physical education and sport; recreation and tourism • The use of languages, with exceptions concerning special-status municipalities, services whose activities extend beyond the linguistic region in which they are established, and federal and international institutions whose activities are common to more than one Community
Misc.	Setting the upper and lower age limits for compulsory schooling, minimum requirements for degrees, and the education pension scheme	<ul style="list-style-type: none"> • Environment, water policy and sewage • Rural renewal and conservation of nature • City planning and housing • Public works • Subsidiary powers and administrative jurisdiction • Land-use planning • Local government 	Education, except for setting the upper and lower age limits for compulsory schooling, minimum requirements for degrees, and the education pension scheme Cooperation between communities

(Sources: Belgian Constitution 1970, OECD 1997a)

GERMANY

HISTORICAL BACKGROUND

For hundreds of years Germany comprised no more than a group of tribes in North Central Europe. In the 10th century these tribes become a part of the Holy Roman Empire, a loose confederation of hundreds of political units of varying shapes and sizes (Gunlicks 2003). The Thirty Years' War (1618-48) devastated the economy and population of the Empire (US Department of State 2008) and in 1806 it was defeated by the Napoleonic armies and forced into dissolution (Gunlicks 2003).

Napoleon was defeated in 1815 and a German confederation of 39 states was established, principally as a security measure to protect from external threats (Gunlicks 2003). It was a loose association of political entities with no common citizenship, legal system, or administrative or executive organs. It did however establish a Congress of Representatives, comprising members from each of the constituent states, which met regularly to discuss issues affecting the Confederation as a whole (US Department of State 2008). This was a significant indication of movement towards unification.

In 1834 a group of 18 German states formed the German Customs Union which introduced a single currency and enhanced economic efficiency (US Department of State 2008). This was followed in 1867 by the establishment of the North German Confederation which united more than twenty German states. The confederation was enlarged in 1871 by the accession of four independent South German states and assumed the name the German Empire (Lehmbruch 2000). This was the first united German state (Gunlicks 2003). It had a federal structure, with legislative authority being granted to the autonomous states as well as at central level (US Department of State 2008). The decision to establish a federal state was a natural progression from Germany's past experiences as a confederation and lack of history as a unitary state.

The new German empire became a rapidly growing economic power. Lack of trust between this new power and its neighbours resulted in the outbreak of the First World War (Economist 2003). A broadly democratic state in the form of the Weimar Republic was established after the war but was plagued by economic problems during the global depression. In an attempt to tackle these problems the centralisation of fiscal administration took place (Lehmbruch 2000). When Hitler and the National Socialist (Nazi) party came to power extensive centralisation continued, culminating in the abolition of all democratic institutions and the introduction of a dictatorship.

Nazi expansionist plans led to the outbreak of World War Two (US Department of State 2008) which ended in the destruction of Germany's political and economic infrastructures and its occupation by allied – including Soviet – forces. Tensions between the western allies and Russia led to the division of Germany into two parts. The Western Allies founded a democratic West Germany whilst a communist East Germany was created under Soviet domination (Economist 2003). In West Germany the allied nations insisted on a reversal of the centralising trend of the interwar period. Federalism was introduced into the 1949 Constitution, otherwise known as the German Basic Law. The federal arrangement was a

reflection of historic German traditions and a mechanism to curtail the powers of the central government and to protect against the resurgence of a dictatorship. The constitution created eleven länder (states) with extensive competencies. With the unification of East and West Germany in 1990, these competencies were extended to the five new länder (Hooghe 2008) and the united Federal Republic of Germany was established.

DISTRIBUTION OF RESPONSIBILITIES

The existence of 16 länder, each with their own constitution, government and parliament, is guaranteed in Germany's basic law (OECD 1997b). The so-called 'eternity clause' in article 79(3) prohibits the passage of any amendments which would abolish the länder (Watts and Hobson 2000). The German federal system is symmetrical and therefore all 16 länder share the same powers. While a list of exclusive legislative powers of the federation is present in the German constitution, the main principle of German federalism is that competencies are shared (Keating 2007). It is a system of cooperative federalism in which there is a functional division of powers between the federal and state institutions (Börzel 2003). The main responsibilities at federal level are legislative, whereas the länder have responsibility for the majority of administrative duties (OECD 1997b).

The exclusive legislative competencies of the federal state are constitutionally entrenched in article 73 of the Basic Law (see table below). In these areas responsibility for the making of laws remains at federal level. This is complemented by a number of concurrent powers in which authority is shared between the state and länder parliaments. Article 74 lists the matters which are concurrent. Initially it was the case that in these areas both the federal and länder parliaments had legislative powers, although in areas of conflict, federal law prevailed (Watts and Hobson 2000). The federal parliament also retained exclusive legislative competency in concurrent matters where federal involvement was deemed essential, according to the so-called subsidiarity principle in Article 71(2). This principle states that the federation may legislate if it does so in the interests of the state at large and where the establishment of equal living conditions in the federal territory or the preservation of legal and economic unity so necessitates.

On 1 September 2006 German Federal Reform I was enacted which restructured the distribution of legislative powers (Robbe and Hohn 2008). The federal system had been criticised as resulting in the relative decline of the länder in terms of law making powers (Gunlicks 2007). The reforms were therefore introduced with the objective of providing a clearer allocation of responsibilities and improving the capacity of both the federal and länder parliaments to act and make decisions (Robbe and Hohn 2008). A number of amendments were made regarding concurrent powers, notably the division of concurrent legislation into three categories. The first category is concurrent legislation without the subsidiary criterion. In matters falling into this category the federal parliament can legislate without the requirement of meeting certain conditions, whilst the länder have legislative authority only insofar as the federal parliament has not enacted a law (Robbe and Hohn 2008). A second category is concurrent legislation which is subject to the subsidiarity criterion. In these matters the länder parliaments have legislative authority unless the federal government deems its legislative involvement essential according to the

subsidiarity principle, which remains unchanged by the reforms (Gunlicks 2007). The final category is non-conformity legislation. In this area the länder parliaments have authority to deviate from federal laws and federal laws do not have override powers (Gunlicks 2007).

Prior to the federal reforms, in addition to exclusive and concurrent matters, Article 75 of the constitution included a provision for matters of framework legislation. These were matters in which the federal parliament had the ability to pass legislation providing the general details and basic outline of a law and then the parliaments of the länder were legally bound to enact a detailed and customized law within this framework. Framework legislation was designed with the purpose of providing a degree of uniformity across the länder (Watts and Hobson 2000). The federal reforms removed article 75 and framework legislation from the constitution. Criticisms had been made that details were increasingly being provided by the central parliament and the authority of the länder was declining (Gunlicks 2007). The matters previously under the heading of framework legislation were added to article 74 as concurrent matters.

The Constitution does not contain an exhaustive list of the legislative competencies of the länder parliaments. Instead article 70(1) provides a residual clause in favour of the länder which states that the länder parliaments have the right to legislate in all areas of competence which have not been granted to the federal authorities by the constitution. This is comparable to the arrangement in Scotland whereby the Scottish Parliament has legislative competence for all areas not reserved to Westminster under the UK Act, Scotland Act 1998. The federal reforms in Germany increased the legislative competency of the länder by removing a number of matters from the list of concurrent powers in the constitution. It is also the case that a number of previously concurrent matters were granted to the federal parliament, expanding the scope of its exclusive legislative powers (Robbe and Hohn 2008).

While the länder do have legislative competencies in a number of areas, policy implementation takes up a high proportion of their time and activity. In accordance with article 83 of German Basic Law, the länder have a mandatory responsibility to execute federal laws insofar as the constitution does not specify otherwise. In most instances the länder execute federal statutes as matters of their own concern, acting independently and on their own responsibility (OECD 1997b). Additionally, a small number of administrative tasks are carried out by the länder, acting as agents of the federation. In these instances the federal government retains responsibility for ensuring the lawfulness and appropriateness of the execution of statutes.

TRANSFERRING AND DELEGATING POWERS

Article 71 of German Basic Law grants federal institutions the option of delegating legislative authority in exclusive federal matters to the länder parliaments. This can be done only by the authorization of a federal statute which has been passed in both the parliament and the senate. A comparable approach to transferring powers exists in Spain where the state can pass an organic act in congress in order to delegate powers to the self-governing communities.

A different approach is taken in order to grant the federal parliament authority in länder matters. Rather than transfer powers by statute, a cooperative approach to policy making

has been adopted. The constitutional reforms of 1969 introduced the concept of joint tasks (OECD 1997b). These are detailed in Article 91a of the constitution which indicates a number of länder responsibilities in which federal institutions may participate, such as the improvement of regional economic structures. Federal involvement is authorised only on the condition that such participation is important to society as a whole and is necessary for the improvement of living conditions. This has made it possible for a number of policies to be handled jointly and has resulted in a high degree of cooperation and close working relations between länder and federal institutions (Keating 2007).

Table 5: Distribution of Legislative Competencies in Germany

Area	Federal	Concurrent	Framework Legislation
General Reservations	<ul style="list-style-type: none"> • Foreign affairs • Defence, including the protection of the civilian population • Legal status of persons employed by the Federation and by federal corporate bodies under public law 	<ul style="list-style-type: none"> • Civil law, criminal law and execution of sentences, the organization and procedure of courts, the legal profession, notaries and legal advice • State liability • Expropriation 	Legal status of persons in the public service the states, communes or other corporate bodies under public law, where Art.74a does not provide otherwise
Financial and Economic Matters	Currency, money and coinage	<ul style="list-style-type: none"> • Law relating to economic matters (mining, industry, supply of power, crafts, trades, commerce, banking, stock exchanges and private insurance) • Prevention of the abuse of economic power 	
Home Affairs	<ul style="list-style-type: none"> • Statistics for federal purposes • Freedom of movement, passport matters, immigration, emigration and extradition • Citizenship 	<ul style="list-style-type: none"> • Law relating to weapons and explosives • Refugee and expellee matters • Law on residence and settlement of aliens • Registration of births, deaths and marriages 	Matters concerning registration of residence or domicile, and identity cards
Trade and Industry	<ul style="list-style-type: none"> • Weights and measures • Unity of the customs and trading area, treaties on commerce and on navigation, the freedom of movement of goods, and the exchange of goods and payments with foreign countries, including customs and other frontier protection • Postal affairs and telecommunication • Industrial property rights, copyrights and publishing law 	<ul style="list-style-type: none"> • Promotion of scientific research • Promotion of agricultural production and forestry, securing the supply of food, the importation and exportation of agricultural and forestry products, deep-sea and coastal fishing, and preservation of the coasts • Law of association and assembly • Transfer of land, natural resources and means of production to public ownership or other forms of collective enterprise for the public benefit 	
Energy		Production and utilization of nuclear energy for peaceful purposes, the construction and operation of installations serving such purposes, protection against hazards arising from the release of nuclear energy or from ionizing radiation, and the disposal of radioactive substances	

Transport	<ul style="list-style-type: none"> • Air transport • Traffic of railroads owned completely or mainly by the federation; the construction, maintenance, and operation of railway tracks and railroads of the federation as well as the charging for the use of these railways 	<ul style="list-style-type: none"> • Road traffic, motor transport, construction and maintenance of long-distance highways, as well as the collection of charges for the use of public highways by vehicles and the allocation of revenue for this purpose • Railroads which are not railroads of the Federation, except mountain railroads • Ocean and coastal shipping, as well as sea marks, inland navigation, meteorological services, sea routes, and inland waterways used for general traffic 	
Social Security		<ul style="list-style-type: none"> • Public welfare • War damage and reparations • Benefits to war-disabled persons and to dependents of those killed in the war as well as assistance to former prisoners of war 	
Employment		Labour law, including the legal organization of enterprises, protection of workers, employment exchanges and agencies, as well as social insurance, including unemployment insurance	
Health and Medical Sciences		<ul style="list-style-type: none"> • Measures against human and animal diseases that are communicable or otherwise endanger public health, admission to the medical profession and to other medical occupations or practices, as well as trade in medicines, curatives, narcotics and poisons • Economic viability of hospitals and the regulation of hospitalization fees • Artificial insemination of humans, research on manipulations of genes, and regulations for transplantation of organs and living matter 	
Media and Culture			<ul style="list-style-type: none"> • General legal status of the press • Protection against transfer of items of German culture to foreign countries

<p>Misc.</p>	<ul style="list-style-type: none"> • Determination of standards of time • Cooperation between the Federation and the States concerning: <ul style="list-style-type: none"> a) criminal police, b) protection of the free democratic basic order, of the existence and the security of the Federation or of a State Land (protection of the constitution) c) protection against activities in the federal territory which, through the use of force or actions in preparation for the use of force, endanger the foreign interests of the Federal Republic, as well as the establishment of a Federal Criminal Police Office and international control of crime 	<ul style="list-style-type: none"> • Regulation of educational and training grants • War graves of soldiers, graves of other victims of war and of victims of despotism • Real estate transactions, land law (excluding the law of charges for development) and matters concerning agricultural leases, as well as housing, settlement and homestead matters • Protection regarding the marketing of food, drink and tobacco, of necessities of life, fodder, agricultural and forest seeds and seedlings, and protection of plants against diseases and pests, as well as the protection of animals 	<ul style="list-style-type: none"> • General principles governing higher education • Land distribution, regional planning and the management of water resources • Hunting, nature conservation and landscape management
---------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

(Source: [German Constitution 1949](#), Gunlicks 2007 and Robbe and Hohn (2008))

COMPARATIVE OUTLOOK

The decentralisation of legislative and administrative responsibilities has been introduced to a number of European countries for a variety of reasons. Scotland's long history as a distinct and sovereign nation, together with the strong undercurrent of nationalism which has persisted since the Union of 1707, were important factors behind Scottish devolution and the re-establishment of a Scottish Parliament. Experience of sovereignty also played a role in the decentralisation of Italy and Spain, both of which comprise a number of communities with self-governing histories. Accommodation of historical experience was accompanied by the perceived need to provide a safeguard against authoritarian governance in both Spain and Italy. This was the key objective behind German decentralisation where the prevention of the recurrence of a dictatorship was the central motivating factor. In Belgium, the establishment of a decentralised arrangement was for the prevention, not of authoritarianism, but of the outbreak of conflict between different linguistic communities.

The chosen structural arrangements for the implementation of political decentralisation vary from country to country. Devolution is the preferred arrangement in Spain and the UK. The status or indeed survival of sub-national parliaments is not constitutionally guaranteed in either country and their central parliaments retain supreme authority in all areas. Italy, Belgium and Germany have opted for federal arrangements. There is no hierarchy between levels of government and the existence and competencies of state or regional parliaments are constitutionally guaranteed.

Structure also differs in terms of hierarchy between the sub-national parliaments within states. In Scotland there is an asymmetrical arrangement whereby the powers of the Scottish Parliament differ from those assigned to the Northern Irish and Welsh Assemblies. Both Spain and Italy began as asymmetrical arrangements but, over time, differences have minimised and more symmetrical structures have developed. In Germany the constitution guarantees that all *länder* share the same powers, and in Belgium all regional parliaments have equal responsibilities, as do all community parliaments.

The allocation of legislative competencies is contained in most cases in the national constitution of each state. This is not the case in Scotland where in the absence of a unified written constitution, the legislative competencies of the Scottish Parliament are defined by exception in an Act of the United Kingdom Parliament (The Scotland Act 1998) in that matters not protected under Schedule 4 or reserved under Schedule 5, of the Act are within the competence of the Scottish Parliament. In both Spain and Italy, in addition to their national constitutions, the regional and community autonomy statutes include further provisions regarding the separation of powers.

All five states considered in this paper have devised different mechanisms for sharing or allocating powers among national and sub-national levels. The Scotland Act provides a comprehensive list of the exclusive powers reserved to the UK Parliament. All matters not explicitly reserved to Westminster fall within the legislative competence of the Scottish Parliament, although as discussed above, Westminster retains ultimate authority over all matters and exclusive authority over reserved matters. Similar to the Scottish arrangement, the Italian constitution details the exclusive central powers of the Italian

national parliament and there is a residual clause that operates in favour of the regions granting them legislative authority in all other areas. The main difference between the Scottish and Italian arrangements is the inclusion of concurrent powers in the Italian constitution. The list of concurrent matters introduces the concept of shared powers in which both the national and sub-national parliaments have a degree of legislative authority. The concept of shared powers does not exist in the Scotland Act where the preferred arrangement is that all matters fall definitively under the control of one parliamentary level, even although there remain 'grey areas' where the boundaries between reserved and devolved matters are not clear.

The German arrangement is very similar to that of Italy. The German constitution details the exclusive competencies of the national parliament as well as the concurrent matters to be shared between the national and sub-national levels. Again the residual clause operates in favour of the sub-national bodies, parliaments of the *länder*. The difference in Germany is the additional complexity of dividing concurrent matters into three categories and the emphasis on a functional division of powers as opposed to a division strictly in terms of legislative competencies.

Unlike the three aforementioned examples, in Belgium there is no constitutional entrenchment of the powers of the national parliament. It is the legislative competencies of the community parliaments that can be found in the constitution. Belgium has the additional complexity of a third 'federal' level. The assigned powers of the regional parliaments are rather vague, understood simply as the powers in the fields that are connected with their region or territory. All other matters fall within the competence of the national parliament. Spain is the only country in which the legislative competencies of both the national and sub-national parliaments are constitutionally entrenched. For matters which are not exclusively assigned to either level, community parliaments have the option of assuming responsibility for them by virtue of their autonomy statutes. All such matters not assumed by regional statutes fall under the authority of the national parliament.

In all of the countries included in this study, with the exception of Belgium, there are constitutional provisions for national parliaments to transfer powers to sub-national parliaments. In addition to this practice, in both Spain and Italy the sub-national parliaments can include in their autonomy statutes further provisions for increasing their powers. In Belgium there is no such mechanism for transferring powers from national to sub-national parliaments. This can be accounted for in part by the absence of constitutional entrenchment of the powers of both the federal and the regional parliaments. Lack of clarity of designated powers increases the complexity of transferring responsibilities. The Belgian constitution does however provide the regions with the power to devolve responsibility to community parliaments.

The arrangements for the transfer of powers in the opposite direction, from sub-national to national level, vary from country to country. Under the devolved structural arrangement, by order in council the UK Parliament has the legal and constitutional right to legislate at any time to amend Schedule 5 to the Scotland Act in the direction of new or further reservation. In practice however, as a consequence of the Sewel Convention, it would normally do so only after securing the Parliament's consent with the passing of a Legislative Consent Motion. In both Belgium and Germany there are no provisions for matters in their entirety to be transferred to their national parliaments. An alternative approach has been adopted

whereby federal parliaments have the opportunity to participate in sub-national legislative tasks on a cooperative basis only. In Germany this is the likely result of a perceived need to prevent the central parliament from becoming too powerful, whilst in Belgium a cooperative approach has the potential to reduce conflict caused by the lack of clarity over legislative competence. The Spanish and Italian constitutions contain no provisions for increasing the competence of their national parliaments, again the likely result of perceived need to limit power at the centre.

In terms of the nature of legislative matters that have been reserved by national parliaments or assigned to sub-national parliaments, there is a high degree of commonality from country to country. Common matters under the exclusive competence of national parliaments can be found mainly in areas of high politics, a term assigned by political realists to matters of the highest importance, namely defence and national security (Ripsman 2003). Foreign affairs, international relations, defence and the armed forces, immigration and nationality have been exclusively assigned to the national parliament in all five countries considered. In addition to matters of high politics, all five national parliaments have exclusive responsibility for monetary policy and currency.

There is increased differentiation in regards to all other economic, political and social matters, areas traditionally designated by realists as matters of low politics (Ripsman 2003). Variation among countries exists on whether matters of education, environment, energy, transport, health, social security, culture, the media and employment fall under the competency of national or sub-national parliaments. The compromise in many instances is for these issues to be shared between levels in countries with the provision for concurrent powers.

A possible explanation for the differentiation in the level of government authority responsible for these matters is the contentious nature of their relative degree of importance. Whilst common agreement exists that national security is a high priority, the perceived importance of issues such as the environment and culture may vary from country to country. Realists argue that a hierarchy of political issues exists with matters of high politics taking precedence over all other matters. In establishing devolved and federal arrangements it appears that national governments have reserved for themselves the matters with which they attribute the highest importance. Each country is likely to have differing priorities as a result of their different political, as well as economic, environmental, geographic and historical circumstances. The issues reserved by the national parliament of a country are the issues deemed highest on the political agenda specific to that country, and are not necessarily the same issues reserved by the national parliament of another country with a different political agenda. This explains why, in one country, the environment may be deemed high on the political agenda and therefore under the remit of its national parliament, whereas in another country, the environment may be regarded with lesser importance and thus have been devolved to a sub-national parliament. It is also important to note that exclusive state matters such as defence and the armed forces are likely to be more easily coordinated at a national level, whereas issues such as education, transport and culture may be more effectively tackled at sub-national level where requirements in different parts of a country are likely to vary.

SOURCES

Armstrong, E and French, C. (2002) *Parliamentary Systems: Spain* SPICe Briefing 02/135 [Online] Available at:

http://www.scottish.parliament.uk/business/research/pdf_res_brief/sb02-135.pdf

[Accessed 5 February 2009]

BBC Scotland (1997) *Scottish Referendum Live – The Results* [Online] Available at:

<http://www.bbc.co.uk/politics97/devolution/scotland/live/index.shtml>

[Accessed 5 February 2009]

Belgian Constitution 1970. [Online] Available at:

http://www.servat.unibe.ch/law/icl/be00000_.html [Accessed 5 February 2009]

Belgian Federal Government (a) *The Powers of the Regions* [Online]. Available at:

http://www.belgium.be/en/about_belgium/government/regions/competence/

[Accessed 5 February 2009]

Belgian Federal Government (b) *The Federal Government's Powers* [Online]. Available at:

http://www.belgium.be/en/about_belgium/government/federal_authorities/competence_federal_government/ [Accessed 5 February 2009]

Börzel, T.A. (2003) *What can Federalism tell us about the EU? The German Experience*, London: The Royal Institute of International Affairs [Online]. Available at:

http://www.chathamhouse.org.uk/publications/papers/download/-/id/125/file/3098_borzel.pdf [Accessed 5 February 2009]

Cairney, P (2006) *Venue Shift Following Devolution: When Reserved Meets Devolved in Scotland* *Regional and Federal Studies* 16(4), December 2006, p. 429–445

Cairney, P. and Keating, M. (2004) *Sewel motions in the Scottish Parliament*. *Scottish Affairs* 47, p.115-134

Colino, C. (2008) *The Spanish Model of Devolution and Regional Governance: Motivations, Evolution and Effects on Public Policies* *Policy and Politics* 36(4), p.573-586

Del Duca, L.F. and Del Duca, P (2006) *An Italian Federalism? – The State, its Institutions and National Culture as Rule of Law Guarantor* *The American Journal of Comparative Law* 54, 2006, p. 799-841

Earle, M. (2008) *Devolved, Reserved and Shared Powers in Catalonia* SPICe. Unpublished enquiry briefing

Economist. (2003) *Germany: History in Brief* [Online]. Available at:

<http://www.economist.com/countries/Germany/profile.cfm?folder=History%20in%20brief>

[Accessed 5 February 2009]

German Constitution 1949 [Online]. Available at:

<http://www.vescc.com/constitution/germany-constitution-eng.html>

[Accessed 5 February 2009]

Generalitat de Catalunya. *Catalonia: History* [Online]. Available at:

<http://www.gencat.net/catalunya/eng/historia.htm> [Accessed 5 February 2009]

- Gunlicks, A.B. (2003) *The Länder and German Federalism*, Manchester: Manchester University Press
- Gunlicks, A. (2007) *German Federalism Reform: Part One*. German Law Journal 8(1), p 111-132 [Online] Available at: http://www.germanlawjournal.com/pdf/Vol08No01/PDF_Vol_08_No_01_111-132_Developments_Gunlicks [Accessed 5 February 2009]
- Hooghe, L et al. (2008) *Appendix A: Profiles of Regional Reform in 42 Countries (1952-2006)*. Regional and Federal Studies 18(2-3) April-June 2008, p183-258
- Italian Constitution 1948 [Online] Available at: <http://www.vescc.com/constitution/italy-constitution-eng.html> [Accessed 5 February 2009]
- Italian Constitution (including 2001 amendments) [Online] Available at: http://www.servat.unibe.ch/law/icl/it00000_.html [Accessed 5 February 2009]
- Keating, M. (2007) *Federalism and the Balance of Power in European States*. SIGMA [Online] Available at: <http://www.oecd.org/dataoecd/61/8/37890628.pdf> [Accessed 5 February 2009]
- Lehmbruch, G. (2000). *The Institutional Framework: Federalism and Decentralisation in Germany*. In: Wollmann, H. and Schröter, E. ed *Comparing Public Sector Reform in Britain and Germany: Key Traditions and Trends in Modernisation*. Aldershot: Ashgate. [Online] Available at: <http://www.uni-konstanz.de/FuF/Verwiss/Lehmbruch/Veroeffentlichung/Druckfas.rtf> [Accessed 5 February 2009]
- McGarvey, N and Cairney, P (2008) *Scottish Politics*. Basingstoke: Palgrave.
- OECD (1997a) *Managing Across Levels of Government: Belgium* [Online] Available at: <http://www.oecd.org/dataoecd/10/43/1902434.pdf> [Accessed 5 February 2009]
- OECD (1997b) *Managing Across Levels of Government: Germany* [Online] Available at: <http://www.oecd.org/dataoecd/10/0/1902398.pdf> [Accessed 5 February 2009]
- Palermo, F. (2005) *Italy's Long Devolutionary Path Towards Federalism*. In: Ortino, S et al. ed *The changing Faces of Federalism – Institutional Reconfiguration in Europe*. Manchester. Manchester University Press.
- Parlament de Catalunya (2006) *Organic Law 6/2006 of the 19th July, on the Reform of the Statute of Autonomy of Catalonia* [Online] Available at: http://www.parlament-cat.net/porteso/estatut/estatut_angles_100506.pdf [Accessed 5 February 2009]
- Ripsman, M.N. (2004) *False Dichotomy: When Low Politics is High Politics*. Paper presented at the annual meeting of the International Studies Association, Le Centre Sheraton Hotel, Montreal, Quebec, Canada, Mar 17, 2004 [Online] Available at: http://www.allacademic.com/meta/p_mla_apa_research_citation/0/7/3/3/8/p73388_index.html [Accessed 5 February 2009]
- Robbe, P and Hohn, G. (2008) *Legislative Authorities in the Federal State: Current State of Affairs*. Deutscher Bundestag Research Services. Berlin.

Scottish Parliament (2001) *Official Report Thursday 18 January 2001* Col 401. Edinburgh: Scottish Parliament [Online] Available at:

<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-01/or100402.htm#Col401> [Accessed 5 February 2009]

Scotland Act 1998 c.46 [Online] Available at:

<http://www.statutelaw.gov.uk/legResults.aspx?LegType=All%20Primary&PageNumber=1&BrowseLetter=S&NavFrom=1&activeTextDocId=2044365> [Accessed 6 March 2009]

Senelle, R (1996) *The Reform of the Belgian State*. In: Hesse, J.J. and Wright, V. ed *Federalizing Europe?: The Costs, Benefits, and Preconditions of Federal Political Systems*, Oxford: Oxford University Press

Solozabal, J.J. (1996) *Spain: A Federation in the Making*. In: J.J. and Wright, V. ed *Federalizing Europe?: The Costs, Benefits, and Preconditions of Federal Political Systems*, Oxford: Oxford University Press

Spanish Constitution 1978 [Online] Available at:

http://www.congreso.es/portal/page/portal/Congreso/Congreso/Informacion/Normas/const_espa_texto_ingles_0.pdf [Accessed 5 February 2009]

Special Statute for Trentino-Alto Adige/Südtirol 2001 [Online] Available at:

http://www.consiglio-bz.org/it/banche-dati-raccolte/opuscoli.asp?redas=yes&somepubl_action=300&somepubl_image_id=108157 [Accessed 6 March 2009]

Statute of Autonomy of the Basque Country [Online] Available at:

http://www.nuevoestatutodeeuskadi.net/docs/state_of_autonomy.pdf [Accessed 5 February 2009]

US Department of State. (2008) *Background Note: Germany* [Online] Available at:

<http://www.state.gov/r/pa/ei/bgn/3997.htm> [Accessed 5 February 2009]

Watts, R.L and Hobson, P. (2000) *Fiscal Federalism in Germany* [Online] Available at:

http://www.aucc.ca/_pdf/english/programs/cepra/watts_hobson.pdf [Accessed 5 February 2009]